NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $896 million in 2009, up $287 million from 2008. U.S. goods exports in 2009 were $715 million, down 34.7 percent from the previous year. Corresponding U.S. imports from Nicaragua were $1.6 billion, down 5.4 percent. Nicaragua is currently the 79th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $162 million in 2008 (latest data available), down from $237 million in 2007.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions. In response to rising prices, in 2007, Nicaragua issued a series of decrees to unilaterally eliminate or reduce to 5 percent tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through June 30, 2010.

However, under the CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty-free, with remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Nicaragua duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty-free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural goods by 2025, including those on pork, rice, and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters and rice by 2023 and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ rather than by tariff reductions.

Nontariff Measures

The Nicaraguan government levies a "selective consumption tax" on some luxury items that is 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

GOVERNMENT PROCUREMENT

Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, the National Assembly, the National Basic Foods Company, the Ministry of Tourism, the Supreme Court, the Ministry of Energy and Mines, and some public universities, remains subject to highly nontransparent and irregular practices.

Nicaragua is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Nicaragua must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

To implement its CAFTA-DR IPR obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, the piracy of optical media and trademark violations continue to be concerns. The United States has expressed concern to the Nicaraguan government about inadequate enforcement.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including: protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals; and for digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Nicaragua granted U.S. services suppliers substantial access to its services market, including financial services.

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. The executive branch has proposed legislation that would strengthen the enforcement capacity of the telecommunications regulator (TELCOR) and improve competitive conditions in Nicaragua's telecommunications market. The United States will monitor this process, as well as TELCOR's efforts to implement new telecommunications regulations.

INVESTMENT BARRIERS

The CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Nicaragua. The investment protection obligations of the CAFTA-DR apply to a broad definition of investments, including enterprises, debt, concessions, contracts, and intellectual property. In most circumstances, the CAFTA-DR guarantees U.S. investors the right to establish, acquire, and operate their investments in Nicaragua on an equal footing with domestic investors. Investor rights are protected under the CAFTA-DR by a procedure for dispute settlement that is impartial and transparent.

During the 1980s, the Nicaraguan government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Where granted, compensation is most commonly provided via low interest bonds issued by the government. As of October 2009, the Nicaraguan government had settled more than 4,600 U.S. citizen claims relating to confiscated property. A total of 563 U.S. claims registered with the U.S. Embassy remain outstanding. The United States continues to press the Nicaraguan government to resolve these outstanding claims.

Notwithstanding the CAFTA-DR's legal framework for investment, the ongoing occurrence of disputes involving the government of Nicaragua suggests a systemic concern that may negatively impact the investment climate. For example, in 2009, the government of Nicaragua cancelled a provisional license for electricity generation granted to a wind energy consortium that included a U.S. partner. The government claimed the consortium had violated the terms of its license by beginning construction. After a six week delay, the government granted a permanent license, and the consortium resumed construction.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision-making appear at times to be inconsistent, non-transparent, and very time consuming. Courts have frequently granted orders (called an "amparo") to protect individuals suspected of white collar crime that enjoin official investigatory and enforcement actions indefinitely. Foreign investors are not specifically targeted but often find themselves at a disadvantage in any dispute with Nicaraguan nationals.

Law 364

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies and courts have expressed concern that the law and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, the law allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, the imposition of a $100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000). Some plaintiffs seek to lay claim to U.S. company assets in other countries. In 2009, a California State court dismissed with prejudice two Nicaraguan DBCP cases, and a Federal district court denied recognition of a $97 million Nicaraguan judgment under Law 364 because the "case did not arise out of proceedings that comported with the international concept of due process." The Federal court also found "the presumption of causation in Special Law 364 contradicts known scientific fact." The U.S. Government has been working with the affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.