NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $771 million in 2006, an increase of $215 million from $555 million in 2005. U.S. goods exports in 2006 were $755 million, up 20.7 percent from the previous year. Corresponding U.S. imports from Nicaragua were $1.5 billion, up 29.2 percent. Nicaragua is currently the 73rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Nicaragua in 2005 was $245 million (latest data available), up from $215 million in 2004.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement, with the exception of Costa Rica. The CAFTA-DR entered into force for Nicaragua on April 1, 2006. The agreement also has entered into force for the Dominican Republic, El Salvador, Guatemala and Honduras.

The agreement removes barriers to trade and investment in the region and will further regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market (CACM), most of Nicaragua's tariffs do not exceed the maximum common external tariff of 15 percent. Nicaragua imposes regular import duties of 10 percent or 15 percent on many final consumer goods, a duty of zero percent to 5 percent on most primary goods, and a duty of 5 percent to 10 percent on intermediate goods from outside CACM that compete with products produced by CACM countries. The tariff is assessed on the cost, insurance and freight (CIF) value of a good.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty-free, with remaining tariffs phased-out over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are now traded duty-free and quota-free, promoting new opportunities for

U.S. and regional fiber, yarn, fabric and apparel manufacturing companies. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004.

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 products within 15 years, including its tariffs on rice and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters within 18 years and on dairy products within 20 years. For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate 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.

Non-Tariff Measures

A "selective consumption tax" on luxury items is levied on a limited number of items. The tax is generally lower than 15 percent, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed according to the manufacturer's price while imports are taxed according CIF value. Alcoholic beverages and tobacco products are taxed according to the price charged to the retailer.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Consumer products must be labeled in Spanish, except for products destined for the Atlantic region of Nicaragua, where English may be required. Importers may translate labels into Spanish. The government of Nicaragua accepts a sticker with a Spanish translation.

When the United States and Central America launched free trade agreement negotiations, they initiated a working group on sanitary/phytosanitary barriers to agricultural trade to facilitate market access. As a result of the work of this group, Nicaragua committed to resolve specific measures affecting U.S. exports to Nicaragua. On February 18, 2005, the President of Nicaragua issued a decree that authorized the agriculture ministry to recognize the equivalency of foreign meat and poultry inspection systems. After auditing the U.S. meat and poultry inspection system, the government of Nicaragua recognized the equivalence of the U.S. food safety and inspection system for meat and poultry, thereby eliminating the need for plant-by-plant inspections.

The U.S. Animal and Plant Health Inspection Service negotiated protocols with Nicaragua for the importation of U.S. rice, wheat, yellow corn, and seed potatoes. All packaged food products must be registered with the Ministry of Development, Industry and Trade. If a product is imported in bulk and packaged in Nicaragua, a phyto/zoosanitary certificate is required from the country of origin and from the Nicaraguan Ministry of Health. A phyto/zoosanitary certificate issued by Nicaragua is not required for products packaged in the United States.

Under the CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the World Trade Organization's (WTO) Import Licensing Agreement. Import licenses are required to import alcoholic beverages and all brands of alcoholic beverages must be registered annually with the Ministry of Health. U.S. industry has expressed concern about Nicaragua's proposed standards for rum and *agua ardiente*. The five Central American countries, including Nicaragua, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade.

Law 291 regulates the importation of products of agricultural biotechnology. The law was approved in 1998 and modified in 2003 to require that products of agricultural biotechnology undergo a risk analysis

prior to importation. The risk analysis must be performed by the Commission on Risk Analysis for Genetically Modified Organisms (CONARGEN), which makes a recommendation concerning importation to the Minister of Agriculture and Forestry, who then issues a final decision. CONARGEN is comprised of officials from the Ministry of Agriculture and Forestry, the Nicaraguan Institute for Agricultural Technology, the Ministry of Environment and Natural Resources, the Ministry of Health, the National Autonomous University of Nicaragua in León, the National Agrarian University and the Central American University in Managua. After reaching consensus with anti-biotechnology organizations in 2005, the government submitted a compromise science-based biotechnology bill to the National Assembly for approval. As of March 2007, passage was still pending.

Nicaragua is in the process of implementing the provisions of the Cartagena Protocol, of which it is a signatory. As part of the process, in 2005 the government of Nicaragua began to require notifications and risk analyses as preconditions for the import of living modified organisms (LMOs). CONARGEN has conducted risk analyses on all genetic events authorized by the United States for yellow corn destined for processing and for animal feed. Nicaragua and the United States signed an agreement on the transboundary movement of LMOs destined for food, feed or processing that entered into force on February 18, 2005. The agreement articulates a practical definition for LMO and non-LMO shipments for purposes of applying the "may contain" documentation requirement consistent with the Cartagena Protocol on Biosafety, which requires that shipments of LMOs intended for direct use as food or feed, or for processing, contain a statement that they "may contain" LMOs. The agreement also recognizes that non-LMO shipments must be defined in a sales contract as having 95 percent or greater non-LMO content.

GOVERNMENT PROCUREMENT

Nicaragua is not a signatory to the WTO Agreement on Government Procurement. Nicaragua's procurement law applies to all branches of government as well as to the autonomous regional governments, municipalities, universities and other institutions that receive government funds or where the state is a shareholder. It sets general standards and procedures regulating public procurement of goods and services, including construction services, and leasing.

The CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. To make its bidding process more transparent and efficient, Nicaragua launched a computer-based procurement system in November 2006. The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties.

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 port of exit value of the exported goods.

Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Nicaragua may maintain existing 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). Thereafter, Nicaragua shall maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In March 2006, Nicaragua strengthened its legal framework for the protection of intellectual property rights (IPR) with the passage of five new laws in preparation for the entry into force of the CAFTA-DR. CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Although, historically, Nicaraguan IPR enforcement has been weak, the U.S. Government and industry are working with the Nicaraguan government to provide training to improve enforcement efforts. In an April 2006 raid, police took custody of 13,000 pirated CDs and DVDs, but made no arrests. In October 2006, the government scored a prosecutorial victory when a court convicted a local vendor of selling 400 pirated videos. The vendor was fined $1,500 and sentenced to two years in prison. Weeks later, however, the conviction was overturned by an appeals court for lack of evidence. In coming months, the government plans to prosecute its first copyright and trademark infringement case under the new IPR law.

SERVICES BARRIERS

Financial Services

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Its commitments cover most banking services, including the acceptance of deposits, lending, leasing, guarantees and foreign exchange. However, they do not cover the management of assets or securities. Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches. The CAFTA-DR ensures U.S. financial service suppliers have full rights to establish subsidiaries, joint ventures or branches for banks.

The country's banking system is now stable after having undergone severe restructuring several years ago. In 2005, as part of the Poverty Reduction and Growth Facility agreement with the IMF, Nicaragua further strengthened the financial sector through reforms to its banking laws and the regulations governing the Superintendent of Banks and Other Financial Institutions and through the creation of the Guarantee of Deposits in Institutions of the Financial System. In recent years, U.S. and foreign banks have begun to re-enter the market.

The insurance sector is open to private sector participation. Several private insurance companies compete with the government-owned firm, INISER. Under the CAFTA-DR, U.S. insurance suppliers have full rights to establish subsidiaries and joint ventures with a phase-in for branches. Nicaragua allows U.S.-based firms to supply insurance on a cross-border basis, including reinsurance, reinsurance brokerage, as well as marine, aviation, and transport insurance, in addition to other insurance services. Furthermore, Nicaragua accords substantial market access in services across their entire services regime, subject to very few exceptions.

Other Services Issues

The Law on Promotion of National Artistic Expression and on Protection of Nicaraguan Artists (Law No. 215, National Gazette 134, July 17, 1996) requires that foreign production companies contribute 5 percent of total production costs to a local cultural fund. In addition, the law requires that 10 percent of the technical, creative, and/or artistic staff must be hired locally. Under the CAFTA-DR, Nicaragua does not require U.S. film productions to contribute to the cultural fund or hire locally.

Under the CAFTA-DR, Nicaragua opened its telecommunications sector to U.S. investors, service providers, and suppliers. All exports, including telecommunications equipment, receive duty-free treatment.

The telecommunications sector is fully privatized and open to competition. Enitel, the former state telephone company, is now 99.03 percent owned by a Mexican telecommunications company. The mobile industry in Nicaragua is served by only two nationwide operators. Enitel controls switching for all cellular service, and therefore may exercise leverage over companies seeking interconnection. At the end of 2004, Enitel unilaterally imposed a 100 percent increase in termination rates for calls sent to wireless networks and blocked traffic to such networks when carriers refused to pay the increase. TELCOR, the regulatory entity, was not effective in requiring Enitel to justify the increase.

TELCOR has generally encouraged competition in its licensing and regulatory practices. However, duplicate appointments to TELCOR by the executive and legislative branches have resulted in a continuing leadership stalemate for the regulatory authority.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Nicaragua on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public and interested parties will have the opportunity to submit their views.

In the 1980s, the Sandinista government confiscated nearly 30,000 real properties. Since 1990, many thousands of individuals have filed claims for the return of real property or compensation. Most claimants seek compensation through low-interest bonds issued by the government. As of November 2006, the Nicaraguan government had settled nearly 4,500 U.S. citizen claims. Fewer than 700 U.S. Embassy-registered U.S. claims were outstanding. Many valuable properties remain in the hands of the Nicaraguan government or private parties. The United States continues to urge the Nicaraguan government to resolve outstanding claims.

In May 2006, the Nicaraguan Chamber of Commerce inaugurated Nicaragua’s first center for mediation and arbitration. Nicaraguan businesses may choose from a list of national and international mediators to deal with a dispute.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Nicaragua has committed to provide non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.

OTHER BARRIERS

The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties. However, voices within and outside of Nicaragua have raised concerns that Nicaragua's legal system is weak, cumbersome, and lacks independence. Many members of the judiciary, including those at high levels, are widely believed to be corrupt or subject to outside political pressures. Enforcement of court orders is uncertain and sometimes subject to non-judicial considerations. Courts have granted a writ of shelter (called an *amparo*) to protect criminal suspects of white collar fraud by enjoining official investigatory and enforcement actions almost indefinitely. Foreign investors are not specifically targeted, but are often at a disadvantage in disputes against nationals with political connections. Recognizing Nicaragua's reputation for having problems with corruption, former President Bolaños made anti-corruption a centerpiece of his administration's domestic policy. This effort greatly contributed to Nicaragua's selection in 2004 as a country eligible for Millennium Challenge Account (MCA) assistance under a program operated by the United States. Nicaragua's MCA program requires the country to maintain progress on eligibility criteria, particularly in the areas of controlling corruption, improving government effectiveness and assuring political/civil liberties.

Law 364

U.S. multinational firms and the U.S. Chamber of Commerce have expressed concern regarding Nicaraguan Law 364, enacted in October 2000 and published in January 2001. Law 364 retroactively imposes liabilities 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. multinationals 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, imposition of a $100,000 non-refundable bond per defendant as a condition for firms to put up a defense in court, escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000.) In January 2006, the National Assembly placed an embargo on the trademark rights of an American multinational because of its involvement in the production of this pesticide. Some plaintiffs seek to lay claim to U.S. company assets in other countries. The U.S. Government has been working with the affected companies and the Nicaraguan government to facilitate resolution of this issue.