NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $713 million in 2007, a decrease of $61 million from $774 million in 2006. U.S. goods exports in 2007 were $890 million, up 18.5 percent from the previous year. U.S. imports from Nicaragua were $1.6 billion, up 5.1 percent over the corresponding period. Nicaragua is currently the 72nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Nicaragua was $261 million in 2006 (latest data available), up from $245 million in 2005.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic–United States–Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force, as Costa Rica has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties remove barriers to trade and investment in the region, which will strengthen regional economic integration. 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 (IPR), transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market (CACM), Nicaragua agreed in 1995 to reduce its common tariff to a maximum of 15 percent.

Under CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty free, with remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement’s rules of origin now enter 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 over 15 years to 20 years, including those on pork, rice, and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters and rice within 18 years and on dairy products within 20 years. For certain products, tariff-rate quotas (TRQs) will permit some 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.

Nicaragua and the other Parties have agreed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, Nicaragua committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

Nontariff Measures

The 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 charged to the retailer.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

On February 18, 2005, the government of Nicaragua issued a decree authorizing the Ministry of Agriculture to recognize the equivalency of foreign meat and poultry sanitary measures. 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 systems for meat and poultry, thereby eliminating the need for plant-by-plant inspections in the United States.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service has entered into protocols with Nicaragua for the export of U.S. rice, wheat, yellow corn, and seed potatoes. All packaged food products must be registered with the Ministry of Trade, Industry, and Development. If a product is imported in bulk and packaged in Nicaragua, a phytosanitary or sanitary certificate is required from the country of origin and the Nicaraguan Ministry of Health. Such certificates issued by Nicaragua are not required for products packaged in the United States. However, at this point, Nicaragua continues to maintain bans on U.S. boneless beef from animals over 30 months of age, bone-in-beef, and live cattle, which are inconsistent with the World Organization for Animal Health (OIE) guidelines.

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 alcoholic beverages distilled from sugarcane. However, Nicaragua and the other Central American countries are developing common standards for the importation of several key products, including distilled spirits, an effort that may eventually facilitate trade.

Law 291, approved in 1998, regulates the importation of products of agricultural biotechnology. The law was modified in 2003 to establish the Commission on Risk Analysis for Genetically Modified Organisms (CONARGEN), a panel composed of representatives from government and the academic community. According to the law, the Minister of Agriculture and Forestry, taking into consideration risk analysis conducted by CONAGREN, makes a final decision on biotechnology imports. Through this process, Nicaragua has allowed the entry of yellow corn for animal feed. Law 291 also addresses the field-testing of biotechnology crops.

Two bills that would regulate the importation of products of agricultural biotechnology are pending in the National Assembly. The former Bolanos administration submitted a bill including science-based provisions to the National Assembly in 2005, known as the Law on the Prevention of Risks from Living Organisms Modified through Molecular Biotechnology. This bill comprehensively defines the technical criteria and procedures needed to conduct the risk analysis currently required by Law 291. The Ortega Administration has submitted a competing bill on Sovereignty, Food Security, and Nutrition that would prohibit the government from accepting food aid containing agricultural biotechnology products. The proposal would also establish a National Commission headed by the President, to regulate all food aid donations and to draft, implement, and evaluate food security policies.

Nicaragua is a signatory of the Cartagena Protocol on Biosafety. As mandated by the protocol, Nicaragua requires that agricultural goods containing living modified organisms (LMOs) – unless they include 95 percent or greater non-LMO content – be labeled to indicate that they "may contain" LMOs.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires the use of fair and transparent government 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 may 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 2006. The anti-corruption provisions of 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. Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, remains subject to nontransparent and irregular procurement 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 is not permitted to 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

The CAFTA-DR provides improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international intellectual property standards, as well as with emerging international standards of protection and enforcement. Such improvements include state-of-the-art protections for digital copyrighted products such as software, music, text, and videos; stronger protection for patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks, and further deterrence of piracy and counterfeiting.

However, Nicaraguan efforts to enforce intellectual property law remain limited. During the first 10 months of 2007, the Nicaraguan government conducted only 20 raids and the police seized 58,547 pirated DVDs, 21,629 CDs, 13 computers, 3 multi-purpose copiers, and other audiovisual equipment worth approximately $123,000. In July 2007, the Nicaraguan Government successfully prosecuted a case in a local court against a Nicaraguan citizen selling pirated music CDs, but the offender's sentence of 2 years in prison was reduced to parole and a 5,000 Córdobas ($267) fine. The Prosecutor General and National Police are currently investigating 28 intellectual property cases for possible prosecution.

SERVICES BARRIERS

Financial Services

The CAFTA-DR ensures that U.S. financial services companies have full rights to establish subsidiaries, joint ventures, or bank branches, and U.S. insurance suppliers enjoy full rights to establish subsidiaries and joint ventures, with a phase-in provision for branches of financial services companies. Nicaragua allows U.S. based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation, and transport insurance; in addition to other insurance services.

Other Services Issues

Nicaragua accords substantial market access across its entire services regime, including financial services, subject to very few exceptions. The Law on Promotion of National Artistic Expression and on Protection of Nicaraguan Artists (Law 215, 1996) requires that foreign production companies contribute 5 percent of total production costs to a national cultural fund. In addition, the law requires that 10 percent of the technical, creative, and/or artistic staff be locally hired. 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. U.S. exports of 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 percent owned by a Mexican telecommunications company. The mobile telephone industry in Nicaragua is served by two nationwide operators. Enitel controls switching for all cellular service and, therefore, may exercise leverage over companies seeking interconnection. The telecommunications regulator, TELCOR, has generally encouraged competition in its licensing and regulatory practices. However, a legal dispute between the executive and legislative branches over the country's public regulatory framework has resulted in a leadership stalemate at TELCOR.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the Agreement, all forms of investment are protected, including enterprises, debt, concessions, contracts, 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 fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an 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.

During the 1980s, the Sandinista government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the properties' return or for compensation. Compensation is most commonly granted via low-interest bonds issued by the government. As of September 2007, the Nicaraguan government had settled more than 4,500 U.S. citizen claims. A total of 677 Embassy registered U.S. claims remain outstanding. The United States continues to press the Nicaraguan government to resolve outstanding claims.

In August 2007, the Nicaraguan government seized, via judicial order, several petroleum storage tanks owned by a U.S. company, claiming that the company had not paid value added taxes associated with the importation of crude oil, even though crude oil is not subject to this tax. The government then used the tanks to store petroleum products imported from Venezuela under the terms of a state-to-state financing agreement. The government subsequently purchased the storage tanks from the company and paid the company for the government's use of the storage tanks during the period prior to the purchase. In a separate instance, the courts declared oil exploration concessions invalid, forcing companies, including some U.S. companies, to renegotiate the terms of concession agreements that had been tendered and awarded in a transparent manner by the previous administration.

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 nondiscriminatory treatment to U.S. digital products, and not to impose customs duties on digital products transmitted electronically.

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. Voices within and outside 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 nonjudicial considerations. Courts have granted orders (called an "amparo") to protect criminal suspects of white collar crime by enjoining official investigatory and enforcement actions almost indefinitely. Foreign investors are not specifically targeted, but may find themselves at a disadvantage in any dispute with Nicaraguan nationals.

Law 364

U.S. companies and the U.S. Chamber of Commerce have voiced concern 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 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 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). A November 2006 court order lifted a January 2006 embargo placed by the National Assembly on the trademark rights of a U.S. company allegedly involved in the distribution and use 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.