NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $611 million in 2008, a decrease of $103 million from $714 million in 2007. U.S. goods exports in 2008 were $1.1 billion, up 22.8 percent from the previous year. Corresponding U.S. imports from Nicaragua were $1.7 billion, up 6.3 percent. Nicaragua is currently the 73rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $203 million in 2007 (latest data available), up from $145 million in 2006.

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. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to 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 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 will 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 agreed in 1995 to reduce its common tariff to a maximum of 15 percent. In response to rising prices, Nicaragua issued a series of decrees in 2007 and 2008 to unilaterally eliminate, or reduce to 5 percent, tariffs on many basic foodstuffs and consumer goods through the first six months of 2009.

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

Under the CAFTA-DR, Nicaragua committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Nicaragua also 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.

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 billed to the retailer.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Nicaragua and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Under the CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the WTO Import Licensing Agreement. The Ministry of Health must provide a permit, renewable every five years, for the importation of any alcoholic beverage. U.S. industry has expressed concern about Nicaragua's proposed standards for alcoholic beverages distilled from sugarcane.

Sanitary and Phytosanitary Measures

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary (SPS) barriers to agricultural trade. Through the work of this group, Nicaragua committed to resolving specific measures affecting U.S. exports to Nicaragua. For example, Nicaragua now recognizes the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

In February 2009, Nicaragua fully opened its market to all U.S. beef and beef products in line with the World Organization for Animal Health (OIE) guidelines for "controlled risk" countries for Bovine Spongiform Encephalopathy (BSE). The OIE categorized the United States as "controlled risk" for BSE in May 2007. Prior to February 2009, Nicaragua prohibited imports of U.S. deboned beef from cattle 30 months of age and older and bone-in beef from cattle of any age. Nicaragua based its import prohibition on the 2003 discovery of a BSE positive animal in the United States.

In 2008, Nicaragua and the four other Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

Law 291 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.

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

Under the CAFTA-DR, procuring entities must use 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 anticorruption 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 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

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 standards, as well as with emerging international standards of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos as well as further deterrence of piracy and counterfeiting.

In 2008, Nicaragua's National Police implemented a strategy to improve IPR enforcement that included a public awareness program, training on the detection of pirated goods and the application of IPR law, as well as the coordination of raids and seizures of pirated goods and equipment for their production. During the first eight months of 2008, the Nicaraguan police reported having seized 350,000 pirated and 80,000 blank DVDs and CDs and audiovisual equipment worth approximately $803,000. Despite these improvements, Nicaraguan efforts to enforce IP law remain limited. For example, the Nicaraguan government did not make any IPR-related arrests or convictions in 2008.

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

Under the CAFTA-DR, Nicaragua granted U.S. services suppliers substantial access to its services market, 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. The telecommunications sector is fully privatized and open to competition, although some have expressed concern that political factors may affect renewal of broadcast licenses. 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, interconnection. The telecommunications regulator, TELCOR, has generally encouraged competition in its licensing and regulatory practices. However, a protracted legal dispute between the executive and legislative branches over the country's public regulatory framework has resulted in a regulatory 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 October 2008, the Nicaraguan government had settled more than 4,500 U.S. citizen claims. A total of 617 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. In a negotiated settlement, the government subsequently purchased the storage tanks from the company and paid for the use of the tanks during the seizure. In a separate instance, the courts declared four oil exploration concessions to two U.S. companies invalid because autonomous regional governments had not been properly consulted, forcing these companies to renegotiate some of the terms of concession agreements that had been tendered in an otherwise 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

U.S. companies have raised concerns that Nicaragua's legal system is weak, cumbersome, and subject to political influence and that many members of the judiciary, including those at high levels, are believed to be corrupt. Enforcement of court orders can be erratic and subject to non-judicial considerations. Courts have granted orders (called an "*amparo*") to protect criminal suspects of white collar crime by enjoining 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 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. The U.S. Government has been working with the affected companies and the Nicaraguan government to facilitate resolution of this issue.