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Subject to Legal Review for Accuracy, Clarity, and Consistency
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ANNEX I: NON-CONFORMING MEASURES
NICARAGUA

Sector:	Musicians and Artists
Obligations Concerned	National Treatment (Article 11.2) Most Favored Nation Treatment (Article 11.3)
Measures:	Ley de Promoción a las Expresiones Artísticas Nacionales y de Protección a los Artísticas Nicaragüenses. Ley No. 215, publicada en La Gaceta No. 134 del 17 de julio de 1996.
Description:	<p style="text-align:center"><u>Cross-Border Trade in Services</u></p> <p>Foreign artists or musical bands may perform in Nicaragua solely by means of a prior contract.</p> <p>Foreign artists performing shows or reviews of a commercial nature shall include in their program a Nicaraguan artist or group that performs similar shows.</p> <p>Foreign artists or artistic groups not wishing to include a national artist in their program must pay 1% of the show's net receipts to the Nicaraguan Institute of Culture, unless the foreign artists' or groups' country of origin does not levy such tax on Nicaraguan artists or artistic groups.</p> <p>Foreigners selected for the design and construction of public, pictorial or sculptural monuments erected in Nicaragua, shall do so in association with national artists.</p>

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Sector:	Tourism – Hotels, Restaurants, Tour Guides and other tourism-related activities.
Affected Obligations:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Measures:	Republic of Nicaragua Tourism Trade Incentive Law, Law No. 306, published in <i>La Gaceta</i> No. 117 of 21 June 1999. Regulations governing Tourism Enterprises and Activities of Nicaragua, published in <i>La Gaceta</i> No. 99 of 28 May 2001. Regulations governing Tour Operators of Nicaragua, Article 5, paragraph d); published in <i>La Gaceta</i> No. 100 of 29 May 2001. Regulations to Law No. 298, Decree No. 64-98, published in <i>La Gaceta</i> No. 190 of 09 October 1998. Regulations on the Regime for Pricing, Reservations, and complementary Services in tourism lodging, published in <i>La Gaceta</i> No. 99 of 28 May 2001. Regulations on rental companies for Land and Water Vehicles (Rent a Car), published in <i>La Gaceta</i> No. 108 of 8 May 2001. Regulations on Food, Beverages, and Entertainment, published in <i>La Gaceta</i> No. 203 of 25 October 2001. Regulations governing Tourism Guides, published in <i>La Gaceta</i> No. 40 of 26 February 2001. Regulations governing Travel Agencies of Nicaragua, published in <i>La Gaceta</i> No. 96 of 21 May 2001.
Description:	<u>Cross-Border Trade in Services</u> To supply tourism services in Nicaragua: (a) an enterprise organized under the laws of a foreign country must be established in Nicaragua; and (b) a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua. This paragraph does not apply to the supply of tourism services during a cruise.

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Tour Guides must be Nicaraguan nationals.

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Sector: Services Related to Construction

Obligations Concerned: National Treatment (Article 11.2)
Local Presence (Article 11.5)

Measures: Ley General de Construcción

Description: Cross-Border Trade in Services

To supply construction services in Nicaragua:

- (a) an enterprise organized under the laws of a foreign country must be established in Nicaragua; and
- (b) a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

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Sector:	Production and Sale of fireworks, firearms and cartridges, hunting, shooting, shooting ranges, and firearm collectors.
Affected Obligation:	National Treatment (Article 11.2) Local Presence (Article 11.5)
Measures:	Regulations to the Law on the National Police, Decree No. 26-96, published in <i>La Gaceta</i> No. 32 on 14 February 1996.
Description:	<u>Cross-Border Trade in Services</u> To market fireworks, firearms, cartridges, hunting, shooting, shooting ranges, and firearm collectors: (a) an enterprise organized under the laws of a foreign country must be established in Nicaragua; and (b) a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

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Sector: Private Security Services

Affected Obligations: National Treatment (Article 11.2)
Local Presence (Article 11.5)

Measures: Civil Surveillance Manual, No. 001 of July 6, 1998.

Description: Cross-Border Trade in Services

An enterprise must be established in Nicaragua to operate a private security guard company. Natural persons serving as armed guards must be nationals of Nicaragua.

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Sector: Radio Broadcast, Free Television Reception

Affected Obligation: National Treatment (Article 11.2 and x4)

Measures: Law Amending Law No. 200, “General Law on Telecommunications and Postal Services”, Law No. 326, published in *La Gaceta* No. 244 of December 22, 1999.

Regulations on Television Broadcasting Services. Administrative Agreement No. 07-97, Published in *La Gaceta* No. 228, on November 28, 1997.

Description: Investment and Cross-Border Trade in Services

A license for operating free over the air television and radio broadcast services (known under Nicaraguan law as public communication media) shall only be granted to Nicaraguan persons. In the case of enterprises, Nicaraguan nationals must own 51% of the capital.

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Sector: Communications—Professional Radio and Television Broadcast Services

Affected Obligations: National Treatment (Article 11.2)
Most Favored Nation Treatment (Article 11.3)

Measures: Decree No. 66, published in *La Gaceta* No. 256 on November 10, 1972.

Description: Cross-Border Trade in Services

Enterprises that supply radio and television broadcast companies services in Nicaragua shall only use the professional services of announcers who are Nicaraguan nationals for narration, commentary, and live broadcast in sports or commercial programs.

Notwithstanding the foregoing, foreign nationals will be allowed to serve as announcers if the laws of their own countries allow Nicaraguan nationals to supply such services.

The provisions of this measure shall not apply to the broadcast of programs by foreign announcers when the transmission of such programs is aimed exclusively at other countries.

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Sector:	Electricity Distribution and Generation
Affected Obligations:	Local Presence (Article 11.5) National Treatment (Article 11.2)
Measures:	Law No. 272, published in <i>La Gaceta</i> No.74 on April 23, 1998. Regulations to the Law on the Electricity Industry. Decree No. 24-98 published in <i>La Gaceta</i> No. 116 on June 23, 1998. Law amending the Organic Law on the Nicaraguan Energy Institute (<i>INE</i>), Law No.271 published in <i>La Gaceta</i> No. 63 on April 1, 1998.
Description:	<u>Cross-Border Trade in Services</u> In order to engage in the generation and distribution of electricity an enterprise must be established in Nicaragua.

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Sector:	Energy—Hydrocarbons
Affected Obligations:	Local Presence (Article 11.5)
Measures:	Special Law on the Exploration and Exploitation of Hydrocarbons. Law No. 286, published in <i>La Gaceta</i> No. 109 on June 12, 1998. Regulations to the Special Law on the Exploration and Exploitation of Hydrocarbons, Decree No. 43-98, published in <i>La Gaceta</i> No. 117 on June 24, 1998.
Description:	<u>Cross-Border Trade in Services</u> An enterprise that both explores for and extracts or processes hydrocarbons must be established in Nicaragua. To conduct studies of hydrocarbons such as geological or geophysical studies, drafting topographic maps, seismic, or geochemical studies, a foreign national must designate a legal representative permanently domiciled in Nicaragua.

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Sector:	Extraction of Metallic and Non-Metallic Minerals
Obligations Concerned:	Local Presence (Article 11.5)
Measures:	Special Law on the Exploration and Exploitation of Mines, Law No. 387, published in <i>La Gaceta</i> No. 151, August 13, 2001. Regulations to Law No. 387, Special Law on the Exploration and Exploitation of Mines, Decree No. 119 –2001, published in <i>La Gaceta</i> No. 4, January 7, 2002.
Description:	<u>Cross-Border Trade in Services</u> To obtain a mining concession for exploration for metallic and nonmetallic minerals in Nicaragua: (a) an enterprise organized under the laws of a foreign country must be established in Nicaragua; and (b) a foreign national must reside in Nicaragua or appoint a legal representative in Nicaragua.

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Sector:	Fishing and Aquaculture and Activities related to fishing
Obligations Concerned:	National treatment (Article 11.2) Performance requirements (Article X7) Local presence (Article 11.5)
Measures:	Law on Public Bidding for Fishing Licenses and Concessions. Law No. 165, enacted on 22 February 1994. Special Law on Fisheries, Decree No. 557, published in <i>La Gaceta</i> No. 32 of 7 February 1961. Ministerial Agreement No. 014-2001
Description:	<u>Investment and Cross-Border Trade in Services</u> A foreign vessel may capture shrimp or lobster in the territorial waters of Nicaragua in the Caribbean Sea or Pacific Ocean only if it flies the Nicaraguan flag. An enterprise must be established in Nicaragua in order to obtain a commercial fishing license. A minimum of 75% of the personnel on board a vessel engaged in commercial fishing in Nicaraguan territorial waters must be Nicaraguan nationals. The captain and engineer are not included in this percentage. Processing and packing for export of fishing products captured in Nicaraguan territorial waters shall be carried out in enterprises in Nicaragua. Only Nicaraguan nationals may engage in artisanal fishing as a family enterprise for subsistence.

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Sector:	Land Transportation
Affected Obligations:	National Treatment (Article 11.2) Most Favored Nation Treatment (Article 11.3) Local Presence (Article 11.5)
Measures:	General Transportation Law, Decree No.164, published in <i>La Gaceta</i> No.34 of February 17, 1986. Communication from the Ministry of Construction and Transportation, dated November 12, 1990.
Description:	<u>Cross-Border Trade in Services</u> To supply point-to-point land transportation of cargo or passengers within Nicaragua, an enterprise must be established in Nicaragua. An enterprise organized under the laws of a foreign country may supply international land transportation of cargo or passengers to the extent that a specific agreement between such country and Nicaragua provides for reciprocal treatment of enterprises organized under the laws of Nicaragua. Notwithstanding the foregoing, only Nicaraguan persons may supply collective land transportation services in the interior of Nicaragua.

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Sector:	Maritime Transportation
Affected Obligations:	National Treatment (Article 11.2)
Measures:	General Transportation Law. Decree No. 164 of 1986 and its Regulations. Law on Water Transportation No. 399 published in <i>La Gaceta</i> No. 166 of September 3, 2001. Law Regulating Pilotage Services, Decree No. 15-49, published in <i>La Gaceta</i> No. 4 on January 5, 1985.
Description:	<u>Investment and Cross-Border Trade in Services</u> In order to operate as a shipowner or shipping enterprise in Nicaragua, a natural person must be a Nicaraguan national and an enterprise must be established in Nicaragua. To operate as a shipping agent, general shipping agent, or shipping consignment agent, a natural person must be a Nicaraguan national, and an enterprise must be established in Nicaragua. Only a Nicaraguan nationals or an enterprise established in Nicaragua may obtain a route concession to engage in maritime transportation. Cabotage is reserved exclusively for enterprises established in Nicaragua. Only Nicaraguan nationals may be named as official pilots for any port in Nicaragua. A branch of an enterprise organized under the law of a country other than Nicaragua must be established in Nicaragua in order to engage in loading and unloading and transferring cargo between ships and trucks.

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Sector:	Ports
Affected Obligations:	Market Access (Article 11.4)
Measures:	Decree No. 480 de 1980. Decree No. 35-95 1995. Decree No. 12-99 1999.
Description:	<u>Cross-Border Services</u> The administration and operation of the existing ports of national interest (Corinto, Sandino, San Juan del Sur, Cabezas, El Rama and El Bluff) is reserved to the National Port Company (EPN).

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Sector:	Air Transportation—Repair and Maintenance Services, Specialty Air Services
Affected Obligations:	National Treatment (Articles 11.2 and X4) Most Favored Nation Treatment (Article 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article X11)
Measures:	Civil Aviation Code. Decree No. 176, published November 22, 1956, with Errata on Sept. 3, 1957.
Description:	<p style="text-align:center"><u>Cross-Border Trade in Services</u></p> <p>1. The authorization of the General Director of Civil Aviation is required to supply specialty air services and aircraft repair services in the territory of Nicaragua.</p> <p>In order to perform private, for-profit air services, an entity must be a natural or legal Nicaraguan person, For greater certainty, private air services include:</p> <ul style="list-style-type: none">(a) Air-related tasks such as aero-topography, aero-photography, commercial advertising, and other similar tasks.(b) Agricultural fumigation services.(c) Industrial activities other than public transportation.(d) Kinetic civil aviation applications, such as educational flights, the determination of hurricane trajectories, fumigation flights, and migratory ships, and other similar applications. <p>Flight personnel who participate in aviation activities for agricultural purposes within national territory must be Nicaraguan nationals. Similarly, aircraft used for such purposes must be licensed in Nicaragua.</p> <p>Investment</p> <p>2. Only an enterprise organized under Nicaraguan law may be granted a license to engage in specialty air services or aircraft repair services. Nicaraguan nationals must own at least 51% of the capital, and have effective control of such an enterprise, and Nicaraguan nationals must control its administration.</p>

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Only Nicaraguan nationals and enterprises organized under Nicaraguan law may engage in private, for-profit specialty air services.

Only Nicaraguan nationals may engage in paid national aeronautics activity in Nicaragua. In the absence of such personnel, the Ministry of Transportation may allow foreign pilots or other technical personnel to engage in such activities, in which case the Ministry of Transportation must give preference to persons who are nationals of the following countries: Honduras, El Salvador, Guatemala and Costa Rica.

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Sector:	Professional Services
Affected Obligations:	National Treatment (Article 11.2) Most Favored Nation Treatment (Article 11.3) Local Presence (Article 11.5)
Measures:	Professional Association Law of Nicaragua, Decree No. 132 published in <i>La Gaceta</i> No.47 on November 2, 1979.
Description:	<p><u>Cross-Border Trade in Services</u></p> <p>A foreign professional may practice in Nicaragua in a form and subject to the same conditions that are permitted for Nicaraguans in the country of origin of such professional.</p> <p>Nicaragua agrees that if a jurisdiction in a foreign country allows Nicaraguan nationals to apply for and receive the licenses or certificates necessary to practice a profession in such jurisdiction, a foreign national with a license or certificate to practice the profession in such jurisdiction shall also be allowed to apply for and receive any license or certificate necessary to practice in Nicaragua.</p> <p>In addition, the relevant professional association in Nicaragua will recognize a license granted by a foreign jurisdiction, and allow the holder of that license to register with the association and practice the profession in Nicaragua based on the foreign license, in the following cases:</p> <ul style="list-style-type: none">(a) no academic institution in Nicaragua offers a course of study that would allow the practice of the profession in Nicaragua;(b) the holder of the license is a recognized expert in the profession; or(c) allowing the professional to practice in Nicaragua will, through training, demonstration, or other such opportunity, further the development of the profession in Nicaragua.

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Sector: Public Accounting and Auditing

Obligations Concerned: National Treatment (Article 11.2)
Local Presence (Article 11.5)

Measures: Law to exercise as a public Accountant. Law No. 6 published in *La Gaceta* on April 30, 1959.

Description: Cross-Border Trade in Services
Foreign public accounting firms, auditors and accountants, either as individuals or enterprises may exercise their profession in Nicaragua, or other related activity, through an authorized Nicaraguan public accounting firm or association.

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Sector: Professional Services - Notary Publics

Obligations Concerned: National Treatment (Article 11.2)
Most Favored Nation Treatment (Article 11.3)

Measures: Law of November 19, 1938, published in the Official Gazette No. 267 dated December 10, 1938.

Description: Cross-Border Trade in Services

Public notaries must be Nicaraguan citizens authorized by the Supreme Court of Justice in order to practice their profession.

Central American citizens authorized to act as attorneys in the Republic may also obtain this authorization after residing in Nicaragua at least five years, provided they are allowed to exercise their profession as public notaries in their own countries, and that Nicaraguans are authorized to act as public notaries in their respective countries.

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Sector:	Customs Brokers
Affected Obligations:	National Treatment (Article 11.2) Most Favored Nation Treatment (Article 11.3) Local Presence (Article 11.5)
Measure:	Law Establishing Self-Release For Import, Export, and Other Customs Regimes, Law No. 265, published in <i>La Gaceta</i> No. 219 on November 17, 1997.
Description:	<u>Investment and Cross Border Services</u> A customs broker must be a Nicaraguan national or a national of a country that permits Nicaraguan nationals to serve as customs brokers. An enterprise operating as a customs broker in Nicaragua must be established in Nicaragua and at least one official of the customs enterprise must have a valid license.

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Sector: Scientific Research Services

Affected Obligation: Local Presence (Article 11.5)

Measures: General Law on the Exploitation of National Resources. Decree No. 316, published in *La Gaceta* on April 17, 1958.

Description: Cross-Border Trade in Services

Any holder of a foreign license that wishes to engage in scientific research activities related to natural resources must have a legal representative in Nicaragua during the entire time the research is being conducted.

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Sector:	Regime on Free Zones, and Regime on Active Improvement
Affected Obligations:	Performance Requirements (Article X10)
Measures:	Law on Industrial Export Free Zones, Decree No. 46-91, published in <i>La Gaceta</i> No. 221 on November 22, 1991. Regulations to the Decree on Industrial Export Free Zones, Decree No. 31-92 published in <i>La Gaceta</i> No.112 on June 12, 1992.
Description:	<u>Investment</u> An enterprise authorized to operate in a free zone may introduce up to 40 percent of its production by volume into the territory of Nicaragua after payment of duties and taxes. Nicaragua will apply this measure consistent with its obligations under the World Trade Organization Agreement on Subsidies and Countervailing Measures.

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Sector:	Telecommunications
Affected Obligations:	Market Access (Article 11.4) National Treatment (Article 11.2)
Measures:	Law Amending Law No. 210, Law Incorporating Private Individuals in Operating and Expanding Public Telecommunications Services, Law No. 293 published in <i>La Gaceta</i> No. 123 on July 2, 1998.
Description:	<u>Investment and Cross-Border Trade in Services</u> Foreign nationals may own up to 40% of the share capital in the Nicaraguan Telecommunications Company (ENITEL). The Nicaraguan Telecommunications Company (ENITEL) has an exclusive regime for providing basic telephone services, including local telephone service, national and international long distance, supply of television and telegraph links, pursuant to what is established in its concession contract. ENITEL exclusivity will end according to Nicaraguan law or concession but in any event no later than April 13, 2005.

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Sector	Development of maps
Affected Obligations:	Market Access (Article 11.4)
Measures:	Organic Law on the Nicaraguan Institute for Territorial Studies (INETER), Law No 311 published in <i>La Gaceta</i> No. 103 on July 28, 1999.
Description:	<u>Cross-Border Trade in Services</u> The developing, drafting, editing, and publishing official, regional, property, urban, and rural maps, as well as thematic maps and hydrographical, nautical, and aeronautical charts of Nicaragua in different scales is reserved to the Nicaraguan Institute for Territorial Studies.

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Sector:	Potable Water, Sanitary Sewer Systems, Sewage Collection and Disposal.
Affected Obligation:	Market Access (Article 11.4)
Measures:	Law Creating the Nicaraguan Water and Sanitary Sewerage Authority (ENACAL) Law No. 276, Published in <i>La Gaceta</i> No. 12 on January 20, 1998. Law on the Suspension of Concessions No. 440, published in <i>La Gaceta</i> No. of 2003
Description:	<p><u>Cross-Border Trade in Services</u></p> <p>For greater certainty, the establishment, construction, and development of public works for the supply and distribution of drinking water, and collecting and disposing of wastewater may only be performed by ENACAL.</p> <p>The Nicaraguan Company for Aqueducts and Sanitary Sewerage (ENACAL) is the State entity responsible for investigating, exploring, developing, and exploiting the water resources necessary to provide potable water and to dispose of liquid residue, and has the following functions:</p> <ul style="list-style-type: none">(a) To capture, treat, conduct, store, distribute, and sell potable water; and to gather, treat and finally dispose of liquid residue.(b) To purchase natural water, purchase and sell potable water, as well as to commercialize the services of collection, treatment and final disposal of liquid residue.(c) Take all necessary measures so that the release of treated liquid residue minimizes the environmental impact.(d) Develop the Company's Expansion Plan for the short, medium and long terms.(e) Any other activity required for its development.

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Sector	Airports
Affected Obligation:	Market Access (Article 11.4)
Measures:	Law on the International Airports Administration, Decree No.1292 published on August 16, 1983 in <i>La Gaceta</i> No.186
Description:	<u>Cross-Border Trade in Services</u> The International Airport Administration (EAAI) is responsible for establishing, operating, exploiting, administering, carrying out works and providing services in airports.

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Sector	Energy
Affected Obligations:	Market Access (Article 11.4)
Measures:	Law on the Electricity Industry. Law No. 272. Published in <i>La Gaceta</i> No. 74 of 23 April 1998.
Description:	<u>Cross-Border Trade in Services</u> Electricity transmission services may only be provided by the Centro Nacional de Carga.

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Sector	Administration and distribution of lotteries
Affected Obligations:	Market Access (Article 11.4)
Measures:	Internal Regulations on the National Lottery, published in <i>La Gaceta</i> No. 229 of 3 December 1996.
Description:	<u>Cross-Border Services</u> Only the National Lottery, a State-owned company, may perform activities of administering and distributing lotteries.

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Sector:	Public Communications Services
Affected Obligations:	Market Access (Article 11.4)
Measures:	General Law on Telecommunications and Postal Services, Law No. 200 published in <i>La Gaceta, Diario Oficial</i> No. 154 of 18 August 1996.
Description:	<u>Cross-Border Services</u> The issuance, finance, and marketing of postal stamps, as well as the usage of franking machines and other analogous systems, is reserved to the Nicaraguan Postal Service (<i>Correos de Nicaragua</i>).

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Sector:	Various
Obligation Concerned:	Market Access (Article 11.4)
Measures:	<i>Certain Measures Existing and In Force on January 1, 2004</i>
Description:	<i>Cross-Border Services</i>

Nicaragua reserves the right to maintain market access restrictions in accordance with the following paragraphs.

1. Sectors other than computer services, construction, energy services, professional services, land transport, audiovisual, telecommunications, express delivery, and sectors including Nicaragua schedule of specific commitments with respect to Article XVI of the GATS:
 - (a) Subject to subparagraph (b) and (c), Nicaragua may list any measure existing and in force on January 1, 2004, unless another Party objects on the grounds that it has a substantial trade interest in the sector and that listing the measure would have a significant adverse effect on that interest.
 - (b) Where a Party objects in accordance with subparagraph (a), the Parties shall consult to determine whether the measure may be listed. Upon agreement, Nicaragua may list the measure.
 - (c) Nicaragua must identify such measure by March 1, 2004, and any measures must be listed no later than March 25, 2004.
2. Computer services, construction, energy services, professional services, and land transport sectors:
 - (a) Nicaragua has until January 5, 2004, to identify any non-conforming measures in the computer services, construction, energy services, professional services, and land transport sectors.
 - (i) The Parties shall consult with Nicaragua to reach final agreement by January 13, 2004, on whether each such

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- (b) measure may be listed. Upon agreement, Nicaragua may list the measure.

- 3. Audiovisual, telecommunications, express delivery, and sectors included in Nicaragua's schedule of specific commitments with respect to Article XVI of the GATS:

Nicaragua may not list non-conforming measures in these sectors pursuant to this entry.

