

NICARAGUA

TRADE SUMMARY

In 2001, the U.S. trade deficit with Nicaragua was \$162 million, a decrease of \$46 million from the U.S. trade deficit of \$208 million in 2000. U.S. goods exports to Nicaragua were \$443 million, an increase of \$63 million (16.6 percent) from the level of U.S. exports to Nicaragua in 2000. Nicaragua was the United States' 67th largest export market in 2001. U.S. imports from Nicaragua were \$605 million in 2001, an increase of \$17 million (2.9 percent) from the level of imports in 2000.

The stock of U.S. foreign direct investment (FDI) in Nicaragua in 2000 amounted to \$179 million, an increase of 7.8 percent from the level of U.S. FDI in 1999.

IMPORT POLICIES

Due to a series of economic and tax reform measures launched in 1997, Nicaragua is in the process of progressively reducing import taxes through the year 2002. This reform process also has removed many non-tariff barriers; eliminated the discretion of government officials to waive the application of tariffs; and repealed restrictive laws on agents, representatives or distributors of foreign firms.

Along with other members of the Central American Common Market (CACM), Nicaragua has agreed to reduce and harmonize the CACM common external tariff (CET) to between zero and 15 percent. In connection with this effort, Nicaragua is in the process of progressive import tax reductions through the year 2002. Nicaragua imposes regular import duties of 15 percent on many final consumer goods and a duty of 5 percent on intermediate goods. Some 900 items are levied with a temporary protection tariff (ATP) of 5 percent to 10 percent above the

normal import duty, with a maximum combined rate of 20 percent on most of these items.

Import duties on so-called "fiscal" goods (e.g., tobacco, soft drinks, and alcoholic beverages) are particularly high. Some protected agricultural commodities such as corn and rice face special import tariffs of up to 55 percent.

A luxury tax is levied through the specific consumption tax (IEC) on 609 items. The tax generally is lower than 15 percent, with a few significant exceptions. While normal import duties and ATP taxes are based on CIF value, the IEC tax for domestic goods is based on the manufacturer's price, and for imported goods on CIF. Alcoholic beverages and tobacco products are an exception, in that the IEC is assessed on the price charged to the retailer. Nicaragua also levies a 15 percent value-added tax (IGV) on most items, except agricultural inputs.

Nicaragua's classification of vehicle engine sizes for determining the assessment of luxury taxes represents a barrier to U.S. exports. Cars with large engines (greater than 4000 cc) face an IEC tax of 25 percent, while vehicles with smaller engines are charged either zero or a three percent IEC tax. This assessment scheme may have a discriminatory effect on U.S. vehicles with larger engines.

U.S. exporters have expressed concern about arbitrary customs procedures. Tariffs and import taxes for most used goods are not assessed on a CIF/bill-of-lading basis, but rather on a reference price determined by Customs at the time of entry. This price can be significantly higher than the actual price paid. The government committed itself to enact the WTO Customs Valuation Agreement by September 2000; however, Nicaragua has yet to comply with the new customs procedures. Nicaragua withdrew a request for a second WTO implementation deferral and the government is confident that the National Assembly will pass the necessary legislation in early 2002. In May 2000, the WTO

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Committee on Customs Valuation granted Nicaragua's request to use minimum values. Nicaragua may use minimum values for certain tires, used clothing, and used vehicles until September 3, 2002. It may use minimum values for sugar until September 3, 2003.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In October 2001 the Nicaraguan Ministry of Health issued a circular requiring food importers to submit certification of whether a product had been genetically modified. The Ministry of Health subsequently suspended implementation of the circular for six months in order to review the WTO implications of the measure.

U.S. exporters of distilled spirits have raised concerns regarding potentially discriminatory elements of a proposed Nicaraguan technical standard for rum and other spirits.

GOVERNMENT PROCUREMENT

Nicaragua's law on government procurement went into effect in January 2000. It provides for non-discrimination among suppliers. Nicaragua is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

On January 7, 1998, Nicaragua signed a bilateral Intellectual Property Rights Agreement with the United States, the first such agreement in Central America. The Agreement covers copyrights, patents, trademarks, semiconductor layout designs, encrypted program-carrying satellite signals, trade secrets, and industrial designs. It addresses criminal and civil penalties for infractions and appears to provide a level of protection that exceeds commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property

Rights (TRIPS). The Agreement called for full implementation by mid-1999—a deadline that Nicaragua was unable to meet. However, in April 2001, the National Assembly passed an updated law on trademarks that entered into effect in July 2001—the last of six new IPR laws.

Copyrights

Nicaragua's 1999 Copyright Law protects literary, artistic and scientific works as well as computer programs (software), the rights of performers, producers of phonograms and broadcasting organizations. The Law for Protection of Program-Carrying Signals, published on December 16, 1999, requires the registration of persons who transmit or distribute program-carrying signals. The Law for the Protection of Layout Designs of Integrated Circuits, published on February 1, 2000, establishes a registration requirement that protects designs for ten years from the filing date.

Despite the progress represented by these recent legal reforms, piracy of sound and video recordings, as well as theft of U.S. satellite signals and broadcasts, remain problems in Nicaragua due to weak enforcement of the country's intellectual property laws.

Patents

Nicaragua's patent law, enacted in 2000, provides patent protection for a term of 20 years. The law appears to be consistent with WTO requirements. Nicaragua has also ratified the Paris Convention for the Protection of Industrial Property and the technical part of the Central American Convention on Industrial Property (Inventions and Industrial Designs), although the latter convention has not yet come into effect. In 1999, the National Assembly approved a new Law for the Protection of Plant Varieties that conforms to the Convention of the International Union for the Protection of Plant Varieties (UPOV, 1978). The implementing

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regulations for the Plant Varieties law are still pending.

U.S. companies have raised concerns regarding the confidentiality of data submitted to Nicaraguan government agencies in connection with obtaining marketing approval for medicines. Nicaragua has an obligation to protect such data from “unfair commercial use” under both the WTO TRIPS Agreement and the Bilateral Intellectual Property Agreement with the United States. Local and foreign pirates legally compete with U.S. companies after legitimizing their contraband by citing U.S. research already submitted to the Ministry of Health. Using the pirated U.S. research, copied medicines secure marketing approval with virtually no cost or delay. Despite a recent pledge by the Ministry of Trade to investigate the matter, no other action has been taken by the government to protect product information in accordance with WTO obligations or balance the unequal treatment U.S. companies face when receiving approval to market new medicines.

Trademarks

As one of the last steps in the modernization of Nicaragua’s intellectual property laws, Nicaragua’s National Assembly passed a new Trademark Law, which came into force on July 15, 2001. The Trademark Law covers trademarks, service marks, collective marks, certification marks, publicity slogans, trade names, business signs, and appellations of origin. The new law appears compatible with the Paris Convention and the TRIPS Agreement.

SERVICES BARRIERS

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Nicaragua has WTO commitments covering most banking services (acceptance of deposits, lending, leasing, guarantees, and foreign exchange

services), but it has no commitments in securities, asset management, or other (non-insurance) financial services. While Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches, none operated in the country during 2001. At least one U.S. financial services company cited a pending injunction in U.S. court related to a government debt default which allows for the seizure of Nicaraguan government funds as a major barrier to doing business with the public sector. Likewise, the government’s local partner requirement in its solicitations for project proposals also hampers U.S. companies seeking to provide financial services.

INVESTMENT BARRIERS

Sandinista-era confiscation cases of U.S. citizen-owned investments or properties continue to create questions about the rule of law and respect for private property in Nicaragua. While there has been progress in resolving claims, valuable properties remain in the hands of the government or private parties (including former officials) awaiting fair compensation or return to the rightful owners. Property claimants can sue in court for return of their properties but many complain that the system favors the current occupants. The government continues to offer only bonds as a means of compensation (which currently sell for about 19 percent of face value on the secondary market). Claimants may decide whether to pursue the return of property or compensation through such bonds. The United States continues to press Nicaragua to improve its resolution of expropriation cases and to take measures to increase the value of the compensation bonds.

In order to receive benefits under the 1991 Foreign Investment Law, which provides guaranteed repatriation of profits and repatriation of original capital three years after the initial investment, the interagency Foreign Investment Committee must approve the investment. These approvals can be

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time-consuming and contain criteria (e.g., approval by the Nicaraguan Environmental Agency) that lack clear definition. Investments may be made without Foreign Investment Committee approval, but such investments do not enjoy repatriation guarantees. However, there are no foreign exchange controls currently imposed by Nicaragua to prevent the free exchange of currency and repatriation of profits.

The resolution of commercial and investment disputes is still unpredictable. The legal system is cumbersome, and the enforcement of judicial rulings is uncertain and sometimes subject to non-judicial considerations.

U.S. firms have expressed concern that Nicaraguan legislation passed in 2001 may retroactively create additional legal liabilities for U.S. companies that used the chemical pesticide DBCP in Nicaragua prior to its ban in the late 1970s.

In July 1995, the governments of Nicaragua and the United States concluded the U.S.-Nicaragua Bilateral Investment Treaty (BIT). Nicaragua's National Assembly ratified the BIT in June 1996. The BIT awaits advice and consent from the U.S. Senate.