

NICARAGUA

In 1996, the U.S. trade deficit with Nicaragua was \$88 million, a shift of \$100 million from the U.S. trade surplus of \$12 million in 1995. U.S. merchandise exports to Nicaragua were \$262 million, an increase of \$12 million (4.8 percent) from the level of U.S. exports to Nicaragua in 1995. Nicaragua was the United States' eightieth largest export market in 1996. U.S. imports from Nicaragua were \$350 million in 1996, an increase of \$112 million (47.1 percent) from the level of imports in 1995.

IMPORT POLICIES

Tariffs

Nicaragua is a member of the Central American Common Market (CACM), which also includes Costa Rica, Guatemala, El Salvador, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET) ranging between 5 and 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

Nicaragua also imposes a variety of import fees, including a temporary protection tariff (ATF) of 5 to 10 percent on about 900 items, a specific consumption tax (DAJ) of approximately 15 percent on 750 items, a 5 percent stamp tax (ITF), and a 15 percent value-added tax (VAT). As a result of a tax reform law passed in 1995, effective January 1, 1996, the combined total import fee percentage of the ATP, DAJ, and ITF taxes should not exceed 32 percent. Tariffs are subject to a WTO scheduled reduction, except on certain so-called "fiscal goods" such as alcoholic beverages, tobacco, and soft drinks.

Agricultural Price Bands

In 1992, Nicaragua implemented a price band mechanism for yellow corn, sorghum, rice, and soybeans. Similar to the price band practices of other countries in the region, the Nicaraguan price bands are calculated from a time series based on international prices for the prior 60 months on a given product. The 15 highest and lowest prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within defined bands are assessed a 20 percent tariff. Based on an established schedule, imports entering with prices above the band are assessed lower duties, while imports priced below the band are assessed a higher duty. Additionally, the basic tariff minus the discount should not be lower than 5 percent of the international c.i.f. price. In September 1996, Nicaragua allowed the duty free import of rough rice, although mill rice imports are still subject to the price band.

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GOVERNMENT PROCUREMENT

The 1981 Law of Administrative Contracting by the State, Decentralized/Autonomous Agencies, and Municipalities sets out clear guidelines for government procurement. However, in practice, many government agencies and parastatals engage in direct purchasing outside of the legal framework.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Nicaragua made substantial progress in 1996 toward concluding a bilateral intellectual property rights agreement with the United States that would go beyond the protection levels afforded under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). However, at the beginning of 1997 negotiations had not been concluded.

Copyrights

Piracy of video recordings, unauthorized video and sound recordings, broadcast theft, and piracy of U.S. satellite signals by the local cable television operators are widespread. The current law, which dates from 1904, does not explicitly protect computer software, which contributes to endemic piracy of these products. A draft copyright law languished in the previous National Assembly. A report prepared by the International Intellectual Property Alliance estimated that losses in Nicaragua due to copyright infringements cost U.S. firms \$5.4 million annually.

Patents

The current patent law, which dates to 1899, fails to meet international standards for term of protection and for subject matter subject to patentability. A new draft patent law was prepared by the executive branch in the previous government and submitted to the National Assembly, but was not actively considered. In July 1995, Nicaragua acceded to the Paris Convention for the Protection of Industrial Property. The Nicaraguan Government is currently implementing article two of the Paris Convention (including national treatment), although implementation of other Paris Convention norms is awaiting new Nicaraguan legislation.

Trademarks

Nicaragua's trademark law currently provides inadequate protection for trademarks, especially well-known marks. However, in November 1994, the Central American Convention for the Protection of Industrial Property, of which Nicaragua is a signatory, was revised. The Convention has been signed by the Nicaraguan executive branch, but has not yet been ratified by the National Assembly. The Convention is intended to ensure compatibility with the Paris Convention and Uruguay Round TRIPs provisions. The Convention will not take effect until all Central American countries become signatories. Two Central American countries have not decided whether to sign the Convention.

INVESTMENT BARRIERS

Sandinista-era cases of expropriation of U.S. citizen-owned investments or properties are a continuing problem. Although the Chamorro government said that resolution of these cases was a priority, resolution of cases has been slow. The United States continues to press Nicaragua to provide prompt, adequate and effective relief to affected U.S. owners and investors.

In order to receive the benefit of the 1991 Foreign Investment Law -- which provides guaranteed repatriation of profits and repatriation of original capital three years after the initial investment -- investments must be approved by an interagency foreign investment committee. These approvals can be time-consuming and contain criteria -- e.g., approval by the government's environmental agency -- which lack clear definition. Investments may be made without foreign investment committee approval, but such investments do not enjoy repatriation guarantees.

The 1980 Law of Agents, Representatives, and Distributors of Foreign Products provides for considerable protection of the interests of local agents and distributors. In contrast, for investors, the resolution of commercial and investment disputes is unpredictable. The legal system is cumbersome, and the enforcement of judicial rulings is uncertain and sometimes subject to non-judicial considerations.

In July 1995, the Governments of Nicaragua and the United States concluded the U.S.-Nicaragua Bilateral Investment Treaty (BIT) which was designed to improved the investment climate by recognizing intellectual property rights, and by guaranteeing the repatriation of capital and compensation for damages. Nicaragua's National Assembly ratified the BIT in June 1996. The treaty has not yet been submitted to the U.S. Senate for ratification. Submission of the BIT to the Senate for ratification has been linked to Nicaraguan progress in resolving U.S. citizen property claims and in improving protection of intellectual property rights.

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