

NICARAGUA

In 1997, the U.S. trade deficit with Nicaragua was \$150 million, an increase of \$62 million from the U.S. trade deficit of \$88 million in 1996. U.S. merchandise exports to Nicaragua were \$289 million, an increase of \$27 million (10.4 percent) from the level of U.S. exports to Nicaragua in 1996. Nicaragua was the United States' seventy-ninth largest export market in 1997. U.S. imports from Nicaragua were \$439 million in 1997, an increase of \$89 million (25.5 percent) from the level of imports in 1996.

IMPORT POLICIES

Tariffs

Nicaragua's tax reform law of May 1997 made sweeping changes in the system of import taxes, reestablishing a schedule for progressive tariff reductions through the year 2002. As of January 1998, Nicaragua imposes regular import duties (DAI) of 15 percent on final consumption goods and 10 percent on intermediate goods (there is no DAI on raw materials and capital goods). The country also levies a temporary protective tariff (ATP) of 5 to 10 percent on about 900 items. The maximum combined DAI and ATP rate is 20 percent. In addition, Nicaragua levies a specific consumption tax (IEC) of 10 percent on 750 items and a 15 percent value-added tax on most items excluding agricultural inputs. The 1997 tax reform banned the establishment of almost all the non-trade barriers on imports. It also repealed, effective July 1998, the 1980 "law of agents, representatives and distributors of foreign products." That law makes it difficult for foreign firms to terminate local distributors.

CACM members are working toward the full implementation of a common external tariff (CET) ranging between 0 and 15 percent for most products. With a few exceptions, there are no regular import duties (DAI) on products traded among CACM members. Nicaragua, in its 1997 Tax Reform Law, adopted a tariff reduction schedule beyond that called for by CACM agreements. In December 1997, Nicaragua and Mexico signed a free-trade agreement which, when ratified by their legislatures, will remove most regular import duties (DAI) on Nicaraguan exports to Mexico and do the same for Mexican exports to Nicaragua in the year 2000.

Nicaragua's domestic tax and tariff rates are higher on cars with large engines. This has the effect of discriminating against American automobiles, which typically have larger engines than equivalent competitors from other countries. In January 1998, the Nicaraguan Government sent draft legislation to the National Assembly to reduce that discrimination by sharply reducing the tariff differential between cars with large and small engines.

Agricultural Price Bands

Nicaragua's tax reform law of May 1997 replaced the price-band mechanism with tariffs. Those tariffs (for yellow corn, sorghum, rice, and soybeans) now range from 20 to 30 percent and are set to drop to 5 and 10 percent by 2000.

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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

Bilateral Agreement

On January 7, 1998 Nicaragua signed a Bilateral Intellectual Property Rights Agreement with the United States -- the first such agreement in Central America and only the fourth in the hemisphere. The agreement, which had been under negotiation for four years, covers copyrights, patents, trademarks, semiconductor layout designs, encrypted program-carrying satellite signals, trade secrets, and industrial designs. The agreement addresses criminal and civil penalties for infractions and provides a level of protection which exceeds commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The agreement, which must be approved by the National Assembly, calls for full implementation by mid-1999.

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. Patent protection is limited to short patent terms (10 years). In 1996, the National Assembly ratified the Paris Convention for the Protection of Industrial Property. In April 1997, Nicaragua approved the technical part of the Central American Convention in Industrial Property (inventions and industrial design). However this is not yet in force, pending approval by other countries. New patent legislation is under consideration, but its prospects for passage are uncertain.

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.

INVESTMENT BARRIERS

Sandinista-era cases of expropriation of U.S. citizen-owned investments or properties are a continuing problem. Although the Aleman government said that resolution of these cases was a priority, resolution of cases has been slow during the second semester, in part because of uncertainties relating to the new property law that was being debated during the year. 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 government has announced plans to review the adequacy of the investment law with the objective of removing any bias against foreign investment.

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 improve 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 as well as signing a Bilateral Intellectual Property Rights Agreement with the United States in January 1998.