

# NICARAGUA

## TRADE SUMMARY

The U.S. trade deficit with Nicaragua was \$266 million in 2003, an increase of \$24 million from \$242 million in 2002. U.S. goods exports in 2003 were \$503 million, a 15.1 percent increase from the previous year. Corresponding U.S. imports from Nicaragua were \$769 million, an increase of 13.2 percent over 2002. Nicaragua is currently the 65<sup>th</sup> largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua in 2002 was \$242 million, up 54 percent from 2001.

## IMPORT POLICIES

### Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

### Tariffs

In 2002 and 2003, Nicaragua completed implementation of most of a broad package of tariff reductions that had been approved in 1997. In those same years, two tax reforms included tariff changes as well. The overall thrust of the changes in both legislation and practice over the last several years has been to reduce tariffs (though there have been a few increases), reduce non-tariff barriers, and greatly reduce the discretion of government officials to waive the application of tariffs. The reform process is in accordance with reduction and harmonization of a common external tariff among members of the Central American Common Market (CACM), to between zero and 15 percent on most items.

Nicaragua imposes regular import duties of 10 percent or 15 percent on many final consumer goods and a duty of 5 percent on certain primary or intermediate goods from outside Central America that compete with products produced in CACM countries. The tariff is assessed on a good's CIF value. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Nicaragua duty free, with the remaining tariffs on such goods being eliminated within 10 years. Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

A small number of protected agricultural commodities, notably rice and chicken parts, have higher rates. Processed rice faces tariffs as high as 61 percent, down from a maximum of 103.5 percent in 2002. Certain chicken parts face a tariff of 170 percent. Tariffs on corn, previously higher, now range from 10 percent to 15 percent. In May 2003, Nicaragua raised tariffs on cheese and certain other dairy products from countries outside the CACM region to a common external tariff rate of 40 percent, from a prior rate

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of 15 percent. Under the CAFTA, Nicaragua has committed to eliminate tariffs on rice within 15 years, on poultry within 18 years, and dairy products within 20 years. Tariffs on yellow corn will be phased out over 15 years, while trade in white corn will be liberalized through an expanding quota. In addition, the CAFTA will eliminate tariffs on virtually all other agricultural products within a maximum of fifteen years.

### **Non-tariff Measures**

A "selective consumption tax" (ISC) on luxury items, -- known until May 2003 as the "specific consumption tax" (IEC) -- is levied on a limited number of items. The tax is generally lower than 15 percent, with a few exceptions noted below. Although the ISC is not applied exclusively to imports, the value on which it is based varies depending on whether the product is produced domestically or abroad. While the ISC on domestic goods is based on a manufacturer's price, the ISC on imported goods is based on the CIF value. Alcoholic beverages and tobacco products are exceptions in that the ISC for them is assessed on the price charged to the retailer.

Cars more than six years old may not be imported. Newer models with large engines (greater than 4000 cc) face an ISC of 30 percent, while vehicles with smaller engines are charged between 10 percent and 25 percent ISC, depending on engine size. While the differential applied to U.S. cars was reduced in 2003, a significant differential remains which continues to create a preference in the Nicaraguan market for non-U.S. cars.

In accordance with April 2000 amendments to Nicaragua's tax laws, the ISC on soft drinks was lowered from a level of 18 percent the preceding year, to 15 percent in 2000 and 12 percent in 2001. A further reduction to the target rate of 9 percent, scheduled to have taken place in 2002, was suspended, leaving the ISC at 12 percent. Soft drink manufacturers have argued that this puts them at a competitive disadvantage with respect to non-carbonated beverages and that changing the basis for calculating the ISC on soft drinks from the wholesale to the retail price further erodes tax reductions of previous years.

Nicaragua also levies a non-discriminatory 15 percent value-added tax (IVA) on most items, except agricultural inputs. A temporary protection tariff (ATP) on some 900 items, which added 5 percent to 10 percent above the regular import duty, was eliminated in 2001.

Licenses are required for imports of sugar prior to the CAFTA's entry into force. Import licensing requirements are otherwise minimal.

Importers have in the past complained of steep secondary customs costs, including customs declarations form charges, consular fees, and fees for mandatory employment of licensed customs agents. Nicaragua adopted the WTO customs valuation method in September 2002, eliminating previous complaints about customs valuation based on a "reference price" that was often significantly higher than the actual amount paid by importers.

CAFTA provisions call for reforms in customs procedures and valuation methods. The Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Nicaragua committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

The telecommunications sector is in transition from state ownership to private ownership. Fifty-one percent of Enitel, the former state telephone monopoly, has been sold and a process to sell the remaining 49 percent is nearly complete. Private mobile telephone companies have at times complained that the regulatory agency TELCOR exhibits favoritism toward Enitel. In general, however, TELCOR has

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encouraged competition in its licensing and regulatory practices. Under the CAFTA, Nicaragua has committed to open its telecommunications sector to service and investment by U.S. providers.

### **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Products that meet domestic U.S. standards are generally accepted in the Nicaraguan market with little need for further certification. U.S. exporters of food products must meet minimal phytosanitary and labeling requirements.

There is currently no regulatory process for approving agricultural biotechnology products for import or sale. Imported agricultural products derived from biotechnology are supposed to be identified as such, but there is no law in place governing the use of labels on biotechnology products. In August 2003 an executive decree called for the establishment of an interagency commission to develop procedures for risk analysis of agricultural biotechnology products, norms for their use, and regulations for their production and importation. As of November 2003, the commission had not been formed.

Under the CAFTA, Nicaragua agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Nicaragua and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

### **GOVERNMENT PROCUREMENT**

Nicaragua's law on government procurement, which went into effect in January 2000, provides for nondiscrimination among suppliers and requires that most government procurement contracts be advertised in national newspapers and the Internet. However, some contractors have complained of inadequate notification of pending procurements. Nicaragua is not a party to the WTO Agreement on Government Procurement.

Under the CAFTA, U.S. suppliers would be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

### **EXPORT SUBSIDIES**

Nicaragua does not subsidize exports directly or provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the FOB value of the exported goods. Foreign inputs for Nicaraguan export goods from the country's free trade zones enter duty-free and are exempt from value-added tax. The CAFTA will require the elimination of WTO-illegal export subsidies.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

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Nicaragua has strengthened its legal framework for protection of intellectual property rights over recent years, but enforcement remains weak. In January 1998, Nicaragua and the United States signed a bilateral IPR agreement covering patents, trademarks, copyright, trade secrets, plant varieties, integrated circuits, and encrypted satellite signals. The Nicaraguan legislature subsequently passed a package of six modern IPR laws. In 1999, the National Assembly approved a new copyright law, a plant variety protection law, a law on the protection of satellite signals, and a law on integrated circuit design. In 2000, a new law on patents was passed and a law on trademarks was passed in 2001.

Although the Nicaraguan government has dedicated three public prosecutors solely to IPR issues, enforcement of IPR laws has been limited. Protection of well-known trademarks is poorly enforced. According to industry sources, the government made two attempts to crack down on music recording piracy in 2001 but has made no significant raids or arrests since then, and anecdotal evidence suggests an increase in the reproduction of pirated music and videos. The U.S. Government and industry are working with the Nicaraguan government to provide training for effective enforcement. While in 2003 the Health Ministry suspended the distribution and sale of a locally produced generic version of a pharmaceutical product patented in Nicaragua by a U.S. company, some U.S. pharmaceutical firms remain somewhat concerned about possible unauthorized use of protected data. The CAFTA obligations clarify that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Nicaragua is a signatory to the Paris Convention, the Mexico Convention, the Buenos Aires Convention, the Inter-American Copyrights Convention, the Universal Copyright Convention, the Berne Convention, and the Satellites Convention. In April 2002, the National Assembly ratified the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT), both of which entered into force shortly thereafter. In September 2003, Nicaragua adhered to the Lisbon Agreement for the Protection of Appellation of Origin and their International Registration.

CAFTA provisions will strengthen Central American IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

### **SERVICES BARRIERS**

#### **Financial Services**

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Nicaragua's WTO commitments cover most banking services, including acceptance of deposits, lending, leasing, guarantees, and foreign exchange. However, its WTO commitments do not cover security or asset management. Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches, but no U.S. bank has yet reentered the Nicaraguan financial market since several major U.S. banks withdrew in the 1970s. A requirement that a local partner be involved in solicitations for project proposals may discourage U.S. companies from entering the financial services market, but general weakness of the sector is the main obstacle to foreign involvement in the financial services. CAFTA provisions will make it easier for U.S. banks to enter the Nicaraguan market. U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks.

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Legislation passed in 1996 opened the insurance industry to private sector participation. Private insurance companies now compete with the government-owned firm INISER. However, no U.S. or other foreign insurance company has entered the Nicaraguan market. Under CAFTA, Nicaragua will accord substantial market access in services across their entire services regime, subject to very few exceptions. Nicaragua will allow U.S.-based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services.

### INVESTMENT BARRIERS

Poorly enforced property rights and the resulting proliferation of property disputes are among the most serious barriers to investment in Nicaragua. The Sandinista government confiscated nearly 30,000 properties during the 1980s. Many thousands of individuals -- including over 1,000 U.S. citizens -- have filed claims since 1992 for compensation or return of properties. While there has been progress in resolving claims, many valuable properties remain in the hands of the government or private parties, including former Sandinista government officials and military officers. Property claimants can sue for return of their properties, but the legal system favors the current occupants. The government offers low-interest bonds as a means of compensation in most instances. The United States continues to urge the Nicaraguan government to resolve claims. Of the nearly 3,000 U.S. citizen claims registered with the U.S. Embassy, fewer than 800 were pending as of December 2003.

Remittance of 100 percent of profits and original capital three years after investment is guaranteed through the Central Bank at the official exchange rate for those investments registered under the Foreign Investment Law. Investors who do not register their capital may still make remittances through the parallel market, but the government will not guarantee that foreign exchange will be available.

Nicaragua and the United States concluded a Bilateral Investment Treaty (BIT) in July 1995. Nicaragua's National Assembly ratified the BIT in June 1996, but the U.S. Senate has not ratified it. However, the investment chapter of the CAFTA includes provisions for the protection of U.S. investors analogous to those in the 1995 BIT by establishing a secure, predictable legal investment framework. Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will 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 a fair market value for property in the event of an expropriation. Investor rights will be backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

### TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

Electronic commerce is not well developed in Nicaragua. Currently, there are no laws or regulations restricting its use or regulating the treatment of electronic transactions. Under CAFTA, Central America and the United States agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. Nicaragua committed to non-discriminatory treatment of digital products; agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

### OTHER BARRIERS

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## **Judicial Uncertainty**

The Nicaraguan legal system is weak and cumbersome. Many members of the judiciary, including those at high levels, are widely believed to be corrupt or subject to outside political pressures. Recognizing Nicaragua's reputation for problems with corruption, President Bolanos has made anti-corruption a centerpiece of his administration's domestic policy.

Enforcement of court orders is uncertain and frequently subject to non-judicial considerations. Foreign investors are not specifically targeted but are often at a disadvantage in disputes against nationals with political connections. Misuse of the criminal justice system sometimes results in individuals being charged with crimes arising out of otherwise civil disputes, often in order to pressure those targeted into accepting a civil settlement. The resolution of commercial and investment disputes is therefore still unpredictable. Rulings in favor of those who are politically connected are a visible manifestation of political corruption. The CAFTA investment chapter would allow investors to seek recourse outside of Nicaraguan courts under a transparent process for expropriatory acts by Nicaraguan governmental entities.

## **Law 364**

Several multinational firms and the U.S. Chamber of Commerce have expressed concern regarding Nicaraguan Law 364 enacted in 2001. Law 364 retroactively imposed liabilities for foreign companies that manufactured or used in Nicaragua the chemical pesticide DBCP, which was banned in the United States in 1979, when the Environmental Protection Agency cancelled its certificate for use (with exceptions). Onerous requirements under Law 364 include: truncated judicial proceedings; imposition of a \$100,000 non-refundable bond per defendant as a condition for firms to put up a defense in court; escrow requirements of approximately \$21 million earmarked for payment of awards; irrefutable presumptions of causation; liquidated damages as minimum liabilities; and no stay of execution of a judgment pending appeal. In December 2002, the first judgment under this law was rendered in a consolidated lawsuit in the amount of \$489 million. A U.S. district court ruled in October 2003 that the judgment could not be enforced against the companies in the United States. Several hundred lawsuits claiming damages of over \$11 billion are pending.