MEXICO

TRADE SUMMARY

Two-way trade between the United States and Mexico grew from $81.5 billion in 1993 to $232.9 billion in 2001. The NAFTA has promoted additional trade between the two countries, contributing to Mexico surpassing Japan in 1999 to become the United States' 2nd largest trading partner.

U.S. goods exports to Mexico were $101.5 billion in 2001, a 8.8 percent decrease over the previous year. Imports from Mexico were $131.4 billion, a decrease of 3.3 percent from 2000. The U.S. trade deficit with Mexico for 2001 was $29.9 billion, an increase of $5.3 billion from the 2000 deficit.

U.S. exports of private commercial services (i.e., excluding military and government) to Mexico were $14.0 billion in 2000 (latest data available), and U.S. imports were $11.0 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $4.8 billion in 1999 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $355 million.

The stock of U.S. foreign direct investment (FDI) in Mexico in 2000 was $35.4 billion, up 9.8 percent from 1999. U.S. FDI is concentrated in the manufacturing and financial services sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. The NAFTA progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules for investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements which provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Tariffs and Market Access

Under the terms of the NAFTA, Mexico will eliminate tariffs on all industrial and most agricultural products imported from the United States within nine years of implementation of the agreement, or January 1, 2003. Remaining tariffs and non-tariff restrictions on certain agricultural items will be phased out by January 1, 2008.

NAFTA Parties implemented the eighth annual regular tariff reductions on January 1, 2002. Mexico's average duty on U.S. goods has fallen from 10 percent prior to NAFTA to less than 0.5 percent. Currently, about 80 percent of U.S. manufactured goods enter Mexico duty-free.

The NAFTA allows the three governments to agree to reduce or eliminate tariffs on a faster schedule than originally provided. In 2001, the Parties agreed, for the fourth time since 1997, to accelerate the elimination of tariffs. The value of total trade for the range of items covered by this fourth package was $25 billion. In addition to reciprocal reductions on certain footwear, Mexico eliminated tariffs on U.S. products including motor vehicles, electrical and electronic goods, toys, and chemicals. Many of these U.S. products were being disadvantaged by the tariff elimination provisions of the European Union-Mexico Free Trade Agreement. As a result of the ability to eliminate tariffs on an accelerated basis, the United States was able to obtain parity for these products -- placing U.S. industry on equal footing with their European competitors on January 1, 2002. (Visit http://www.ustr.gov/releases/2002/01/02-04a.pdf for a complete list of products.)

Pursuant to the requirements of NAFTA Article 303 and the timetable specified in Annex 303.7, on January 1, 2001, the three countries implemented limitations on the use of duty drawback and duty deferral programs with respect to trade with Mexico. The same provisions were implemented for trade between the United States and Canada in 1996. The NAFTA now limits the duty waivers that Mexico may grant for temporary importation of non-NAFTA originating goods incorporated into finished products that are subsequently exported to the United States or Canada. Such waivers may not exceed the lesser of: (a) the total amount of customs duties paid or owed on the good initially imported; or (b) the total amount of customs duties paid to another NAFTA government on the good, or the product into which the good is incorporated, when it is subsequently exported.

To minimize the increase in input costs for its manufacturers as a result of these new limitations, Mexico created several "Sectoral Promotion Programs" (Prosecs). Prosecs reduce the MFN applied tariffs (often to zero) on items in over 16,000 tariff categories used to produce specified products in any of 22 industries. While the industries and items eligible for the reductions are those of greatest importance to the temporary import (maquiladora) sector, the reduced tariffs are available to all qualifying producers, regardless of nationality, and do not condition benefits on subsequent exportation. Implementation of NAFTA Article 303 continues the process of integrating maquiladoras into Mexico's domestic economy. The United States continues to monitor Mexico's Prosec programs to assure they are consistent with the NAFTA. The American Textile Manufacturers Institute (ATMI) objected this year to the inclusion in one of the programs of certain textile products available in North America. Fabrics, specifically mentioned are those used to make pockets, linings, undercollar cloth and interlinings of jackets, trousers and suits.

Agricultural Products

U.S. exports of agriculture, fish and forestry products to Mexico are expected to surpass $7 billion in 2001. Mexico is our third largest agricultural market. Under the NAFTA, Mexico continues to reduce import tariffs and increase tariff-rate quotas on many agricultural products from the United States, providing enhanced market access. While there were no import barriers to trade for agricultural products in 2001 that prohibited imports, there continued to be a number of import polices and phytosanitary issues that significantly distorted and impeded trade. In addition, the Mexican Congress proposed laws and passed others that could restrict agricultural imports in 2002.

In 2001, the Mexican Secretariat of Economy (SE) continued antidumping duties on beef and live hogs. While the duties do not prohibit the import of these products from the United States, they have increased costs and disrupted normal trading patterns. In the case of beef product exports, the dumping duty rates assigned to individual companies only apply to beef aged less than 30 days and graded Choice or Select; all other cuts of beef subject to the order are subject to the higher, all others rate. The live hog antidumping duty only applies to hogs weighing less than 110 kilos. These policies have significantly reduced the number of U.S. suppliers and have altered product trading patterns. A request to investigate dumping pricing on imported milled rice was rejected by the SE in 2001. The Mexican forest products industry has complained about lumber imports and has conducted a study to support its argument that U.S. lumber imports are hurting the industry. The United States is monitoring reports that the Mexican forest product industry may request safeguard or antidumping investigations in 2002.

On June 12, 2000, the Mexican Congress amended Mexico's Animal Health Law to require that all import verification inspections for meat and poultry be conducted in Mexico. The law was to be implemented on June 12, 2001; however, Mexico only had one facility operational on that date, so implementation was postponed until December 12, 2001. The Secretariat of Agriculture (SAGARPA) prohibited imports of meat and poultry at several border crossing points for two weeks, which resulted in substantial losses for U.S. industry. The Mexican Congress postponed implementation of the new provision again in late 2001 for an additional six months, until June 12, 2002. If the law is not modified, access to a meat and poultry export market valued at over $1.2 billion could be threatened.

The Mexican Congress also approved on January 1, 2002, as part of the annual budget, a consumption tax on certain beverages sweetened with ingredients other than cane sugar, including high fructose corn syrup (HFCS). The action by the Mexican Congress was discriminatory and counterproductive, and established a major barrier to a settlement of broader sweetener disputes between the United States and Mexico. In mid-January, U.S. officials and representatives of the U.S. agricultural sector, including corn growers and refiners, met with Mexico's Secretary of the Economy Luis Derbez and strongly objected to the tax. On March 5, 2002, the tax was suspended for seven months by President Fox. With the Mexican Congress threatening new restrictions, however, HFCS sales remain well below prior volumes.

Mexican sanitary and phytosanitary standards have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, apples, stone fruit, meat, poultry, citrus, table eggs, wood and wood products, avocados, and rendered products. In addition, procedural requirements regarding sanitary and phytosanitary inspections at the port-of-entry often do not reflect agreements reached between U.S. Department of Agriculture (USDA) officials and their Mexican counterparts, resulting in unnecessary delays at Mexican ports of entry.

In 2001, SAGARPA rejected significant quantities of agricultural imports. Reasons for rejection ranged from detection of a non-quarantine pest to typographical errors on customs documents. Perhaps the worst case was the rejection of U.S. stone fruit shipments from California because of detection of non-quarantine insects. Although the insects were never identified as pests of concern in the work plan agreed to by USDA and SAGARPA, SAGARPA rejected these shipments costing the industry millions of dollars. USDA and SAGARPA eventually resolved the problem and the trade flow was restored.

In 2003, tariff-rate quotas (TRQs) and import tariffs in Mexico for most agricultural products will be eliminated under the NAFTA. While this should further open the Mexican market for U.S. agricultural products, the United States will continue to closely monitor Mexican procedures to ensure that new barriers to trade are not implemented in place of the TRQs.

Serious problems identified last year with Mexico's administration of the U.S. dry bean TRQ were resolved through a bilateral agreement in May 2001. TRQ administration has improved substantially as a result, but U.S. exporters remain concerned about the high prices import permits command at the annual auctions.

Administrative Procedures and Customs Practices

U.S. exporters continue to complain about Mexican customs administration procedures, including the lack of sufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements for imports at different border posts; requirements that particular goods enter only through certain ports; and discriminatory and uneven enforcement of Mexican standards and labeling rules. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, non-transparent and unreliable. U.S. exporters continue to voice concerns about the lack of effective intellectual property rights enforcement at the border.

Because of the potential for sanctions under the 1996 Customs Reform Law, Mexican customs brokers employ very restrictive interpretations of Mexican regulations and standards. In an attempt to combat what is perceived to be under-invoicing and other forms of customs fraud, Mexican Customs maintains (and in some cases has significantly expanded over the last year) measures that can unnecessarily impede legitimate imports. These measures include import license requirements, an industry sector registry, and estimated (reference) prices.

The Secretariat of Economy (SE) requires import licenses for a number of commercially sensitive products. On December 31, 2001, it published a decree requiring licenses for imports of high fructose corn syrup, but noted that it will issue all such import permits automatically. However, the SE notice indicates that it shall suspend or limit the issuance of these import permits if it determines that the United States has not complied with its international trade obligations regarding sweeteners or other products. The effective date of the import permit requirement was January 15, 2002, but procedures for obtaining licenses were not available by that date. USTR is closely monitoring this new requirement to ensure Mexico adheres to its international obligations.

Mexico uses estimated prices for customs valuation of a wide range of products imported from the United States and other countries – including apples, milled rice, beer, distilled spirits, chemicals, wood, paper and paperboard products, textiles, apparel, toys, tools and appliances. On October 1, 2000, the Mexican Government implemented a burdensome new guarantee system for goods subject to these prices. Since that date, importers have been unable to post a bond to guarantee the difference in duties and taxes if the declared value of an entering good is less than the official estimated price. Instead they must deposit the difference in cash at a designated Mexican financial institution or arrange one of two alternative sureties (a trust or line of credit). The cash deposit is not returned for six months, and then only if the Mexican Government has not initiated an investigation and if the supplier in the country of exportation has provided an invoice certified by its local chamber of commerce. U.S. exporters have long complained that estimated pricing under Mexico's old surety system unfairly restricted trade, but implementation of the cash deposit requirement has created significant additional costs. Mexican banks charge as much as $1,500 to open cash accounts and $250 for each transaction. While the United States has raised this issue with Mexico for the past eight years, we have seen no progress. The United States is considering next steps, including dispute settlement.

On June 29, 2001, Mexico published an amendment to its Customs Law that prohibits transshipment of certain products through Mexico to other countries. The resolution covers products such as explosives and weapons. The resolution also covers certain textile, electronic, and agricultural products, as well as diapers, beer, cigarettes, wine, liquors, and other goods. The prohibition currently impedes legitimate trade and raises serious questions about Mexico's adherence to its WTO obligations.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Mexico's Law on Metrology and Standardization mandates that products subject to technical regulations ("Normas Oficiales Mexicanas" (NOMs)) be certified by the government agency that issued the NOM or by an authorized independent certification body. Under the NAFTA, Mexico was required, starting January 1, 1998, to recognize conformity assessment bodies in the United States and Canada on terms no less favorable than those applied in Mexico.

Each Mexican Government agency has its own compliance assessment process to determine compliance with its NOMs. Changes to the Secretariat of Economy (SE) product certification procedures became effective on May 1, 2000. The main change allows U.S. manufacturers and/or exporters to hold title to a NOM certificate of compliance and assign it to as many distributors in Mexico as needed to cover the market. These changes are only for SE-issued NOMs and apply exclusively to countries having signed a free trade agreement with Mexico. However, numerous U.S. exporters complain that even the improved process remains unduly costly and burdensome. Another common complaint is that for each NOM there is only one certification body accredited and authorized to issue certificates of compliance.

Tequila: In August 2001, Mexico published draft regulations governing the "indirect use of tequila." If approved, the new regulations could have the effect of extending Mexican regulations and the authority of the Mexican Tequila Regulatory Council to products bottled outside of Mexico that contain tequila but that are not themselves tequila. The United States is concerned that such regulations would not be consistent with Mexico's international trade obligations.

Vitamins, Nutritional Supplements, Herbal Remedies: U.S. exporters of certain vitamins, nutritional supplements, and herbal remedies have expressed concerns that regulations under Mexico's health law unnecessarily impede their access to the Mexican market. There is a lack of clarity regarding which products are classified as medicines or pharmaceuticals, and for which the Secretariat of Health (SSA) requires inspection and approval of the manufacturing facility in order to obtain a sanitary license. For those products requiring a sanitary license, Mexico does not have in place procedures to permit its officials to conduct the required inspections and approvals for foreign-based facilities. It is our understanding that Mexico is looking at ways to address these concerns consistent with WTO and NAFTA obligations.

GOVERNMENT PROCUREMENT

In March 2000, Mexico established price preferences for domestic products when government purchases are not subject to the NAFTA in two procurement laws. The implementing regulations were published on August 20, 2001.

The NAFTA gradually increases U.S. suppliers' access to purchases by PEMEX and the Federal Electricity Commission (CFE), the parastatal petroleum and electricity monopolies, which are the two largest purchasing entities in the

Mexican government. Under the NAFTA, Mexico immediately opened 50 percent of PEMEX and CFE tenders whose values fall above NAFTA thresholds to competition from U.S. goods and services. In 2002, this figure is 70 percent. Though it appears that market access is increasing, the United States is concerned with Mexico's implementation of its commitments with respect to offsets. In particular, we have concerns with the high requirements for domestic content in equipment and supplies in CFE tenders for sub-stations and transmission lines.

As of January 1, 2002, the NAFTA applies to purchases of pharmaceuticals that are not currently patented in Mexico or whose Mexican patents have expired. For purchases of non-patented pharmaceuticals subject to the NAFTA, Mexico will no longer be able to grant preferential treatment to domestic suppliers.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Under the NAFTA and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Mexico is obligated to implement certain standards for the protection of intellectual property rights and procedures to address infringement such as piracy and counterfeiting. The United States and Mexico review progress on intellectual property issues in regular consultative meetings. As a result of the progress Mexico has made on intellectual property matters, Mexico was taken off the Special 301 Watch List in 2000 and remained off the list in 2001. However, the United States remains concerned about the continuing high levels of piracy and counterfeiting in Mexico and closely monitors how the Mexican Government is addressing these problems.

Copyright

Copyright piracy remains a major problem in Mexico, with U.S. industry estimates of losses growing. A significant increase in the level of piracy during the past year coupled with a decrease in the level of enforcement has resulted in ever greater losses to the copyright industry and the closure of legitimate copyright-related businesses. Pirated sound recordings and video cassettes are widely available throughout Mexico. The International Intellectual Property Alliance (IIPA) estimated that trade losses due to copyright piracy in Mexico totaled $527.5 million in 2000. Loss figures for 2001 are not yet available. Piracy levels in some industries have declined since 1995; for instance, the estimated software piracy level came down from 74 percent in 1995 to 56 percent in 2000. The music industry has, however, seen a significant increase in the piracy level, from 54 percent in 1995 to 63 percent in 2000. Sales of legitimate CDs declined from 80 million units in 1999 to 67 million units in 2000, and industry projections forecast sales of only 55 million legitimate CDs in 2001.

Mexican law enforcement agencies have conducted hundreds of raids on pirates, including in dangerous areas such as Tepito in Mexico City. However, there have been few convictions for piracy, thus undercutting the deterrent effect of the raids and arrests. During 2001, there were only eight indictments, a drastic decline from 54 indictments the year before. Despite occasional raids, Mexico's informal markets are effectively tolerated by the government, making sustained reductions in piracy (particularly music piracy) very difficult.

Patents and Trademarks

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), an independent agency. The number of raids by IMPI against counterfeiters has increased in recent years, and use of administrative remedies is increasingly effective for U.S. trademark owners. Nonetheless, many U.S. trademark holders have encountered difficulties in enjoining former subsidiaries and franchisees from continued use of their trademarks. Some U.S. firms have reported difficulty enforcing their trademark rights. An illustrative case involves Nintendo of America, which has been involved in numerous court battles since 1989 with a Mexican national who registered a trademark for the Game Boy mark with the Mexican trademark authorities. The Mexican national has no commercial relationship with Nintendo, and has been identified in the past as distributing counterfeit Nintendo products. Furthermore, the Mexican national aggressively has tried to obstruct the ability of Nintendo to sell legitimate video game products in Mexico through raids on an authorized Nintendo distributor and retailers. Nintendo has pursued several legal and administrative avenues within the Mexican Government, with little positive outcome. A Department of Commerce Compliance Team actively has been pursuing all possible avenues for resolving the dispute, including using the bilateral IPR talks.

U.S. pharmaceutical and agricultural chemical companies are concerned about the lack of coordination between IMPI and other Mexican officials with regard to the granting of marketing approval for their products. As part of the process to obtain approval to sell their products, pharmaceutical and agricultural chemical companies must submit data on the safety and efficacy of their products. These data are valuable and the result of substantial investments in research. Governments are obliged to protect this data from unauthorized use by a third party. The Mexican Secretariats of Health (SSA) and Agriculture (SAGARPA) have granted marketing approval for generic products without verifying with IMPI whether a patent exists. The SSA and SAGARPA also have allowed Mexican interests to rely on the test data submitted by U.S. companies without authorization from the U.S. companies, which also appears not to be in conformity with the NAFTA and TRIPS.

SERVICES BARRIERS

Telecommunications

Mexico’s former state-owned telecom monopoly (Telmex) continues to dominate Mexico’s telecommunications sector. Competition in the sector has been hampered by the inability of Mexico’s telecommunications regulator (Cofetel) to enforce regulations to prevent Telmex from engaging in anticompetitive conduct (known as “dominant carrier” regulations). Mexico has not yet taken concrete enforcement action against Telmex in the face of violations of these dominant carrier regulations. Such violations —which relate to Mexico's WTO obligations— include Telmex's refusal to provide key information required by the regulation (such as information regarding its network needed by competitors to offer service), Telmex's failure to offer competitors non-discriminatory quality of service, and Telmex's failure to provide private lines in a timely manner.

In addition, the Mexican Government has yet to take appropriate action to address the refusal of Telmex’s wireless affiliate (America Movil) to abide by a regulatory ruling requiring the adoption of competitively neutral numbering rules. Cofetel has recommended that Telmex be fined for non-compliance with these rulings; however, the authority responsible for levying fines has declined to take action. Finally, Cofetel has failed to address a dispute over the terms and conditions for local interconnection that has remained unresolved for over one year despite its WTO commitment to resolve interconnection disputes within a reasonable period of time.

Mexico has also failed to address the much-needed reform to its international rules to permit competition in the offering of international services at cost-oriented rates. Mexico's rules prevent competitive alternatives to the interconnection rates negotiated by Telmex. The current international interconnection rate between the United States and Mexico is 13.5 cents per minute—a rate that exceeds cost by approximately 10 cents. Mexico has a WTO obligation to ensure that international interconnection rates are cost-oriented. The United States has repeatedly raised concerns regarding the WTO-consistency of Mexico's international telecom regime (including these non-cost-oriented rates) Mexico's high international interconnection rates and, on February 13, 2002, requested formation of a WTO dispute settlement panel to resolve this issue.

In 2001, there was also some progress: Mexico's satellite service sector was opened to competition, and long-distance interconnection rates were reduced for the second year in a row.

Film Law

The implementing regulations of the 1998 film law were published on March 29, 2001. The regulations contain several provisions that seriously impede the free flow of all audiovisual products distributed in Mexico. The Motion Picture Association (MPA) specifically cites a local printing obligation and a local dubbing obligation as barriers to the entry of foreign films. Dubbing restrictions effectively reserve a segment of the domestic film market for local films, thereby protecting local film producers from foreign competition.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's Constitution and Foreign Investment Law of 1992 reserve certain sectors to the state, such as oil and gas extraction and electric power transmission; other laws limit activities to Mexican nationals, such as forestry exploitation, and domestic air and maritime transportation. Only Mexican nationals may own gasoline stations. Gasoline is supplied by PEMEX, the state-owned petroleum monopoly. Gasoline stations sell only PEMEX lubricants, although other lubricants are manufactured and sold in Mexico. A national foreign investment commission decides questions of foreign investment in Mexico. In February 2001, President Bush and Mexican President Vicente Fox agreed to establish a trilateral working group with Canada to address North American energy issues.

NAFTA eliminated barriers to new investment in Mexico, such as trade balancing and domestic content requirements. These barriers are being phased out in key sectors such as automobile manufacturing by January 1, 2004.

Investment restrictions prohibit foreign ownership of residential real property within 50 kilometers of the nation's coasts and 100 kilometers of its borders. However, foreigners may acquire the effective use of residential property in the restricted zones through trusts administered by Mexican banks. Foreign and Mexican nationals encounter problems at times with the lack of enforcement of property rights. Mexico's land tenure laws are complicated. In addition, there is no title insurance system in Mexico, which means potential investors should be sure of their rights prior to acquiring property.

Mexico has notified the WTO of measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures are local content and trade balancing requirements in the automotive industry. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In December 1999, Mexico submitted a request to the WTO for a four-year extension to its transition period, which would parallel the agreement reached in the NAFTA. On November 5, 2001, the WTO Council for Trade in Goods granted this request.