MEXICO

TRADE SUMMARY

In 2000, two-way merchandise trade with Mexico reached a record $248 billion, an increase of $51 billion (26 percent) over 1999. Since 1999, Mexico has become the United States' second largest single-country trading partner, surpassing Japan, and has been the fastest growing major U.S. export market over the last seven years.

U.S. exports to Mexico were $112 billion in 2000, a 28 percent increase over the previous year. Imports from Mexico were $136 billion, an increase of 24 percent over 1999. The U.S. trade deficit with Mexico for 2000 was $24.2 billion, an increase of $1.5 billion (6.7 percent) from the deficit of $22.7 billion in 1999.

U.S. exports of private commercial services (i.e., excluding military and government) to Mexico were $12.5 billion in 1999, and U.S. imports were $9.8 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $3.1 billion in 1998, while sales of services in the United States by majority Mexican-owned firms were $531 million.

The flow of U.S. direct investment (FDI) into Mexico in 1999 was $5.4 billion, and the current stock is $34.4 billion. U.S. FDI is concentrated in the manufacturing (mostly maquiladora) and financial sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico entered into force on January 1, 1994. 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. 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 NAFTA, Mexico will eliminate tariffs on all industrial and most agricultural products imported from the United States within 10 years of implementation of the agreement. 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, 2001. Mexico's average duty on U.S. goods has fallen from 10 percent prior to NAFTA to less than two percent. Currently, about 80 percent of U.S. manufactured goods enter Mexico duty free. The NAFTA allows NAFTA governments to agree to reduce or eliminate tariffs on a faster schedule than provided for in the NAFTA. In 2000, the NAFTA parties agreed to accelerate the elimination of tariffs on approximately 100 items, the third time that the parties had concluded such an agreement since NAFTA's entry into force. This round covered approximately $1 billion in annual trade between the three countries and included items such as non-rubber footwear, batteries, heavy machinery, chemicals, and pharmaceuticals.

Pursuant to the requirements of NAFTA Article 303 and the timetable specified in Annex 303.7, the three countries implemented on January 1, 2001 restrictions 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 import of non-NAFTA originating goods that are 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 counterbalance the economic effects of the NAFTA limitations, Mexico has created "Sectoral Promotion Programs" (Prosecs). Prosecs are a reduction of the MFN applied tariffs (often to zero) on items in over 16,000 tariff categories, so long as they are used to produce specified products in any of twenty-two 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, including those foreign owned, and do not condition benefits on an export requirement. The United States continues to monitor Mexico's implementation of Article 303.

Agricultural Products

Mexico is the United States' third most important agricultural export market. U.S. exports of agricultural products to Mexico increased to $6.5 billion in 2000 (up from $6.5 billion in 1999). The trend is expected to continue in the near term. Nevertheless, in 2000 the Government of Mexico continued to implement import polices that delayed and disrupted the movement of agricultural imports.

On November 30, 2000, Mexican Customs ceased granting extensions of import permits for products imported under quota, which largely affects agricultural products. All imports under quota must now be physically imported into Mexico prior to the expiration date of the import permit. (Previously, Mexican Customs allowed up to 20 additional days, if all documents were submitted by the expiration date, physically to enter a shipment into Mexico by rail. Three days were allowed for physical import by truck or ocean vessel.) As a result of the new policy, more than 200 rail cars carrying edible beans or corn were detained at the border for missing the December 31, 2000 expiration date. Most of the shipments eventually entered under waivers, but only after significant delays and increased costs from demurrage charges.

Mexican anti-dumping measures continue to increase the cost of imports and disrupt trade. With respect to agricultural trade, the United States requested consultations on Mexico's antidumping case for live hogs in 2000. Mexico reported at the consultations that it had removed sanitary restrictions on the import of live hogs weighing over 110 kilograms, but still continued to impose countervailing duties on lighter hogs. Given relatively higher slaughter hog prices in the U.S. in 2000, the countervailing duty made imports of the lighter hogs prohibitive. The GOM also reported that it accepted a submission by Mexican grain farmers to conduct an antidumping case against U.S. milled rice. A preliminary determination of injury and antidumping duties is expected in the middle of 2001. Mexican press reports also indicate its corn industry is considering filing a dumping petition. Mexico is a large net importer of both rice and corn. The U.S. government, U.S. producer associations and Mexican importers have all raised concerns about the antidumping investigations and will continue to work with the new government to address these questions.

Administrative Procedures and Customs Practices

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, 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 capricious enforcement of Mexican standards and labeling rules. Harsh penalties have occasionally been imposed for simple mistakes. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, non-transparent and unreliable. The Customs Reform Law, effective April 1996, gave Mexican customs authorities the right to act in cases of suspected violations of intellectual property rights; however, they do not have the authority to seize goods on their own initiative. Several U.S. exporters have voiced concerns about the lack of effective IPR enforcement at the border.

The 1996 Customs Reform Law also transferred some operations to private sector customs brokers, who are subject to sanctions if they violate customs procedures. As a result, some brokers have been very restrictive in their interpretation 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) measures that can unnecessarily impede legitimate imports, including import license requirements, an industry sector registry, and estimated prices.

The Secretariat of Economy, formerly the Secretariat of Commerce and Industrial Development (SECOFI), requires import licenses for a number of commercially sensitive products. In 1998, SECOFI expanded the import licensing system by establishing a "mandatory" import license for certain Asian and European products because of concerns about dumping and under-invoicing. While NAFTA-originating goods are exempt from these requirements, U.S. companies that obtain goods from covered countries may be affected.

To be eligible to import well over 400 different items – including agricultural products, textiles, chemicals, electronics and auto parts – Mexican importers must apply to the Secretariat of Finance and Public Credit and be listed on a special industry sector registry. U.S. exporters complain that the registry requirement sometimes causes costly customs clearance delays when new products are added to the list of subject items with immediate effect, with no grace period for new applicants. They also report that certain importers have been summarily dropped from the registry without prior notice or subsequent explanation, effectively preventing them from shipping goods to Mexico.

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 can no longer 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.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

Mexican sanitary and phytosanitary standards have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, potatoes, apples, stone fruit, meat, poultry, citrus from Florida and table eggs. The

United States remains concerned about the application of some sanitary and phytosanitary import regulations, such as those for citrus, avocados, tree fruit, grains, poultry, potatoes, rendered products and meat. 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 officials and their Mexican counterparts, resulting in unnecessary delays at the border, seaports, and airports. The Secretariat of Agriculture also requires prior import authorization for fresh/chilled and frozen meat. For the import of certain foods, the Secretariat of Health requires either an "advance sanitary import authorization" or "notification of sanitary import." The permits require extensive documentation and certification by the importer.

On June 12, 2000, the Government of Mexico published an amendment to its animal health law, which generally sets sanitary inspection parameters for domestic meat production and meat imports. The new law did not change sanitary requirements, but did change the physical requirements for border inspection points. The new requirements were so strict that when the new law was implemented on August 10, 2000, only 8 of 28 points of inspection were in compliance, resulting in the closure of several border-crossing points to meat imports. Since then, a number of inspection points have reopened under court orders, resulting in 17 currently operating points of inspection. While there have been some delays in border crossings, meat imports continue to flow into Mexico. However, if the Government of Mexico does not adjust its resources to provide more inspectors at the authorized points of inspection, or to open additional points, there could be significant disruption of trade. Mexican importers have proposed changes to the law, but no action has yet been taken.

Standards

With increased transparency as one of its objectives, the Government of Mexico revised the Federal Law on Metrology and Standardization in May 1997. While the changes provided for privatization of the accreditation program and greater transparency, some Mexican ministries continue to consider particular regulations to be exempt from WTO and NAFTA rules concerning notification of proposals and an opportunity for comment.

U.S. exporters of certain vitamins, nutritional supplements, and herbal remedies have reported that the revised regulations under Mexico's health law impede their supply to the Mexican market. There is a lack of clarity of products now classified as medicines or pharmaceuticals, for which Mexico's Ministry of Health requires inspection and approval of the manufacturing facility in order to obtain a sanitary license. Additionally, Mexican government officials have advised U.S. industry and government officials that Mexican law does not allow them to conduct the required inspections and approvals for foreign-based facilities and that they are looking at ways to address these concerns consistent with WTO and NAFTA obligations. However, to date we have seen no progress.

Conformity Assessment Procedures

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 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. The current GOM position to recognize additional certification bodies only on a "needs basis" raises serious concerns and is a strong indication that the existing product certification bodies will continue to monopolize the market.

U.S. exporters have complained that standards are enforced more strictly for imports than for domestically produced products. Imports are inspected at the border by Customs, while domestic products are inspected randomly at the retail level by the Procuraduria Federal del Consumidor (PROFECO, the Mexican federal consumer protection agency). U.S. exporters have also complained of inconsistencies among ports of entry.

Mexico has approximately 700 mandatory standards (NOMs), and the number increases weekly. Only 81 have been issued by the Secretariat of the Economy. The rest are issued by eight other government agencies. Each agency has its own NOM compliance certification procedures. Only Economy and the Secretariat of Agriculture (for a limited subsector of its NOMs) have published their certification procedures. On February 29, 2000, SECOFI published new procedures to certify NOM compliance. They became effective on May 1, 2000. The new procedures apply only to Economy-issued NOMs, and allow foreign manufacturers from countries having trade agreements with Mexico to hold title to NOM certificates. The procedures allow expansion of the ownership of a NOM certificate to more than one importer. Prior practice required each importer to pay for a separate certificate, even if importing a product identical to that imported by another importer (this remains true for NOMs issued by government agencies other than Economy). The new procedures were designed to reduce the cost of exports to Mexico by eliminating redundant testing and certification. However, product certification bodies have increased the cost of certification and are charging for expansion of ownership of a certificate. U.S. companies are thus not benefiting from the new procedures.

GOVERNMENT PROCUREMENT

Mexico has no central government procurement office. Government agencies and public enterprises use their own purchasing offices to buy from qualified domestic or foreign suppliers, subject to two procurement laws that became effective in March 2000. Both laws acknowledge Mexico’s procurement obligations under NAFTA and other international agreements, but also establish price preferences for domestic products that apply when procurements are not subject to the NAFTA and other treaty obligations. Regulations under the two new laws were to have been in place by July 2000 but had not been issued as of January 2001. The Administration will continue to follow the situation closely to ensure that Mexico implements the new laws in a manner that is fully consistent with NAFTA requirements.

NAFTA gradually increases U.S. suppliers' access to the Mexican government procurement market, including procurement 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 NAFTA, Mexico immediately opened 50 percent of PEMEX and CFE bids to competition by suppliers from NAFTA parties. Each year, that percentage will increase until all PEMEX and CFE bids that are above the NAFTA value threshold are open to goods and suppliers from NAFTA Parties. PEMEX and CFE procurement will be fully open by 2004. In addition, specific preferential treatment in public procurement is granted to domestic pharmaceutical suppliers until January 1, 2002, including foreign companies established in Mexico.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Under 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 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. During 2000, the United States and Mexico consulted on intellectual property issues in April, in Dallas, and in October, in Guadalajara. As a result of the progress Mexico has made on intellectual property matters, Mexico was taken off the "Special 301" watch list in 2000. However, the United States is still concerned about and monitors closely the continuing high levels of piracy and counterfeiting in Mexico and the response of the Mexican Government in addressing these problems.

Copyright

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates remaining high. 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 $469 million in 1998; figures for 1999 and 2000 are not yet available. The Business Software Alliance, a trade association representing the packaged software industry, estimates that the Mexican piracy rate in 1999 was 56 percent, which resulted in losses of approximately $134 million. The International Federation of the Phonographic Industry, a music trade association, estimates the piracy rate for music in Mexico to be approximately 40 percent.

Mexican law enforcement agencies have conducted hundreds of raids on pirates. The government showed its commitment to combating piracy on August 25, 2000, when 1,200 police officers raided Tepito, a notorious Mexico City haven for pirates, and arrested over 30 individuals. However, all were released the next day, highlighting the lack of judicial enforcement against intellectual property violations. In June, Mexican Police arrested one of the country's most infamous alleged music pirates and raided his manufacturing facility in Texmelucan. According to the Mexican Federal Prosecutor's Office, as of October 10, 2000, 109 individuals were in custody on IPR charges. The U.S. Government is aware of one piracy conviction in 1998, but none since then.

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. U.S. firms have reported difficulty enforcing their trademark rights when a Mexican entity has registered them, even when registration was under a different category. The Mexican Government has in the past agreed to address this issue, but to date little progress has been made.

U.S. pharmaceutical and agricultural chemical companies are concerned about the lack of coordination between IMPI and 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 very valuable and are the result of substantial investments in research. Governments are obliged to protect this data from unauthorized use by a third party. The Mexican Ministry of Health (SSA) and the Ministry of Agriculture have granted marketing approval for generic products without verifying with IMPI whether a patent exists, and in a manner that appears inconsistent with NAFTA and TRIPS requirements concerning the protection of data against disclosure and unfair commercial use. The Ministry of Agriculture and the Ministry of Health have also 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 NAFTA and TRIPS.

Border Enforcement

NAFTA Article 1718 and Article 51 of the TRIPS Agreement obligate Mexico to allow U.S. intellectual property rights holders to apply to Mexican authorities for suspension of release of goods with counterfeit trademarks or pirated copyright goods. The process that is currently in place is burdensome on U.S. industry. Intellectual property rights owners seeking to use the procedure must obtain, from a competent authority, an order which directs customs officials to detain the merchandise. Few companies have requested this type of action, but those which have report positive outcomes.

SERVICES BARRIERS

Telecommunications

The United States has had substantial concerns with Mexico's compliance with its WTO obligations in its $12 billion telecommunications market. Although the legal monopoly of Telmex (Mexico's major supplier of telecommunications) ended in August 1996 and local, basic telephone service is technically open to competition, practical competition in this area has not developed. USTR is also concerned about the lack of proper regulation of Telmex, which remains the dominant carrier, and the failure of the regulator to ensure cost-oriented interconnection at all technically feasible points on Mexico's network, including cross-border interconnection, and to permit other competitive international traffic arrangements (such as International Simple Resale).

As a result of these concerns, USTR cited Mexico in its March 2000 annual review of telecommunications trade agreements under section 1377 of the 1988 Trade Act for failure to meet its WTO commitments. In addition, the United States requested WTO consultations with Mexico on August 17, 2000 regarding the WTO-consistency of specific measures affecting telecommunications services. This request covered a broad range of issues, including Mexico's failure to: (1) prevent Telmex from engaging in anti-competitive practices; (2) ensure that Telmex offers its competitors cost-oriented interconnection rates; (3) require Telmex to interconnect with competitors at the local level; and (4) permit competitive international traffic arrangements at cost-oriented rates. These consultations, held on October 10, 2000, did not resolve the matter, and the United States proceeded to the next phase to WTO dispute settlement by filing on November 10, 2000 a request to establish a WTO dispute settlement panel. The United States also filed an additional request for WTO consultations on Mexican measures adopted subsequent to the initial U.S. consultation request (including Mexico's dominant carrier regulations and the interconnection rates for 2001). These consultations took place on January 16, 2001.

To date, Mexico has taken steps to address certain issues. The Mexican government has: (1) issued dominant carrier rules to regulate Telmex; (2) encouraged carriers to agree to interconnection rate cuts for 2001; and (3) ensured that competitors obtain local interconnection from Telmex. However, Mexico has not yet addressed the key issue of above-cost rates for the termination of international traffic, and Mexico has not yet enforced its dominant carrier rules against Telmex.

Film Law

In December 1992, Mexico promulgated film industry legislation that contained a troublesome limitation on film dubbing. Under the provision, only foreign language children's films and documentaries may be dubbed; all other foreign language films must use sub-titles. Because many viewers prefer dubbed films, this provision acts as a significant barrier to U.S. (English-language) films. In January 1999, Mexico substantially revised the film law, but retained the dubbing restriction. On March 6, 2000, the Mexican Supreme Court ruled the dubbing restriction unconstitutional in a private case requesting injunctive relief, but the government has not yet indicated how it plans to respond to the court's decision. The law also prohibits distributors from conditioning or restricting the supply of films to exhibitors without justification. This requirement, which should be clarified by pending regulations, may violate the right of the copyright holder to control the public performance and distribution of its work.

Direct-to-Home Satellite Broadcasting

Barriers to competition also appear to exist in Mexico's broadcasting market. In Mexico, the largest television broadcasting network is also the largest producer of television programming, owns a controlling interest in the largest cable television system, and is part of a consortium that controls 60 percent of the direct-to-home satellite television market. As part of its programming, the producer broadcasts popular drama, sports, and news programming. However, this broadcaster is alleged to deny access to its signal to certain competitors. As a result, such operators potentially face a significant competitive disadvantage.

INVESTMENT BARRIERS

Ownership Reservations

A national foreign investment commission decides questions of foreign investment in Mexico. The country's Constitution and Foreign Investment Law of 1992 reserve certain sectors to the state, such as oil and gas extraction and electric power transmission, and other activities to Mexican nationals, such as forestry exploitation, and domestic air and maritime transportation. Only Mexican nationals may own gasoline stations. These gasoline stations sell only PEMEX lubricants, although other lubricants are manufactured and sold in Mexico. Gasoline is supplied by PEMEX, the state-owned petroleum monopoly. 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.

Despite the restrictions mentioned above, the Foreign Investment Law of 1992 eliminated the requirement of government approval of much foreign investment. Mexico allows private ownership and operation of electric power generating plants. The government is encouraging private sector participation in the transportation, distribution, and storage of natural gas. Foreign investors are limited to 49 percent ownership of existing secondary petrochemical facilities but may hold all of the equity of newly-built plants. Foreigners may invest in railroads and telecommunications, including satellite transmission.

NAFTA also opened Mexico to greater U.S. and Canadian investment by assuring U.S. and Canadian companies national treatment, the right to international arbitration, and the right to repatriate funds without restrictions. NAFTA eliminated barriers to investment in Mexico, such as trade balancing and domestic content requirements. Such barriers are being phased out in key sectors such as automobile manufacturing.

Investment restrictions still 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. Foreigners and Mexican nationals encounter problems at times with the lack of enforcement of property rights.

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 NAFTA. The United States is working with other WTO Members to conduct a case-by-case review of all TRIMS extension requests, in an effort to ensure that the individual needs of those countries that have made requests can be addressed. While the United States does not oppose the four-year extension requested by Mexico under Article 5.3 of the TRIMS Agreement, a final decision by WTO members has not been made. Providing Mexico with additional time to come into compliance with TRIMS disciplines is acceptable to the U.S. because such an extension will serve to align Mexico's NAFTA and WTO commitments.