MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $66.3 billion in 2010, up $18.6 billion from 2009. U.S. goods exports in 2010 were $163.3 billion, up 26.7 percent from the previous year. Corresponding U.S. imports from Mexico were $229.7 billion, up 30.0 percent. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e*., excluding military and government) to Mexico were $21.8 billion in 2009 (latest data available), and U.S. imports were $13.5 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $32.1 billion in 2008 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $3.1 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $97.9 billion in 2009 (latest data available), up from $89.6 billion in 2008. U.S. FDI in Mexico is primarily concentrated in the nonbank holding companies, manufacturing, and finance/insurance 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. Under this free trade agreement, NAFTA countries progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the United States, Canada, and Mexico concluded supplemental agreements on labor and environment. Under these agreements, the parties are, among other things, obligated to effectively enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated remaining tariffs and tariff-rate quotas on all U.S. agricultural exports. *(See the section on agriculture below for additional details on specific farm products.)*

On March 18, 2009, in response to the U.S. cancellation of the United States-Mexico Cross Border Trucking Demonstration Project, Mexico imposed retaliatory tariffs on 89 types of U.S. goods totaling about $2.4 billion in exports from 40 U.S. states. On August 19, 2010, Mexico added some new products and removed others. The revised list now includes 99 types of products. Approximately 1.5 percent of U.S. exports to Mexico are affected by these tariffs. Among the goods affected, 45 are finished products, including shampoo, books, and jewelry, and 54 are agricultural goods, including hams, apples, grapes, and cheese. Retaliatory tariffs range from five percent on a few goods, including hams and toilet paper, to 25 percent on some cheeses. On March 3, 2010, President Obama and Mexican President Calderón announced that Mexico and the United States had found a clear path to resolving the cross-border long-haul trucking dispute. This path will allow for the establishment of a reciprocal, phased-in program built on the highest safety standards that will authorize both Mexican and United States long-haul carriers to engage in cross-border operations. Once a final agreement is reached, Mexico will suspend its retaliatory tariffs in stages beginning with reducing tariffs by 50 percent at the signing of an agreement and will suspend the remaining 50 percent when the first Mexican carrier is granted operating authority under the program. Mexico will terminate all current tariffs once the program is normalized.

Mexico imposes a value added tax (VAT) on sales of goods and services. Certain food products are exempt from the VAT. U.S. producers have complained that, while Mexico imposes the VAT on imports of U.S. nutritional supplements, it does not collect the VAT on sales of similar domestic products.

Agricultural Products

The United States exported $14.6 billion in agricultural products to Mexico in 2010, compared to $12.9 billion in 2009. Mexico is the United States' third largest agricultural export market.

Antidumping duties have hampered U.S. meat exports, with Mexican policies in this area having reduced the number of U.S. suppliers and altered product trading patterns. Industry representatives assert that significant revenue was lost each year due to antidumping duties in the beef sector. On April 24, 2006, Mexico's Secretariat of Economy (SECON) announced that it would continue to apply the antidumping duties imposed on imports of U.S. beef and beef by-products from certain U.S. exporters and producers for another five years following an expiry review investigation. Following several requests for review of the measure by a major U.S. producer, on April 21, 2009, SECON initiated a changed-circumstance review with respect to that producer. On August 11, 2010, Mexico announced the elimination of antidumping duties.

Mexico is the largest export market for U.S. apples, and U.S. apple exporters had expressed concerns regarding the complex process by which Mexico applied antidumping duties on imports of Red and Golden Delicious apples from the United States. Since the launch of the original investigation in 1997, a series of court challenges and redeterminations by SECON ultimately excluded from the antidumping measure all but certain members of Northwest Fruit Exporters. On October 15, 2009, a binational NAFTA panel, convened at the request of U.S. apple exporters, ordered SECON to revise its final determination to account for significant deficiencies in SECON's methodology. On April 26, 2010, SECON published a Final Action Notice in the *Diario Oficial* announcing its compliance with the binational NAFTA panel order of October 15, 2009, case number MEX-USA-2006-1904-02. SECON's Final Action Notice eliminated antidumping duties imposed on U.S. Red and Golden Delicious apple imports as of March 2, 2010. The United States will continue to monitor this issue.

Administrative Procedures and Customs Practices

U.S. exporters continue to express concerns about Mexican customs' administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; alleged under-invoicing of agricultural products; and uneven enforcement of Mexican standards and labeling rules. There have been relatively few specific complaints, however, and Mexican customs has been putting procedures in place to address issues of non-uniform application of requirements at border ports of entry. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, nontransparent, and unreliable. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level from $1 to $50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite delays stemming from the lack of preclearance procedures, which the Mexican government claims are not permitted under current law.

In May 2008, without prior notification of procedural changes, the Mexican government implemented a new requirement to test all chemical samples and shipments being sent to Mexico in gas, liquid, or powder form. While such samples previously could be sent by express delivery service companies, this is prohibited under the 2008 procedures, necessitating the additional cost of using a customs broker. Some chemical exporters report customs broker fees of $500. This barrier is having a detrimental effect on the competitiveness of U.S. exports of these products. The United States is working with Mexico and the Chemical Industry Association of Mexico to offer alternatives to this burdensome and expensive process. In 2009, to reduce delays and lower export costs, Mexico deployed devices at all 49 ports of entry along the United States-Mexico border in order to test chemical samples. Mexican customs is also considering the use of an importer registry for samples difficult to identify.

GOVERNMENT PROCUREMENT

Mexico's efforts to make its government procurement regime more transparent through policy reform and the application of technology have resulted in increased competition as well as savings for the government. The Mexican government has established several "electronic government" Internet sites to increase the transparency of government processes and to provide guidelines for the conduct of government officials. "Compranet" provides an online interface for conducting government procurement and contracting. Despite these reforms, there is still a need for further regulatory and technological improvements throughout the Mexican government.

The NAFTA limits the total value of contracts that Mexico's parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission (CFE), respectively, may exclude from coverage under the NAFTA. Mexico provides to the United States and Canada an annual notice of the calculation of the procurement that it sets aside for domestic suppliers, along with the methodology used in the calculation.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Mexico was listed on the Watch List in the 2010 Special 301 report. The report noted Mexico's improved enforcement efforts, demonstrated by an increase in the number of raids, arrests, and indictments in 2009, and the imposition of the longest prison sentence on record in Mexico for an IPR violation (six and-a-half years). In addition, bilateral cooperation among agencies charged with intellectual property protection and enforcement was noted as encouraging, especially among those participating in a series of training and exchange programs over the past year. In the Special 301 report, the United States urged Mexico to increase resources devoted to protecting intellectual property and improving coordination among enforcement officials at the federal, state, and municipal levels. Concerns also remained over enforcement procedures and the inconsistent issuance of deterrent penalties. The United States welcomed Mexico's passage of legislation that would provide the Mexican Attorney General's office and certain Mexican enforcement officials with *ex officio* authority to prosecute IPR infringement. Legislation is still needed to provide *ex officio* authority to customs officers. The United States was also encouraged to learn about the steps that Mexico is taking to establish a voluntary recordation system at the border, coupled with new procedures with respect to detention of seized goods at the border. The United States welcomed signs that Mexico may be prepared to move forward with additional legislation to strengthen its IPR regime, including an anti-camcording law and the implementation of the WIPO Internet Treaties. The United States encouraged Mexico to provide effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States also welcomed recent efforts by Mexican authorities to improve Mexico's system to address patent issues in connection with applications to market pharmaceutical products, as the existing system has generated considerable litigation and uncertainty. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

Mexico was also an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010.

SERVICES BARRIERS

Telecommunications

The OECD's Communications Outlook 2009 identified Mexico as one of the OECD countries with the highest telecommunications charges. Previous OECD surveys of Mexico have recommended improving mandatory access to the local loop, regulating fixed-to-mobile termination charges, and introducing mandatory roaming to enable smaller mobile companies to use Telcel's (Mexico's largest mobile phone company) network at a regulated price. The OECD and Mexican telecommunications analysts suggest that industry regulator Cofetel (the Federal Telecommunications Commission) needs greater independence both from leading companies in the sector and its parent ministry, the Secretariat of Communications and Transportation (SCT).

The Calderón Administration and the PRI, Mexico's opposition party, agree that increasing competition in Mexico's telecommunications sector is a priority, but implementing policies to this end continues to be a challenge. The Mexican company Telmex and its wireless affiliate Telcel dominate the Mexican telecommunications market and are perceived as exercising disproportionate influence over the legislative process, the courts, and government regulators.

High interconnection rates in both fixed and mobile service remain a problem. While Cofetel has made numerous recent attempts to set lower long distance and mobile termination rates, the companies involved have filed injunctions that delay implementation of Cofetel's actions. Often frustrated in court in its regulatory efforts, the regulators sometimes resort to other means to achieve their goals. For example, SCT, Cofetel, and President Calderón appear determined to withhold modifications to Telmex's concession that would allow the company to provide television services (where Telmex sees its future in voice/video/data convergence) until Telmex makes concessions to further competition in telecommunications.

A Mexican company with U.S. shareholders has also complained that as a result of an interconnection dispute with Telmex (which is currently being resolved in the Mexican courts), Telmex has unilaterally inserted a message into calls to the company's customers indicating that the company has not been paying Telmex's interconnection rate and in the future the calls may not be completed. Telmex has admitted to doing this, claiming that it is necessary in order to protect consumers buying the company's telecommunications services. They also claim that Telmex has intentionally degraded the quality of the circuits it interconnects with Telmex in some areas, and has completely refused to interconnect in other areas. According to the Mexican company with U.S. shareholders, telecommunications regulator Cofetel is aware of these actions, and has asked SCT to impose sanctions on Telmex. However, SCT has not yet taken specific steps to stop Telmex from engaging in these practices.

In 2010, the Federal Competition Commission (Cofeco) concluded a formal investigation into Telmex and Telcel market dominance, finding that these companies indeed have market dominance. Consequently, Cofetel now has a mandate to issue asymmetrical regulations, which impose more stringent requirements on companies that have market dominance. Cofetel had previously proposed such asymmetrical regulations, but Telmex and Telcel challenged them in court, necessitating the investigation by Cofeco.

Although there have been several recent legislative attempts to open the Mexican fixed line telecommunications sector to increased foreign investment, which could increase opportunities for competitive providers, Telmex has opposed such efforts. Currently, the Foreign Investment Law limits foreign ownership in the wireline segment to 49 percent. The restriction helps shield Telmex in the area of local telephony where the firm already controls nearly 90 percent of the market.

Under Mexican law, foreign companies must form joint ventures with Mexican partners to obtain authorizations (called "concessions" under Mexican law) to provide satellite-based services in Mexico. Mexico requires mobile satellite service operators to construct gateway earth stations in Mexico, ostensibly to satisfy security policies. This requirement serves as a barrier to market entry for new competitors, since such a requirement may make many services economically infeasible.

INVESTMENT BARRIERS

Mexico's oil and gas sector remains closed to private investment, with the exception of the liquefied natural gas sector and the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons and provides that no concessions or other types of production sharing agreements or risk contracts shall be granted in regard to hydrocarbon exploitation. With declining production, the Mexican Congress has approved reform of the hydrocarbons sector to increase the independence and performance of Pemex, the national oil company, including through the use of incentive-based service contracts.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). A National Foreign Investment Commission reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and which have a value greater than $165 million (adjusted annually based on Mexico's nominal Gross Domestic Product).

ANTICOMPETITIVE PRACTICES

Mexico revised its competition law in June 2006 to give Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers but no criminal enforcement powers. The head of Cofeco and key members of the Calderón administration have called for the opening up of sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has been made *(see previous section on services barriers)*. It remains to be seen whether the law and the administration will be able to make these sectors truly competitive. A new competition law that would enhance Cofeco's enforcement authority and increase sanctions for anticompetitive behavior and reincidence is under consideration by the Mexican Congress.