MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $61.3 billion in 2012, down $3.2 billion from 2011. U.S. goods exports in 2012 were $216.3 billion, up 9.1 percent from the previous year. Corresponding U.S. imports from Mexico were $277.7 billion, up 5.6 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 $25.2 billion in 2011 (latest data available), and U.S. imports were $13.7 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $34.4 billion in 2010 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $4.8 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $91.4 billion in 2011 (latest data available), up from $84.3 billion in 2010. U.S. FDI in Mexico is primarily concentrated in the manufacturing, nonbank holding companies, and finance/insurance sectors.

Trade Agreements

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico ("the Parties"), entered into force on January 1, 1994. Under the NAFTA, the Parties 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 Parties concluded supplemental agreements on labor and the environment, under which the Parties are obligated to effectively enforce their environmental and labor laws, among other things. The agreements also provide frameworks for cooperation among the Parties on a wide variety of labor and environmental issues.

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 10 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial products and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated its 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.)*

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 at the time of entry, it does not collect the VAT on sales of similar domestic products at the point of sale.

Agricultural Products

The United States exported $20.1 billion in agricultural products to Mexico in 2012, compared to $19.5 billion in 2011. Mexico is the United States' third largest agricultural export market.

On February 8, 2011, the Secretariat of Economy (SECON) announced an antidumping investigation on U.S. fresh, chilled, or frozen chicken leg quarters (CLQ). SECON issued the final determination in the investigation on July 31, 2012. Final antidumping duties ranging from 25 percent to 129 percent were identified but not imposed. Rather, the Mexican Foreign Trade Commission (COCEX) determined that additional duties might increase prices at a time when Mexico's chicken industry was suffering an outbreak of highly pathogenic avian influenza. On September 3, 2012, interested U.S. parties filed an appeal of the final antidumping determination with the NAFTA Secretariat. Subsequently, on October 9, 2012, members of the Mexican poultry industry filed a notification with SECON asking it to rescind its decision not to apply antidumping duties and to deem illegal its decision to use lower duties in its final determination (from its preliminary determination). The U.S. Government continues to monitor the situation.

Administrative Procedures and Customs Practices

Despite improvement in some areas, 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. Numerous U.S. companies reported in 2012 that the *Servicio de Administración Tributaria* (SAT), Mexico's tax authority, is verifying NAFTA origin for the entry of products dating back to 2007. While verifications are permitted under NAFTA, the breadth of these audits and the extent of the information being requested are reportedly overly burdensome and require the submission of confidential business information with no assurance that it will be protected from disclosure. In some cases, SAT reportedly has denied an exporter's claim for NAFTA preference, even after the submission of documentation demonstrating that the products meet NAFTA's rules of origin. The fines and penalties in such cases can be very high (in excess of $10 million), and there are substantial costs associated with complying with the audit and even greater legal costs for appealing the rulings. Following discussions with various stakeholders, SAT committed to adopt new procedures to address industry complaints, but as yet has not announced a target implementation date. The U.S. Government will continue to monitor the situation and urge the SAT at the highest levels to implement the revised procedures as soon as possible.

Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level (below which shipments are exempt from customs duties) 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 pre-clearance procedures, which the Mexican government claims are not permitted under current law.

GOVERNMENT PROCUREMENT

The Mexican government uses several "electronic government" Internet sites to increase the transparency of government procurement processes and to provide guidelines for the conduct of government officials. One such site, Compranet, provides an online interface for conducting government procurement at the federal level. Procurement transparency standards still need to be harmonized at the Mexican state level, however, to avoid corruption and to foster competition. There is a need for further regulatory and technological improvements throughout the Mexican government, as well as a need to provide authorities with more power to respond effectively to corruption and collusion.

In 2012, the Mexican Congress approved the Federal Anti-Corruption in Government Contracting initiative, which imposes penalties against national or foreign individuals and legal entities for irregular conduct (including bribes) during their direct or indirect participation in federal government procurement. For individuals, fines range from 62,000 Mexican pesos (approximately $4,900) to 3 million Mexican pesos (approximately $237,000) and a 3-month to 8-year ban from participation in federal contracting. For corporations, the potential fines may be from 623,000 Mexican pesos to 124 million Mexican pesos and a 3-month to 10-year ban from competing for federal contracts.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2012 Special 301 report. The report noted that pirated and counterfeit goods remain widely available. Criminal enforcement of intellectual property rights (IPR) suffers from weak coordination among federal, state, and municipal officials, limited resources for prosecutions, and the need for deterrent level penalties. The United States continued to encourage Mexico to provide its customs officials with *ex-officio* authority and to enact legislation to strengthen its copyright regime, including by implementing Internet Treaties under the World Intellectual Property Organization (WIPO) and by providing stronger protection against the unauthorized camcording of motion pictures in theaters. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

There were some positive developments in 2012. In June 2012, Mexico issued a regulation to provide protection against the unauthorized disclosure of test or other data submitted during the marketing approval process for pharmaceuticals. Mexico also improved certain administrative tools used to ensure that companies that submit pharmaceuticals for marketing approval are the appropriate owner or licensee of the patent for the product. Mexico also joined the Madrid Protocol, which provides a simple streamlined process for rights holders to apply for trademark protection in Mexico and other member countries.

Mexico was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010. Mexico signed the ACTA in July 2012, but has not yet submitted the agreement to the Mexican Senate for ratification.

SERVICES BARRIERS

Telecommunications

OECD surveys of Mexico have recommended improving mandatory access to the local loop, formally regulating fixed-to-mobile termination charges, which have been significantly reduced with the threat of regulation, and introducing mandatory roaming to enable smaller mobile companies to use the network of Telcel, (Mexico's largest mobile phone company) network at a regulated price. The OECD also suggests that the industry regulator Cofetel (the Federal Telecommunications Commission) needs greater independence both from leading companies in the sector and from its parent ministry, the Secretariat of Communications and Transportation (SCT).

Enhancing competition in Mexico's telecommunications sector continues to be a challenge. The Mexican company America Movil, the parent company of wireless carrier Telcel and wireline carrier Telmex, dominates both the fixed and mobile segments of the Mexican telecommunications market. A combination of weak regulatory oversight and an inefficient court process has meant that disputes involving this carrier with respect to the terms of competition in the market have lingered for years. A decision by Mexico's Supreme Court making it more difficult to stay regulatory decisions on interconnection was a major step forward, however, and should result in smoother implementation of such orders in the future.

Although Cofetel has attempted on numerous occasions to set lower long distance and mobile termination rates, existing suppliers have used judicial proceedings to frustrate these efforts. SCT and Cofetel have attempted to overcome these tactics by withholding approval for new services that Telmex seeks to supply until Telmex consents to enhanced competition for existing services. In October 2012, Mexico's Supreme Court ruled that Cofetel has the power to impose interconnection rates in disputes between operators. The case arose from Cofetel's intervention in a dispute between Axtel and Telcel over interconnection rates.

Cofeco (the Federal Competition Commission) has also sought to introduce greater competition in the telecommunications market. It concluded a formal investigation into Telmex and Telcel market dominance in 2010 by finding that these companies indeed have market dominance. This finding gives Cofeco authority to impose more stringent requirements on the companies. As of 2012, Telcel had approximately 70 percent of Mexico's mobile subscribers, while Telmex accounted for approximately 80 percent of Mexico's fixed line users. Telcel's closest competitor is Movistar, which claims 20 percent of mobile subscribers, while Axtel trails Telmex with only 6 percent of fixed line users. In May 2012, Cofeco reached a settlement with Telcel, whereby Telcel made commitments intended to ensure that it does not hinder future wireless competition. As part of that settlement, Telcel agreed to drop any outstanding lawsuits against interconnection rulings, work with regulators to further reduce interconnection rates after 2014, and stop giving its customers discounted rates on calls only to other Telcel users, thereby disadvantaging other wireless providers.

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 the emergence of additional competitive providers, prospects for legislation are unclear. Currently, the Foreign Investment Law limits foreign ownership in the wireline segment to 49 percent. The restriction deprives new entrants of capital that a foreign entity could provide and hinders the development of the Mexican telecommunications network.

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. Such local siting requirements serve as a localization barrier to market entry for new competitors, since such requirements may make many services economically infeasible.

In his inaugural address, Mexican President Enrique Peña Nieto specifically highlighted the need for enhanced competition in the telecommunications sector and universal access to broadband Internet. On December 2, 2012, the new Mexican administration reached agreement on a "Pact for Mexico" ("the Pact") with representatives of two other political parties. This document calls for greater competition in all sectors of the economy, but with particular emphasis on telecommunications, transportation, financial services, and energy. Specifically, the Pact seeks greater competition in telephony and data services, the adoption of new laws to promote competition in telecommunications, the strengthening of Cofetel's autonomy, the strengthening of Cofeco's power to break up monopolies, and the creation of a specialized court for telecommunication issues. The Pact also reiterated the right to universal broadband access and the need for a national digital agenda (*see section on Anticompetitive Practices*).

Broadcasting

In Mexico, pay television, which is the primary outlet for foreign programmers, is subject to significantly more stringent advertising restrictions than free-to-air broadcast television, which is supplied by domestic operators. The two national broadcasters, Televisa and TV Azteca, control about 90 percent of the national broadcast television market. In June 2012, after a decade in which pay TV programmers were allocated up to 12 minutes per hour for advertising (without exceeding 144 minutes per day), and with no official change in law or regulation, the Dirección General de Radio, Televisión y Cinematografía (RTC) notified certain cable channels that the programmers were now limited to six minutes per hour of advertising. On the other hand, free-to-air broadcasters may allot their permitted 259 minutes per day of advertising with no hourly limits. Mexican authorities have indicated that they are working on new regulations "to establish a clear legal framework" for pay TV advertising.

INVESTMENT BARRIERS

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

The Mexican constitution mandates state ownership of hydrocarbons. Mexico's 2008 energy reform law gave Pemex more independence and allowed the company to tender incentive-based contracts for hydrocarbon exploration and production of mature fields. Pemex awarded three such contracts in 2011, one contract in 2012, and has announced its intention to conduct further public tenders in 2013, such as in Chicontepec, where six blocks will be up for bidding. Production-sharing or profit-sharing concessions are still prohibited. Mexico's new administration is considering reforms in the oil and gas sector (including refining).

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). An interagency 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. In April 2011, the Mexican Congress passed a law that grants Cofeco more authority to promote competition through stronger sanctions, surprise inspection visits, and temporary injunctions. The 2011 amendments also provide for criminal sanctions enforceable by the public prosecutor.

The Pact for Mexico (*see section on Telecommunications*) calls for the strengthening of Cofeco. Specifically, it calls for reforms to grant Cofeco more legal tools with which it can identify and punish dominant market positions and empower it to break up monopolies. The reform will also create a specialized court for antitrust issues. These measures will be submitted to the Mexican Congress in the first half of 2013, with implementation planned for the second half of 2013 and 2014.