MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $47.5 billion in 2009, down $17.2 billion from 2008. U.S. goods exports in 2009 were $129.0 billion, down 14.7 percent from the previous year. Corresponding U.S. imports from Mexico were $176.5 billion, down 18.2 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 $24 billion in 2008 (latest data available), and U.S. imports were $15.8 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $34.7 billion in 2007 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $2.6 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $95.6 billion in 2008 (latest data available), up from $91.3 billion in 2007. U.S. FDI in Mexico is concentrated largely in the manufacturing, nonbank holding companies, 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 between 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, Mexico imposed retaliatory tariffs on 89 U.S. goods totaling about $2.4 billion in exports from 40 states in response to the cancellation of the United States-Mexico Cross Border Trucking Demonstration Project. Only about 1.5 percent of U.S. exports to Mexico are affected by these new tariffs. Among the goods affected, 53 are finished products, including shampoo, books, and jewelry, and 36 are agricultural goods. Retaliatory tariffs range from 10 percent on many goods, including onions, pet food, and toilet paper, to 45 percent on table grapes.

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 $12.9 billion in agricultural products to Mexico in 2009, compared to $16.6 billion in 2008. Since 2004, Mexico has been the United States' second largest agricultural export market. On January 1, 2008, Mexico lifted the final tariffs and tariff-rate quotas on corn, dry beans, nonfat dry milk, orange juice, and sweeteners. In addition, the terms of a separate safeguard agreement on chicken leg quarters were eliminated.

Antidumping duties continue to hamper 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 is 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. As of February 2010, SECON had not yet issued a determination in the review.

Mexico is the largest export market for U.S. apples, and U.S. apple exporters have 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 original investigation was launched in 1997, a series of court challenges and redeterminations by SECON ultimately excluded all but certain Northwest Fruit Exporters members from the antidumping measure. On October 15, 2009, a 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. SECON was given until December 15, 2009, to comply with the NAFTA panel's decision. SECON unilaterally announced it would issue its remand determination by March 2010. On March 2, 2010, SECON published a notice in the Mexican *Diario Oficial* that it would lift that the compensatory duties imposed on U.S. Red and Golden Delicious apples effective the following day. The United States will continue to monitor the implementation of the decision.

Administrative Procedures and Customs Practices

U.S. exporters continue to be concerned 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 the delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

To be eligible to import well over 400 different items, including agricultural products, textiles, chemicals, electronics, and automotive parts, Mexican importers must apply to the Secretariat of Finance and Public

Credit and be listed on a special Importers Sectorial Register. U.S. exporters complain that registering is bureaucratically difficult, and this requirement sometimes causes costly customs clearance delays when new products are added to the list of subject items with immediate effect, thereby denying importers sufficient notice to apply. They also report that certain importers have been summarily dropped from the registry without prior notice or subsequent explanation, effectively preventing some U.S. exporters from shipping goods to Mexico. On March 31, 2008, the Mexican government issued a decree simplifying or eliminating several burdensome customs regulations. Beginning April 14, 2008, the decree exempts importers from registry in the Importers Sectorial Register, except when the merchandise poses a national security risk or a public health risk. Such goods include firearms, ammunition, knives and other weapons, explosives, chemicals and chemical compounds, and radioactive and nuclear products.

Beginning in October 2000, the Mexican government imposed a burdensome guarantee system for goods subject to estimated prices. Importers could not post bonds to guarantee the difference in duties and taxes if the declared value of an entering good was less than the official estimated price. Instead they were required to 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 March 31, 2008 decree noted above also eliminated the system of reference pricing for all products, with the exception of used cars. As of April 14, 2008, no guarantee, bond, or any other form of payment has been required of importers. However, the U.S. footwear industry has reported that many of its footwear imports from China remain subject to a reference pricing scheme, which severely impacts the sale of U.S. brand products in Mexico. The United States will continue to monitor the implementation of the decree.

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. Some chemical exporters are reporting fees of $500 charged by the customs broker. Previously, samples could be sent by express delivery service companies. Now, however, this is prohibited, necessitating the additional incurred cost of using a broker. In addition, there is only one laboratory in Mexico certified to test these products, thus causing a lengthy delay in customs clearance. This new 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 U.S.-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 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 an annual notice of the calculation of the procurement that it sets aside for domestic suppliers, along with the methodology used in the calculation, to the United States and Canada. The 2008 value of the set-aside for PEMEX and CFE was $2 billion.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Mexico was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included a need to improve enforcement efforts against persistently high levels of piracy and counterfeiting, including by enhancing coordination among enforcement agencies at the federal and sub-federal levels. The report also noted the importance of strengthening Mexico's IPR regime through the enactment of legislation that would provide *ex officio* authority to law enforcement and customs authorities, criminalize camcording in theaters, and fully implement the WIPO Internet Treaties.

Mexico's lower house of Congress passed legislation in April 2008 that would provide the Office of the Attorney General (PGR) with *ex officio* authority to prosecute intellectual property crimes and an amended version of the legislation passed the Senate in May 2009. That version awaits review and approval by the lower house.

The United States has urged Mexico to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products.

SERVICES BARRIERS

Telecommunications

The OECD's Communications Outlook 2009 reports that Mexico remains 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 commentators also suggest that industry regulator Cofetel (Federal Telecommunications Commission) needs greater independence from both leading companies in the sector and its parent ministry, the Secretariat of Communications and Transportation (SCT).

The Calderón Administration and the PRI, Mexico's ascendant 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 on 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.

The Federal Competition Commission (Cofeco) has nearly finalized the findings of a formal investigation into Telmex and Telcel market dominance. Once finalized, and if the investigation concludes that these companies have market dominance, Cofetel will have a mandate to issue asymmetrical regulations, which are regulations that 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 before 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 also opposed such efforts. Currently the Foreign Investment Law limits foreign ownership in the wireline segment to 49 percent. The restriction helps shield Telmex in an area (local telephony) where the firm already controls 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 also requires mobile satellite service operators to deploy gateway earth stations, ostensibly to satisfy security policies. This requirement serves as a barrier to market entry, since such a requirement may make many services economically infeasible.

Television and Radio

As in telecommunications, there are concerns that Televisa and TV Azteca, which share a duopoly in the television market, continue to exercise influence over Mexican legislative, policy, and regulatory bodies in order to prevent competition. The Radio and Television Law passed in April 2006 has been criticized by some industry representatives as catering to the interests of the dominant companies by imposing permanent disadvantages on new entrants (*e.g.*, with respect to access to spectrum).

INVESTMENT BARRIERS

Mexico's oil and gas sector remains closed to private investment, with the exception of the liquefied natural gas sector and in 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 government of Mexico has recently sought to promote reform of the hydrocarbons sector through legislation to increase the independence and performance of Pemex, the national oil company.

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 (though 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 that exceed 49 percent equity in an investment and have a value greater than $165 million (adjusted annually based on Mexico's nominal GDP).

ANTICOMPETITIVE BARRIERS

Mexico passed a competition law in June 2006 that gave 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 opening up sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has occurred (see section on services barriers). It remains to be seen whether the law and the administration will be able to make these sectors truly competitive.