# MEXICO

## TRADE SUMMARY

In 1999, two-way merchandise trade with Mexico reached a record $196.8 billion, an increase of $23.3 billion (13.5 percent) over 1998. Mexico has surpassed Japan to become the United States' second largest single country trading partner and has been the fastest growing major U.S. export market over the last six years. U.S. merchandise exports to Mexico were $87 billion in 1999, a 10.25 percent increase over the previous year. Imports from Mexico were $110 billion, an increase of 15.8 percent over 1998. The U.S. trade deficit with Mexico for 1999 was $22.7 billion, an increase of $7 billion (44.4 percent) from the deficit of $15.7 billion in 1998.

The stock of U.S. foreign direct investment in Mexico was $25.9 billion in 1998, a seven percent increase from 1997. U.S. FDI is concentrated largely in manufacturing (mostly maquiladoras) and financial services 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. 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 on enhancing and enforcing labor standards and for encouraging environmentally-friendly practices and bolstering 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 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.

The NAFTA Parties implemented the seventh annual regular tariff reductions on January 1, 2000. This reduced Mexico's average duty on U.S. goods from 10 percent prior to the NAFTA to below two percent. Currently, about 80 percent of U.S. manufactured goods enter Mexico duty free. In 1996, the NAFTA countries completed a trilateral agreement to accelerate tariff reduction on certain goods. In 1998, the United States, Canada and Mexico implemented a second round of accelerated tariff reductions. The NAFTA Parties are currently considering additional acceleration requests.

On January 1, 1999, Mexico increased most of its MFN import tariffs by three percentage points for capital and intermediate goods and by 10 percentage points for consumer goods. However, these increased rates do not apply to goods originating in the United States or other countries that have free trade agreements with Mexico. The tariffs were increased to generate additional revenue for the government. These surcharges were retained for 2000.

In November 1998, Mexico published new regulations for the maquiladora sector. Under NAFTA, beginning in 2001, Mexico can no longer waive import duties for non-NAFTA products that are processed in Mexico and exported to a NAFTA partner. The new regulations stipulate that in 2001 a maquiladora company that exports its final product to the United States or Canada will have to pay the Mexican government, within 60 days of export, import duties for the product's non-NAFTA inputs. Furthermore, starting in 2001, the maquiladora industry will have to pay duties on all imported capital goods. In a related measure, Mexico published regulations for Sectoral Promotion Programs, which will take effect in November 2000. Under the Sectoral Promotion Programs, manufacturers of certain electronic and electric products will be able to import specified inputs at reduced MFN rates. Programs for other sectors are under review by Mexico. The reduced import duties will be available to all manufacturers but will not be available to other importers, such as retailers.

**Agricultural Barriers**

The United States is concerned by Mexico's administration of its tariff-rate quota obligations for certain U.S. agricultural products. In particular, in 1999, Mexico delayed its auction of tariff-rate quota (TRQ) import permits for U.S. edible dry beans until so late in the year that the TRQ was not filled, despite substantial demand for U.S. dry beans. Mexican Customs also seized 25 rail cars of dry beans for alleged falsification of invoices. These beans were then donated to Mexican government food agencies. The United States is monitoring TRQ administration in 2000. An auction for one-third of the TRQ was successfully held on February 14, with the remaining allocations scheduled for mid-May and mid-August. While Mexico has met or greatly exceeded its commitments to allow imports of U.S. corn each year, U.S. firms have also complained about administration of the corn TRQ in 1999.

Mexico is a major user of anti-dumping measures, notably against agricultural products. The United States has raised its concerns regarding the manner in which Mexico has applied antidumping measures on a number of U.S. exports. On January 28, 2000, a WTO dispute settlement panel established at the request of the United States regarding High Fructose Corn Syrup (HFCS) found that Mexico's threat of injury determination violated the Antidumping Agreement in several respects. The panel also found that Mexico improperly imposed final antidumping duties for the period during which its provisional measure was in place, and that it also applied the provisional measure beyond the applicable time limit. On February 24, 2000, the WTO Dispute Settlement Body adopted the panel's report, with which Mexico will have to comply.

Other important U.S. agricultural products on which Mexico imposed provisional and/or final antidumping measures in 1999 include U.S. hogs for slaughter, and cattle, beef and beef offal. In October 1999, Mexico imposed final antidumping duties on imports of U.S. hogs of 0.351 dollars per kilogram. In August 1999, Mexico imposed provisional antidumping measures on imports of U.S. beef and beef offal, ranging as high as 215 percent. In both of these investigations, the United States has raised concerns with Mexico regarding problems with the actions taken by the Mexican antidumping authorities.

**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; new requirements that particular goods may enter only through certain ports; and discriminatory and capricious enforcement of Mexican standards and labeling rules. Complications and confusion have occasionally resulted in the application of harsh penalties for technical customs law violations committed as a result of simple mistakes rather than an attempt to evade Mexican customs rules. 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 border procedures in this area.

Mexico implemented a reference price system for certain imports in 1994, and has continued to expand the number of goods subject to this requirement. In February 1994, for example, there were just seven products on the list. Today there are well over 200 separate items – including certain distilled spirits, cigarettes, chemicals, wood and paper materials, textiles and apparel, footwear, steel, appliances and toys. Currently, companies importing products at prices below the Government of Mexico's official reference price must post a bond to cover the difference in duties and taxes. Bonds are closed when importers provide Mexican authorities with original invoices signed and notarized by the exporter's local chamber of commerce attesting that the declared customs value of the product is correct. In 1999 Mexico published regulations that would require importers to deposit cash in a designated financial institution (or arrange one of two alternative guarantees) instead of posting a bond. Implementation has been delayed and is currently set to become effective April 1, 2000. In 1998, Mexico implemented a prior notification requirement for sensitive products from certain countries. U.S. origin goods are subject to the reference price system, but not the prior notification requirement. The United States is reviewing Mexico's practices for their WTO consistency.

## STANDARDS, TESTING, LABELING AND CERTIFICATION

### Sanitary and Phytosanitary Standards

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 far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grains, poultry, rendered products and meat. These include a new animal health standard for imported poultry products which was implemented in early 1999. In addition, procedural requirements regarding SPS 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 the border, seaports, and airports.

### Standards

The Government of Mexico revised its Federal Law of Metrology and Standardization in May 1997. While these revisions provide for greater transparency, some Mexican ministries deem that certain regulations are executive orders and therefore not subject to notification requirements and are not published for comment.

Additionally, while the law provides for the adoption of emergency mandatory standards to deal with exceptional and unforeseen circumstances which might result in irreversible situations, the legitimacy of the emergency nature of some of these mandatory standards remains questionable. Moreover, in certain instances, Mexico has not immediately notified such technical regulations to the WTO nor has it provided opportunity for comment by its trading partners.

### 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 an authorized independent certification body. Until 1998, only Mexican entities could qualify for recognition as competent to perform conformity assessments. On January 1, 1998, Mexico's NAFTA obligation took effect to accredit or otherwise recognize U.S. and Canadian bodies no less favorably than Mexican entities. However, the United States is concerned that Mexico's implied decision to only accredit additional certification bodies and verification units based on market need for such services may in practice become a barrier to trade.

All imports are subject to inspection at the border and again at the retail level; domestic goods are subject only to spot inspections in the market. This enforcement of compliance with NOM certification appears to be more stringent in the case of imports. U.S. exporters also report occasional inconsistencies in certification enforcement and determinations at different ports of entry.

Mexico has made significant progress in addressing redundant testing requirements. In February 2000, the Secretariat for Trade and Industrial Development (SECOFI) revised its product certification procedures for mandatory standards under its authority. The procedures allow manufacturers in countries with which Mexico has a free trade agreement (including the United States) to submit products for testing and certification. Under the revised procedures, a U.S. manufacturer can supply numerous importers without duplicating the cost of testing and certification.

As a prerequisite for permission to import and market vitamins, Mexico now requires inspection and approval of manufacturing facilities. Mexico has indicated that it does not plan to conduct inspections of facilities outside of Mexico. This precludes U.S. companies without production facilities in Mexico from obtaining the sanitary license necessary to import and market vitamins in Mexico.

## GOVERNMENT PROCUREMENT

In 1999, U.S. firms reported several instances in which Mexican procurement agencies may have awarded contracts without providing the time period for tendering normally required under the NAFTA. The Administration has expressed its concern over this issue in bilateral and trilateral consultations and will continue to closely monitor Mexican procurement agencies' practices to ensure full implementation of the NAFTA tendering requirements.

On January 4, 2000, Mexico published a new law for Public Works and Related Services. The law requires Mexican procurement agencies to implement a new system of "Buy Mexico" purchasing preferences. While the law includes a general exception for treaty obligations, there appears to be a risk that Mexico's procurement officials might interpret it in a way that could be inconsistent with Mexico's NAFTA commitments. The law requires SECOFI to develop regulations for implementing these policies. The Administration is following the situation closely to ensure that Mexico implements this law in a manner that is fully consistent with the NAFTA.

## INTELLECTUAL PROPERTY RIGHTS PROTECTION

Under the NAFTA and the WTO, Mexico is obligated to implement and enforce a certain minimum level of intellectual property rights (IPR) protection. The Government of Mexico announced an anti-piracy campaign on November 11, 1998. This was followed by increased raids and seizures by government authorities and the enactment of stricter anti-piracy penalties in May 1999. The prosecution of IPR crimes has increased, but it remains to be seen if stricter sanctions will be applied consistently and serve as a deterrent. In 1996, Mexico and the United States created a bilateral working group on IPR to discuss enforcement and other matters. The group did not meet in

1998 or 1999. In 2000, the United States and Mexico plan to convene a high-level meeting to launch a bilateral working group focused on enforcement and increased cooperation.

**Copyright**

The Government of Mexico passed a copyright law on December 24, 1996, which addressed a number of inadequacies in the former law. The new law substantially increased protection for computer programs, textile designs and several other types of copyrighted material. Criminal penalties in several areas were increased, and some administrative procedures were introduced as well. With subsequent modifications, the law appears to provide a satisfactory legal framework. However, in practice, criminal penalties have been infrequent and mild. In May 1999, Mexico increased criminal penalties for certain copyright and trademark violations and reclassified copyright and trademark piracy as a felony (*delito grave*). As a result of the felony classification, individuals indicted for IPR piracy cannot be released on bail and search warrants are issued more expeditiously.

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates remaining high. Pirated sound recordings and video cassettes are readily available throughout Mexico. The International Intellectual Property Association (IIPA) estimates that trade losses due to copyright piracy in Mexico in 1998 totaled $469 million. The U.S. copyright industry notes that in spite of numerous raids by legal authorities and extensive confiscation of pirated material, there were few convictions prior to the reclassification of IPR piracy as a felony. However, at the end of 1999 approximately 70 individuals were in jail awaiting trial for IPR piracy, and three individuals had been convicted, according to the Mexican Attorney General's Office.

**Patents and Trademarks**

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), an independent agency. An increasing number of raids have been conducted in recent years, and use of administrative remedies are increasingly useful to U.S. trademark owners. Nonetheless, many U.S. trademark holders have encountered difficulties in enjoining former subsidiaries and franchisees from using their trademarks. U.S. firms have reported experiencing difficulty in enforcing their trademark rights when a Mexican entity has registered them, even when registration was under a different category. These anecdotal reports indicate problems are occurring, but not on a large scale.

**Border Enforcement**

NAFTA Article 1718 requires Mexico to allow U.S. intellectual property rights holders to request that Mexican customs authorities suspend release of goods with counterfeit trademarks or pirated copyright goods. Several U.S. companies have complained that the procedure for obtaining protection via Mexican customs authorities is complicated, for a variety of reasons, including the fact that Mexican law does not recognize its customs service as an authority competent to decide infringement issues. Intellectual property rights owners seeking to use customs resources to prevent importation of infringing goods must obtain, from a competent authority, an order which directs customs officials to detain the merchandise. Thus far, few companies have requested this type of action, but those which have report positive outcomes. The United States will work closely with Mexico to ensure that Mexico is providing effective border enforcement of intellectual property rights, as the NAFTA requires.

## SERVICES BARRIERS

### Telecommunications

Mexico ended Telmex's monopoly on the provision of commercial long-distance telecommunications services on August 10, 1996, and allowed long-distance competitors to interconnect to the public-switched network on January 1, 1997. A number of U.S. firms, in partnership with Mexican firms, are competing for Mexican residential and commercial long-distance subscribers. Mexico allows up to 49 percent foreign investment in telecommunications networks and services, including basic telecommunications. An exception is provided in Mexico's new telecommunications law that allows consideration of 100 percent foreign investment in cellular services.

Under the WTO Agreement on Basic Telecommunications Services, Mexico made market access and national treatment commitments on all basic telecommunication services. Mexico also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement. Mexico, however, requires the use of Mexican infrastructure for the provision of domestic satellite service until the year 2002, and it continues to restrict foreign ownership of all services (other than cellular) to 49 percent.

The NAFTA eliminated all investment and cross-border service restrictions in enhanced or value-added telecommunications services and private communications networks, most as of January 1, 1994. The remaining restrictions, limited to enhanced packet switching services and videotext, were eliminated on July 1, 1995.

There are several aspects of Mexico's regulation of its telecommunications market that inflate the cost of terminating international traffic in Mexico and exacerbate the long-standing problem of high settlement rates by preventing competitive forces from being brought to bear on these rates. The settlement rate for U.S.-Mexico international traffic was more than 19 cents per minute in 1999, compared with U.S.-Canada rates of about seven cents per minute.

USTR is reviewing certain aspects of Mexico's regulatory regime under section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Complaints from U.S. industry were received about the GOM's implementation of its commitments under the WTO Basic Telecommunications Agreement. Issues receiving particular attention were the GOM's failure to: (1) permit international simple resale (ISR), (2) establish cost-based interconnection rates, and (3) to put in place measures to prevent anti-competitive behavior by Telmex (also referred to as "dominant carrier" regulations).

The Government of Mexico has given one carrier, Telmex, a *de facto* monopoly to negotiate settlement rates, which prevents other Mexican carriers from negotiating lower rates. The policy of the Mexican Government not to permit resale, i.e., the reselling of the long distance public network in Mexico, continues to reinforce Telmex's market dominance and erode the basis for effective competition in Mexico's telecommunications market. In addition, the regulatory agency has been unable to implement regulations to restrict market abuses by Telmex. On January 1, 1999, Mexico removed a 58 percent surcharge on the settlement rate on inbound international traffic paid to Telmex.

In the 1997 section 1377 review, USTR concluded that Mexico had satisfactorily established standards for terminal attachment equipment. We continue to monitor implementation of these standards in the NAFTA Telecommunications Standards Subcommittee.

**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 some viewers prefer dubbed films, however, this provision acts as a 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 is unconstitutional in a private case requesting injunctive ("amparo") relief, but the government has not 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 justified cause. This requirement, which should be clarified by pending regulations, could violate the right of the copyright holder to control the public performance and distribution of its work.

## INVESTMENT BARRIERS

**Ownership Reservations**

Mexico maintains state monopolies in a variety of sectors, including oil and gas exploration and development and basic petrochemicals, that effectively bar U.S. private investment. In addition, U.S. investment in border and coastal real estate is available only through bank-run trusts.

In May 1995, the Mexican government passed legislation to privatize the national railroad system. Mexico allows up to 49 percent foreign control of 50-year concessions to operate portions of the railroad system, renewable for a second 50-year period. The concessions for the Northeast, Southeast and Northern Pacific Railroads as well as concessions for two independent and one concession-linked short line have been awarded. Similarly, an airport law passed in December 1995 provides for renewable 50-year airport operation concessions to private investors. However, foreign ownership is limited to 49 percent in most cases (waivers are available in specific circumstances). Three out of four airport groups have been granted concessions since December 1998. Two airport groups are now completely privately owned and operated.

While Mexico actively seeks and approves foreign investment in natural gas transportation, distribution and storage systems, it continues to exclude U.S. investors from owning assets in other important sectors open to its own citizens, including oil and gasoline distribution and retailing, selected educational services, newspapers, and agricultural land.

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. 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.