

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$64.4 billion in 2008, a decrease of \$10.2 billion from \$74.6 billion in 2007. U.S. goods exports in 2008 were \$151.5 billion, up 11.4 percent from the previous year. Corresponding U.S. imports from Mexico were \$215.9 billion, up 2.5 percent. Mexico is currently the second largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Mexico were \$23.8 billion in 2007 (latest data available), and U.S. imports were \$15.6 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$20.5 billion in 2006 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$3.4 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was \$91.7 billion in 2007 (latest data available), up from \$83.2 billion in 2006. 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, provided improved access for services, applied strong rules on investment, and strengthened protection of intellectual property rights. The United States, Canada and Mexico agreed to the NAFTA with side agreements on labor and environment. Under these side 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.)

A number of U.S. exports, both agricultural and nonagricultural, are subject to antidumping duties that limit access to the Mexican market. Products subject to these duties currently include beef, hydrogen peroxide, epoxidized soy oil, apples, liquid caustic soda, ammonium sulfate, polyvinyl chloride, bond paper, industrial fatty acids, stearic acid, ethylene glycol monobutyl ether, and carbon steel pipe and tube.

Agricultural Products

The United States exported \$16 billion in agricultural products to Mexico in 2008, compared to \$12.7 billion in 2007. Since 2004, Mexico has been the United States' second largest agricultural market. On January 1, 2008, Mexico lifted the final tariffs and tariff-rate quotas on corn, dry beans, nonfat dry milk and sweeteners.

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During the past year, Mexico's Secretariat of Economy (SECON) did not open any new dumping investigations with respect to U.S. agricultural products; however, a number of cases remain pending. 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 has applied antidumping duties on apples. SECON continues to assess antidumping duties on U.S. exports of red and golden delicious apples from members of the Northwest Fruit Exporters (NFE). After numerous previous rulings, on July 3, 2007, SECON published a ruling that nullified the original antidumping resolution initially published in 2002, while confirming the validity of an August 2003 ruling. Thus, final duties ranging from 6.4 percent to 47.05 percent on red and golden delicious apples are applied to shipments from NFE members. Exporters who are not NFE members are not subject to any duties. In earlier years, non-NFE members were subject to paying a duty of 46.58 percent.

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, 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.

Biotechnology

Mexico has no significant barriers to the importation of crops or food derived from biotechnology. Mexico recently released implementing regulations for its Biosafety Law passed in February 2005. These regulations establish the respective responsibilities and jurisdiction of the Mexican ministries and agencies that monitor and/or enforce biotechnology related experiments, production, and commercialization. These regulations will pave the way for increased research, investment, and commercialization of agricultural products derived from biotechnology.

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; 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 nonuniform 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 industry sector registry. 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

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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. Mexico has not yet specified which goods fall under these two categories.

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 decree of March 31, 2008 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. The United States will 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 huge delay in customs clearance. This new barrier is having a deleterious effect on the competitiveness of U.S. exports of these products. The United States is working with the Chemical Industry Association of Mexico to offer alternatives to this burdensome and expensive process.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under the NAFTA, Mexico is required to recognize conformity assessment bodies (*i.e.*, certification bodies or testing laboratories) in the United States and Canada on terms no less favorable than those applied to conformity assessment bodies in Mexico.

Applications by two U.S. certification bodies for accreditation by the *Entidad Mexicana de Acreditacion* (EMA), the body responsible for accrediting conformity assessment bodies for Mexican Official Standards, were held up for years due to resistance from the existing Mexican conformity assessment bodies. However, the Mexican government announced it would create a "trust fund" into which accredited bodies would contribute 10 percent of the revenue from conformity certificates issued for the development of standards in Mexico. The two U.S. bodies in question signed an accord agreeing to contribute to the trust fund. In December 2007, one U.S. body was accredited to perform conformity assessments related to one Mexican regulation. The potential increase in U.S. exports of electrical and electronics goods could be significant.

In the telecommunications sector, Mexico has yet to implement either Phase I of the Inter-American Telecommunications Commission's (CITEL) Mutual Recognition Agreement (MRA), which it was scheduled to do by June 2006 under commitments made under the Security and Prosperity Partnership of North America, or Phase II, which was due to be completed by March 2008. Phase I of the CITEL MRA provides for the mutual acceptance of test results, while Phase II provides for the mutual acceptance of certifications concerning conformity of equipment with technical regulations. Mexico's implementation of Phase I would allow recognized U.S. testing laboratories to test equipment for compliance with Mexican technical requirements, whereas implementation of Phase II would allow recognized U.S.

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certification bodies to certify equipment as meeting Mexican technical requirements. Mexico, however, did not meet the June 2006 goal or its amended target of the second quarter of 2007. Mexican implementation of Phase I and II of the CITELE MRA remains a key issue for U.S. testing and certification bodies, as well as for U.S. exports to Mexico, and the United States will continue to press the Mexican government on this issue.

Mexico has over 700 technical regulations called *Normas Oficiales Mexicanas* (NOMs), which are issued by a number of different agencies. Often, conformity assessment procedures are either included in the NOM or the agency publishes its own general procedures. Some agencies, notably the Ministry of Health, have not published their procedures.

Mexico has long had a requirement that in order to sell pharmaceuticals and some dietary supplements locally, the importer of record must have a factory, laboratory, or some other facility in Mexico. To help foster competition and bring down the price of drugs, the Mexican government issued a decree in August 2008 to lift this requirement in a phased manner. HIV drugs will be the immediate beneficiaries of this new policy, and others will follow in a period not exceeding two years. The application to certain dietary supplements remains unclear, as they were not mentioned in the decree.

Sanitary and Phytosanitary Issues

In recent years, Mexican sanitary and phytosanitary measures have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, apples, stone fruit, pork, beef, poultry, citrus, wood and wood products, dry beans, avocados, potatoes, and eggs. In addition, procedural requirements regarding sanitary and phytosanitary inspections at individual ports of entry do not always reflect agreements reached between the U.S. Department of Agriculture (USDA) and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at border points of entry, seaports, and airports. In 2008, significant quantities of U.S. agricultural goods continued to be subject to rejection or delays at the Mexican border.

In addition to issues surrounding inconsistent border procedures and inadequate inspection facilities, Mexico continues to apply excessive restrictions on U.S. beef and beef products. Mexico initially banned imports of U.S. beef in December 2003, following the discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States. In March 2004, Mexico announced that it would accept U.S. deboned beef from cattle less than 30 months of age, and it subsequently lifted restrictions on a number of offals and processed deboned beef products. In early 2006, Mexico lifted its ban on U.S. bone-in beef from animals less than 30 months of age, and in October 2008, the United States and Mexico reached an agreement allowing the import of U.S. breeding cattle into Mexico born after 1999. Mexico continues to ban or restrict U.S. exports of live cattle (non-breeding animals), all beef and beef products from animals 30 months of age and older, ground beef, and certain offals. However, current World Organization for Animal Health (OIE) guidelines for BSE provide for conditions under which all beef and beef products from countries of any risk classification for BSE can be safely traded when the appropriate specified risk materials are removed. The United States was officially categorized by the OIE as "controlled risk" for BSE in May of 2007. The United States continues to press Mexico to base its import policies on science and the OIE guidelines, and put in place import requirements for BSE which allow for the full range of beef and beef products from animals of any age, and take into account the "controlled risk" status of the United States.

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 on-line government procurement and contracting. While implementation of Compranet has been successful, 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, respectively, may exclude from coverage under the NAFTA. Mexico provides an annual notice of the set-aside calculation, along with the methodology used in the calculation, to the United States and Canada. The 2007 value of the set-aside for these entities was \$380 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite a fairly comprehensive set of IPR laws and a clear commitment to stronger enforcement on the part of the Mexican government, IPR violations in Mexico remain extensive. The number of raids, arrests, and convictions of pirates and counterfeiters rose from 2007 to 2008. Criminal indictments dropped slightly from 166 to 163 in that period. Twelve persons were convicted in penal courts in 2008, up from five in 2007 and two in 2006. Customs enforcement efforts almost doubled, growing from 66 seizures the previous year to 115 in 2008. Industry estimates that trade losses due to copyright piracy (not including losses sustained by the movie, publishing or entertainment software industries) in Mexico totaled \$917 million in 2008.

The United States remains concerned about the continuing high levels of piracy and counterfeiting in Mexico and closely monitors how the Mexican government is addressing these problems. Mexico was taken off the Special 301 "Watch List" in 2000 but returned to the list in 2003, where it has remained to date due to inadequate IPR protection and enforcement. Despite efforts by the local authorities in Mexico City to move street vendors into the formal economy and a similar strategy of "market reconversion" being carried out by the Office of the Attorney General (PGR), well-known markets selling pirated and counterfeit goods, such as Tepito in Mexico City, San Juan de Dios in Guadalajara, and others in Monterrey and San Luis Potosi, continue to operate openly. In 2008, Mexico City authorities removed unlicensed vendors from certain parts of the historic center of the city and seized two properties that were being used for illicit commerce in Tepito, but these actions were narrowly targeted.

In June 2006, several Mexican federal agencies, one state government, civil society groups, and concerned industries signed a National Agreement in which all committed to cooperation in combating intellectual property infringement. The Calderón administration is expected to adopt the National Agreement's principles and put in place a Policy of State to combat intellectual property crimes. Several municipalities of the State of Mexico signed the cooperation agreement, and the authorities are currently negotiating with other Mexican states, such as Morelos. The Mexico City government has not signed the agreement.

On the legislative front, an initiative to give the PGR the power to prosecute intellectual property crimes, without first receiving a complaint from intellectual property holders or legal representatives, passed the lower house of the Mexican Congress in April 2008, but this bill has not yet been taken up by the Senate. In September 2008, a bill was introduced in the Mexican Congress that would grant Mexican customs

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officials the authority to detain suspected counterfeit goods for up to five days. It also called for the establishment of a customs trademark registry. A pilot registry program was launched in late 2008 and includes some 20 well-known trademarks, with formal implementation planned for the first half of 2009. An amendment to the Penal Code that would establish unauthorized in-theater camcording as a felony offense punishable by a prison term of between 3 years and 10 years plus a fine, was proposed in 2006, but no further congressional action has been taken.

In September 2003, the Secretariats of Health and Economy implemented a Presidential decree regarding cooperation between the two agencies to ensure that marketing approval is not granted for unauthorized copies of pharmaceuticals. Since the beginning of 2007, there have been no new reports of registrations of unauthorized copies of pharmaceuticals, though several cases of earlier registrations granted to unauthorized copies of pharmaceuticals remain to be resolved.

Mexico lacks adequate regulations for the protection of undisclosed test and other data submitted for the marketing approval of pharmaceutical products. The Federal Commission for the Protection Against Health Risks (COFEPRIS) is currently drafting a set of internal regulations, which it claims will include data protection procedures. These internal regulations were expected to be concluded by November 2008, but the organization is still conducting an analysis of comparable international data protection provisions.

U.S. companies holding trademarks in Mexico have cited problems with trademark enforcement and administration. Although Mexican federal administrative actions are supposed to be completed within four months, actions related to trademark enforcement often take as long as 18 months. In the beginning of 2008, the Mexican government established a specialized IPR court with a view towards accelerating these administrative actions.

SERVICES BARRIERS

Telecommunications

The OECD's October 2007 Economic Survey of Mexico stated that Mexico remains one of the OECD countries with the highest telecommunications charges, especially for business. The report 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 report also suggested that industry regulator Cofetel (Federal Telecommunications Commission) needs greater independence from leading companies in the sector and a more effective mandate for the design and implementation of access pricing rules designed to promote competition.

The Calderón Administration has stated 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 dominates the Mexican telecommunications market and is perceived to exercise some influence over the legislative process, the courts, governmental policy departments, and Cofetel.

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 Secretariat of Communications and Transport (SCT) has resorted to other means to achieve its goals. For example, Telmex recently partnered with a company to provide video via satellite in the 2.5 GHz band, but the SCT appears to be holding firm to additional interconnection requirements before officially changing Telmex's concession.

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The Federal Competition Commission (Cofeco) has been strengthened and announced that it will conduct a formal investigation to determine if monopolistic activities are taking place in the fixed and mobile telephone sectors.

Although there have been several recent legislative attempts to open the Mexican fixed line telecommunications sector to increased foreign investment, which could significantly increase opportunities for competitive providers, currently the Foreign Investment Law limits foreign ownership in the segment to 49 percent, a restriction that helps shield Telmex from additional competition.

Television and Radio

As in telecommunications, there are concerns that the two dominant television companies, Televisa and TV Azteca, who share duopoly status in the sector, continue to exercise influence over Mexican legislative, policy, and regulatory bodies to prevent competition. The Radio and Television Law passed in April 2006 (mentioned above with regard to telecommunications) has been criticized as catering to the interests of dominant industry players by imposing permanent disadvantages on new entrants as compared to the current dominant duopoly.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's oil and gas sector remains closed to foreign investment, with the exceptions 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. Mexico was able to meet its energy needs for decades under this restriction, but declining production in recent years led the government of Mexico to promote reforms of the sector in 2008. The energy reform legislation approved by the Mexican Congress in October 2008 increases the independence and transparency of the national oil company Pemex and allows for some limited performance incentives in service contracts. Implementing regulations have not been finalized, but it appears the reform will do little to allow additional foreign investment in the oil and gas sector.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry exploitation) 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. However, foreigners may acquire the effective use of residential property in the restricted 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 nonrestricted sectors that exceed a 49 percent share of an investment with a value greater than \$165 million (as adjusted each year for growth in Mexico's nominal GDP).

ANTICOMPETITIVE BARRIERS

Mexico passed a new 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

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currently dominated by monopolies or duopolies, and some progress has occurred (see section on services barriers). It remains to be seen whether the new law and the new administration will be able to make these sectors truly competitive.