MEXICO

In 1998, the U.S. trade deficit with Mexico was $15.7 billion, an increase of $1.2 billion from the deficit of $14.5 billion in 1997. U.S. merchandise exports to Mexico were $79.0 billion in 1998, an increase of 10.7 percent from the same period in 1997. Imports from Mexico were $94.7 billion in 1998, an increase of 10.3 percent over the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Mexico in 1997 was $25.4 billion, an increase of 27.6 percent from 1995. U.S. FDI is concentrated largely in the manufacturing and financial sectors.

North American Free Trade Agreement

Trade with Mexico is largely governed by provisions of the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994. The NAFTA progressively eliminates tariffs and nontariff 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 and environmental standards in North America.

IMPORT POLICIES

Tariffs

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 nontariff restrictions on certain agricultural items will be phased out by January 1, 2008.

The NAFTA parties implemented the sixth annual regular tariff reductions on January 1, 1999. This reduced Mexico's average duty on U S. goods from 10 percent prior to the NAFTA to below two percent. For 1999, about 70 percent of U.S. manufactured goods enter Mexico duty free. In 1998, the NAFTA countries completed a trilateral agreement to accelerate tariff elimination of several hundred goods covering nearly $1 billion in trilateral trade, most of it between the United States and Mexico.

On January 1, 1999, Mexico increased most of its MFN import tariffs by three percentage points for capital and intermediate goods and 10 percentage points for consumer goods. These increased rates do not apply to goods from the United States or other countries that have free trade agreements with Mexico. The tariffs were increased to generate additional revenue for the government, to partially offset declining revenues due to low oil prices.

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. The reduced import duties will be available to all manufacturers, not just exporters, but will not be available to other importers, such as retailers. The United States is reviewing these new regulations.

Antidumping Actions

Mexico is a frequent user of anti-dumping measures. The United States has raised its concerns regarding the Mexican Government's application of antidumping measures on U.S. exports of high fructose corn syrup (HFCS). The U.S. Government held WTO consultations with Mexico regarding its final antidumping measure on HFCS in June 1998. A dispute settlement panel was established by the World Trade Organization on 25 November 1998. U.S. exporters are challenging Mexico's measure under the Chapter 19 provisions of the NAFTA. U.S. HFCS exporters also filed a Section 301 petition with USTR on March 25, 1998, alleging that the policies and practices of the Government of Mexico are unreasonable and deny fair and equitable market opportunities for U.S. exporters. USTR accepted the petition on May 15, 1998. The investigation must be concluded within 12 months of initiation.

Other important U.S. products which were targeted by Mexican anti-dumping actions in 1998 included U.S. bond paper, apples, hogs for slaughter, and cattle, beef and beef offal. For apples, after imposition of preliminary antidumping margins that effectively stopped trade, the case was settled in May 1998 by a suspension agreement which set minimum mandatory prices for U.S. red and golden delicious apples. In the hog and beef/cattle cases, the Secretariat of Commerce and Industrial Development (SECOFI) announced on October 21, 1998 that it had initiated investigations of both cases, but no final decision has yet been announced.

U.S. exporters have also complained about anti-dumping orders on steel products, notably the expansion of a prior order to cover certain zinc-iron coated carbon steel.

Administrative Procedures and Customs

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 confusions 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 agriculture goods are long, burdensome, non-transparent, and unreliable. The Customs Reform Law that came into effect in 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 reference prices. Through 1998, a company could import products at prices below the reference price by posting a bond until the exporter confirmed its invoice price. However, in April 1999, Mexico will require that an importer deposit, for at least six months, a cash payment covering the difference between the invoice and reference price. In 1998 Mexico implemented a preshipment-inspection requirement

for sensitive products from certain countries. U.S. origin goods are subject to the reference price system, but not the preshipment-inspection requirement. The United States is reviewing Mexico's reference price system.

For certain sensitive processed foods, the Secretariat of Health administers an import authorization program which requires that, prior to importation, all documents pertaining to the transaction, i.e. invoice, bills of lading, etc., be presented as originals at the Secretariat of Health's central offices in Mexico City. The U.S. raised this issue at the NAFTA sanitary and phytosanitary (SPS) meeting in November 1998, because it adds unnecessary costs and delays to the import process. For live U.S. pigs for slaughter, Mexican producers stopped imports by blockading crossing points in December 1998. The Government finally succeeded in convincing the farmers to end the blockade. However, the Secretariat of Agriculture responded by reducing the number of hog shipments it would inspect by about a third.

The United States has sought to harmonize the personal duty exemption limits for tourists returning from a NAFTA country. For the United States, the limit is $200 per crossing, with one $400 entry allowed each 30 day period. Mexico's per-crossing limit is $50 for land crossing or $300 for air/sea crossings. Mexico also provides a monthly limit of $400 per person in goods for personal use by border residents and permits pooling by family members. In 1998, Mexico began providing new electronic Personal Exemption Cards for border residents. These cards should promote the use of the personal duty exemptions and streamline customs clearance for returning residents. Mexico expects the system to be implemented at all ports in early 1999.

Safeguard Action

On August 1, 1996, the U.S. International Trade Commission (USITC) determined that pursuant to Section 202 of the Trade Act, broom corn brooms were being imported into the United States in such increased quantities as to be a substantial cause of serious industry to the U.S. broom corn broom industry and that, pursuant to Section 311 of the NAFTA Implementation Act, imports of broom corn brooms produced in Mexico accounted for a substantial share of total imports of such brooms and contributed importantly to the serious injury caused by such imports. Under a global safeguard action, on November 28, 1996, the President proclaimed tariff relief for three years on imports of two categories of broom corn brooms. In response, on December 12, 1996, Mexico retaliated against the U.S. safeguard action by increasing preferential import duties on eight U.S. products (fructose, wine, wine coolers, brandy, Tennessee whiskey, notebooks, flat glass and wooden furniture). The United States believes that Mexico's retaliation was excessive in that its action penalized U.S. exports to a greater extent than the U.S. action affected Mexican broom exports. The United States therefore requested consultations under the dispute settlement provision of the NAFTA concerning Mexico's retaliatory actions. In turn, Mexico requested the establishment of a NAFTA Chapter 20 dispute panel to review the U.S. broom corn brooms safeguard action. The final report of the panel was released on February 11, 1998, with a finding in favor of Mexico based on a technical flaw in the United States' injury determination. Based on a subsequent USITC review of the adjustment efforts of the domestic broom corn broom industry, the President issued a Proclamation on December 3, 1998, nullifying the safeguard action. Mexico lifted its retaliatory measures on January 1, 1999.

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, potatoes, apples, stone fruit, Florida citrus and meat. However, the NAFTA Sanitary and Phytosanitary Measures Committee resolved SPS issues surrounding citrus from Arizona and cherries, and the U.S. Government maintains an ongoing dialogue in the Committee to resolve other issues. In addition to product-specific rules, the Mexican process for establishing 'emergency' phytosanitary standards has disrupted trade, since such 'emergencies' do not follow the normal rule-making and notification process, which includes public comment periods. The United States remains concerned about the far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grains and meat. This includes, in particular, a new animal health standard for imported poultry products which will be implemented in early 1999. 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.

Conformity Assessment Procedures

Mexico's Law on Metrology and Standardization mandates that products subject to technical regulations ("Normas Oficiales Mexicanas" (NOMs)) be certified by Mexico's Direccion General de Normas (DGN) or an authorized independent certification body. Until 1998, only Mexican entities could qualify for recognition as competent to perform conformity assessment. The requirement to perform testing in Mexico-based laboratories has added cost and uncertainties for U.S. suppliers. Particular difficulty was experienced in sectors where Mexican technical capability is non-existent or insufficient to meet the demand, or where that capability resides solely in the laboratories of competing manufacturers. On January 1, 1998, Mexico's NAFTA obligation to accredit or otherwise recognize U.S. and Canadian bodies no less favorably than Mexican entities took effect. However, as of March 1999, no U.S. conformity assessment body had been accredited in Mexico.

On May 20, 1997, Mexico published amendments to its Law on Metrology and Standardization which took effect on August 1, 1997. Among other things, the amendments foresee the privatization of SECOFI's accreditation program. In January 1999 the Mexican Government authorized the private sector Mexican Accreditation Entity to provide accreditation services for the range of conformity assessment activities.

On October 24, 1997, SECOFI published revisions to its product certification procedures for the mandatory standards under its authority. Under the previous policies, a foreign manufacturer could not directly obtain any form of certification for its product. Instead, each importer of the same product had to submit the product for testing and certification, regardless of whether or not a certification had already been obtained by another importer. On the other hand, Mexican manufacturers can simply submit products for evaluation and certification on a periodic basis to obtain product certification, and then they can distribute the product for sale throughout the country. The inability of foreign manufacturers to obtain a certification with the same ease that Mexican manufacturers can obtain product certification has caused numerous problems and costs for U.S. exporters who frequently rely upon multiple importers, as well as for exporters who wish to change their importers or distributors.

Under the revised procedures, foreign manufacturers can obtain a "product ruling" (dictamen) for a product based upon the definition of a product family, which can be used by each importer of the product to obtain the product certification. However, this dictamen can only be obtained by a foreign manufacturer if it obtains quality system registration to ISO 9000 criteria from an accredited Mexican quality system registrar. A provision exists for accepting a quality system registration by a foreign organization, but only if a mutual recognition agreement exists between the organizations. It appears likely that this option provided to foreign manufacturers will only be advantageous to a very small number of manufacturers, forcing most importers to continue obtaining separate product certifications for the same products from the same manufacturers.

Labeling Requirements

Changes in Mexico's mandatory labeling requirements have been the subject of frequent discussions, both bilaterally and within the NAFTA Committee on Standards Related Measures. In particular, implementation of NOM-050 and NOM-051 on labeling of consumer products and prepackaged foods and non-alcoholic beverages, respectively, affects a broad range of industries. The difficulty and the costs that companies have experienced in complying with the new labeling standards have, in some cases, disrupted their exports to Mexico or caused them to reduce the number of products they export to Mexico.

GOVERNMENT PROCUREMENT

Although Mexico had agreed under the NAFTA to complete its list of services excluded from NAFTA coverage by July 1, 1995, the United States and Canada continue to work to reduce Mexico's overly-extensive draft list.

Under the NAFTA, government procurements which are subject to NAFTA provisions must be open for a minimum time period consistent with Article 1012, and that allows companies to make meaningful submissions. Generally, the period for the receipt of tenders is to be no less than 40 days from the date of publication of an RFP. Many Mexican procurements are not complying with the 40 day requirement. The Department of Commerce has received complaints from private industry, especially manufacturers of high-tech equipment, that the short deadlines do not allow sufficient time to prepare responsive bids. The United States has joined the Government of Canada in seeking clarification on this issue within the NAFTA context, and is currently waiting for the Government of Mexico to issue a response.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under the NAFTA and the WTO, Mexico is obligated to implement and enforce a very high level of intellectual property rights (IPR) protection. Notable achievements include issuing regulations in May 1998 implementing the 1996 copyright law, and announcement by the Government of Mexico on November 11, 1998, of an anti-piracy campaign.

The number of search and seizure actions undertaken by the PGR (Mexican federal Attorney General's office) in 1998 increased, but prosecution of IPR crimes remains uneven. Mexico and the United States in 1996 created a bilateral working group on IPR to discuss enforcement and other matters. The group did not meet in 1998. The United States is prepared to re-engage in meaningful discussions.

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. The legislation, while meeting many of Mexico's obligations under the NAFTA and TRIPs, fell short in significant areas, including criminal penalties. However, subsequent modification of the law brought commercial piracy of sound recordings under coverage of criminal law. While the newest law appears to provide a satisfactory legal framework, in practice, criminal penalties have been infrequent and mild. In November, 1998, the Mexican administration submitted a proposal to the Mexican Congress to increase criminal penalties for certain copyright and trademark violations, and to reclassify copyright and trademark piracy as a felony (delito grave).

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates continuing to increase. 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 1997 totaled $469 million. The U.S. copyright industry notes that in spite of numerous raids by legal authorities and extensive confiscation of pirated material (for example a January 1998 raid netted 30,000 pirated video cassettes), few convictions have resulted, and in no instance has a pirate served a jail sentence.

Patents and Trademarks

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), a free-standing body. 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.

Plant Varieties

In 1996, as required by the NAFTA, the Mexican Government approved the Plant Varieties Protection Act, and in August 1997 acceded to the international convention for the protection of new varieties of plants

(UPOV). Implementing regulations are still pending, however. The NAFTA also required Mexico to begin accepting, on January 1, 1994, applications from plant breeders for varieties in all plant genera, and to promptly grant protection. On September 24, 1998, Mexico published its implementing regulation which requires that plant varieties new to Mexico must be registered with both the National Plant Variety Registry and the National Seed Certification and Inspection Service.

Border Enforcement

NAFTA article 1718 required Mexico to have adopted by December 1995, procedures to allow U.S. rights holders to request that Mexican customs authorities suspend release of goods with counterfeit trademarks or pirated copyright goods. In December 1995, Mexico's customs law was amended to grant its customs service authority to detain infringing products. Several U.S. firms 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 custom officials to detain the merchandise. Thus far, few companies have requested this type of action, but those which have report positive outcomes.

Film Dubbing

In December 1992, Mexico promulgated film industry legislation that contained a troublesome provision against film dubbing. In particular, under the provision, only children's films and documentaries may use dubbing; all other films are restricted to using 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.

SERVICES BARRIERS

Land Transportation Services

U.S. express delivery firms are experiencing significant difficulties in receiving the national treatment that Mexico is obligated to provide to them under the NAFTA. Mexico has not yet granted full operating authority to U.S. firms in this sector. This issue has been the subject of bilateral consultations between the U.S. and Mexican Governments, including formal consultations at both the staff and ministerial level, pursuant to the dispute resolution procedures of Chapter 20 of the NAFTA.

Telecommunications

Prior to implementation of the NAFTA, Mexico had taken steps to reform its telecommunications sector, including privatizing Telefonos de Mexico (Telmex), the national telephone company; liberating foreign investment rules in most telecommunications services; introducing competition in some telecommunications service sectors; and restructuring the sector's regulatory entities. Mexico implemented a new telecommunications law in June 1995 codifying many of these changes.

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 a higher limit for 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 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 39 cents per minute in 1997, compared to U.S.-Canada rates of about 7 cents per minute. These high settlement rates resulted in outpayments to Mexico by U.S. carriers of 875 million dollars in 1996, and 750 million in 1997.

The Government of Mexico has given one carrier, Telmex, a de facto monopoly to negotiate settlement rates that prevents other Mexican carriers from negotiating lower rates. On January 1, 1999, Mexico removed a 58 percent surcharge on the settlement rate on inbound international traffic paid to Telmex. The Government of Mexico has stated that it is the internal policy of the Mexican Government not to permit resale, i.e., the reselling of the long distance public network in Mexico. In the absence of this policy, carriers could use "international simple resale," a form of resale using leased lines that are not subject to settlement rates. This policy reinforces Telmex's market dominance and seriously erodes the basis for effective competition in Mexico's telecommunications market. USTR is reviewing these and other aspects of Mexico's regulatory regime under section 1377 of the Omnibus Trade and Competitiveness Act of 1988. In the 1997 section 1377 review, USTR concluded that Mexico had satisfactorily established standards for terminal attachment equipment. In particular, U.S.-affiliated carriers remain dissatisfied by regulation of Mexico’s domestic telecommunications market to prevent anti-competitive behavior and to assure fair interconnection. The Mexican Government still has not indicated when it will implement regulations to enable resale of domestic services. Licensing arrangements for earth station operators using U.S.-licensed satellites appear to be unduly cumbersome. We continue to monitor implementation of these standards in the NAFTA Telecommunications Standards Subcommittee.

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 will allow 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). The first group (out of five groups) consisting of nine airports was concessioned in December 1998. Two more groups of airports are to be concessioned in 1999.

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 deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Mexico therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.