

# MEXICO

## TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$65.6 billion in 2011, down \$873 million from 2010. U.S. goods exports in 2011 were \$197.5 billion, up 20.8 percent from the previous year. Corresponding U.S. imports from Mexico were \$263.1 billion, up 14.4 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 \$24.1 billion in 2010 (latest data available), and U.S. imports were \$13.7 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$30.5 billion in 2009 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$3.1 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was \$90.3 billion in 2010 (latest data available), up from \$89.4 billion in 2009. U.S. FDI in Mexico is primarily concentrated 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 among 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, in response to the U.S. cancellation of the United States-Mexico Cross Border Trucking Demonstration Project, Mexico imposed retaliatory tariffs on 89 types of U.S. goods totaling about \$2.4 billion in exports from 40 U.S. states. On August 19, 2010, Mexico added some new products to the list of products subject to tariffs and removed others. The revised list included 99 types of products. Approximately 1.5 percent of U.S. exports to Mexico were affected by these tariffs. Retaliatory tariffs ranged from 5 percent on a few goods, including hams and toilet paper, to 25 percent on some cheeses. On March 3, 2011, President Obama and Mexican President Calderón announced that Mexico and the United States had found a path to resolving the cross-border long-haul trucking dispute. On June 10, 2011 USTR concluded an agreement with Mexico's Secretariat of Economy (SECON) regarding the suspension of the retaliatory duties. The U.S. Department of Transportation and Mexico's Secretariat of Communications and Transportation signed an agreement on July 6, 2011, that established a reciprocal, phased-in program, built on the highest safety standards that will authorize both Mexican and United States long-haul carriers

to engage in cross-border operations. On July 8, pursuant to the USTR-SECON agreement, Mexico reduced the rate of retaliatory duties by half. On October 14, the first Mexican carrier received authorization to operate in the United States under the new program, and Mexico suspended completely the remaining retaliatory duties one week later.

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 \$18.4 billion in agricultural products to Mexico in 2011, compared to \$14.6 billion in 2010. Mexico is the United States' third largest agricultural export market.

Historically, antidumping duties have hampered U.S. meat exports, with Mexican policies in this area having reduced the number of U.S. suppliers and altered product trading patterns, and it has been difficult for U.S. producers to regain market share once duties are lifted. Industry representatives assert that significant revenue was lost each year when antidumping duties were imposed on the beef sector from April 24, 2006 to when they were finally eliminated on August 11, 2010. On February 8, 2011, SECON announced an antidumping investigation on U.S. fresh, chilled, or frozen chicken leg quarters (CLQ). On January 19, 2012, SECON announced its preliminary determination in the antidumping investigation of U.S. CLQs. As this point, SECON has not imposed any compensatory duties on U.S. CLQs exported to Mexico. The U.S. government continues to monitor the situation while the U.S. poultry industry works with its counterparts in Mexico to resolve the matter prior to the imposition of any possible duties.

### **Administrative Procedures and Customs Practices**

U.S. exporters continue to express concerns about Mexican customs' administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; alleged under-invoicing of agricultural products; and uneven enforcement of Mexican standards and labeling rules.

Numerous U.S. companies have reported in 2011 that the *Servicio de Administración Tributaria* (SAT), Mexico's tax authority, is verifying NAFTA origin for the entry of products dating back to 2007. While such verifications are permitted under NAFTA, the breadth of these audits and the extent of information being requested are reportedly overly burdensome and require the submission of business confidential information with no assurance that it will be protected from disclosure. In some cases, SAT has reportedly denied the exporter's claim of NAFTA preference even after the submission of documentation demonstrating that the products meet the agreement's rules of origin. The fines and penalties in such cases can be very high (in excess of \$10 million), and there are substantial costs associated with complying with the audit and even greater legal costs for appealing the rulings.

Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, and nontransparent. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level (below which shipments are exempt from customs duties) from \$1 to \$50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

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. While such samples previously could be sent by express delivery service companies, this is prohibited under the 2008 procedures, necessitating the additional cost of using a customs broker. Some chemical exporters report customs broker fees of \$500. This 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 United States-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**

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

In March 2011, the Mexican Senate approved President Calderón’s Federal Anti-Corruption in Government Contracting initiative, which would impose penalties against national or foreign individuals and legal entities for irregular conduct (including bribes) during their direct or indirect participation in federal government procurement. The proposed fines range from \$5,000 to \$10,000,000 or 30 percent to 35 percent of the amount of the government contract. The Mexican Chamber of Deputies has not yet passed the legislation.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

Mexico was listed on the Watch List in the 2011 Special 301 report. The report noted Mexico’s improved enforcement efforts, but noted that overall piracy and counterfeiting rates remain high. Cooperation among enforcement issues has continued to improve, but coordination at the sub-federal level remains weak. Concerns also remained over enforcement procedures and the inconsistent issuance of deterrent penalties. The United States welcomed Mexico’s passage of legislation in 2009 that would provide the Mexican Attorney General’s office and certain Mexican enforcement officials with *ex officio* authority to prosecute intellectual property rights (IPR) infringement. Nevertheless, Mexico’s judicial authority is still seeking to maximize the benefits of this legislation. *Ex officio* authority to customs officers has not been passed. The United States welcomed signs that Mexico may be prepared to move forward with additional legislation to strengthen its IPR regime, including an anti-camcording law and the implementation of the WIPO Internet Treaties. The United States encouraged Mexico to provide effective protection against unfair commercial use as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States has encouraged Mexican authorities to improve Mexico’s system to address patent issues in connection with applications to market pharmaceutical products, as the existing system has generated considerable litigation and uncertainty. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

Mexico was also an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010, but Mexico has not yet signed the agreement. The ACTA

establishes an international framework that will assist parties in their efforts to effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

## **SERVICES BARRIERS**

### **Telecommunications**

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

The Calderón Administration and the PRI, Mexico's opposition party, agree that increasing competition in Mexico's telecommunications sector is a priority, but implementing policies to this end continue to be a challenge. The Mexican company America Movil dominates both the fixed and mobile segments of the Mexican telecommunications market. A combination of weak regulatory oversight and an inefficient court process has meant that disputes involving this carrier, affecting terms of competition in the market, have lingered on for years. A recent Supreme Court decision making it more difficult to stay regulatory decisions on interconnection was a major step forward, however, and should result in smoother implementation of such orders in the future.

Although Cofetel has attempted on numerous occasions to set lower long distance and mobile termination rates, existing suppliers have used judicial proceedings to frustrate these efforts. SCT and Cofetel have attempted to avoid these difficulties by withholding approval for new services that Telmex seeks to supply until Telmex consents to enhanced competition for existing services. Cofeco, the Federal Competition Commission, has also sought to introduce greater competition. It concluded a formal investigation into Telmex and Telcel market dominance in 2010 by finding that these companies indeed have market dominance. This finding will give it authority to impose more stringent requirements on the companies.

A Mexican company with U.S. shareholders complained that as a result of an interconnection dispute, Telmex (America Movil's wireline subsidiary) unilaterally inserted a message into calls to the company's customers indicating that future calls might not be completed because of the dispute. Last year Telmex did remove the recording and recently implemented a commercial solution to pending interconnection disputes, which is an encouraging sign.

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

Under Mexican law, foreign companies must form joint ventures with Mexican partners to obtain authorizations (called "concessions" under Mexican law) to provide satellite-based services in Mexico. Mexico requires mobile satellite service operators to construct gateway earth stations in Mexico,

ostensibly to satisfy security policies. This requirement serves as a barrier to market entry for new competitors, since such a requirement may make many services economically infeasible.

## **INVESTMENT BARRIERS**

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

The Mexican constitution mandates state ownership of hydrocarbons. Mexico's 2008 energy reform law gave Pemex more independence and allowed the company to tender incentive-based contracts for hydrocarbon exploration and production. Pemex awarded three such contracts in 2011 and has announced its intention to conduct further public tenders. Production-sharing or profit-sharing concessions are still prohibited.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). An interagency National Foreign Investment Commission reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and which have a value greater than \$165 million (adjusted annually based on Mexico's nominal Gross Domestic Product).

## **ANTICOMPETITIVE PRACTICES**

Mexico revised its competition law in June 2006 to give Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers, but no criminal enforcement powers. The head of Cofeco and key members of the Calderón administration have called for the opening up of sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has been made (*see previous section on services barriers*). In April 2011, the Mexican Congress passed a law that grants Cofeco more authority to fight monopolies through stronger sanctions, surprise inspection visits, and temporary suspension of monopolistic practices.