

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$64.1 billion in 2006, an increase of \$14.3 billion from \$49.7 billion in 2005. U.S. goods exports in 2006 were \$134.2 billion, up 11.5 percent from the previous year. Corresponding U.S. imports from Mexico were \$198.3 billion, up 16.5 percent. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Mexico were \$20.6 billion in 2005 (latest data available), and U.S. imports were \$14.7 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$8.9 billion in 2004 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$1.2 billion.

The stock of U.S. foreign direct investment in Mexico in 2005 was \$71.4 billion, up from \$63.5 billion in 2004. U.S. FDI in Mexico is concentrated largely in the manufacturing, banking and finance 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. This free trade agreement progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules on investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements that provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Tariffs and Market Access

Under the terms of the NAFTA, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 2003. As of January 1, 2006, Mexico applies tariffs or tariff-rate quotas on corn, sugar, dry beans, orange juice, chicken leg quarters, high fructose corn syrup (HFCS) and milk powder. All tariffs and tariff-rate quotas are scheduled to be eliminated on January 1, 2008. (See the section on agriculture below for additional details on HFCS and chicken leg quarter actions.)

Trade growth in agricultural products has been balanced since the NAFTA entered into force, with U.S. exports to Mexico having increased by \$7.3 billion from 1993 to 2006, and U.S. imports from Mexico having increased by \$7.5 billion. The statistics are less balanced, however, when considering non-agricultural trade. U.S. non-agricultural imports from Mexico grew \$188 billion compared with U.S. export growth to Mexico of \$123 billion from 1993 to 2006.

A number of U.S. exports, both agricultural and non-agricultural, 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

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paper, industrial fatty acids, stearic acid, ethylene glycol monobutyl ether, and carbon steel pipe and tube. In 2006, Mexico terminated antidumping duties on rice.

Agricultural Products

The United States exported \$10.9 billion in agricultural products to Mexico in 2006, compared to \$9.4 billion in 2005. Since 2004, Mexico has become the United States' second-largest agricultural market.

During the past year, Mexico's Secretariat of Economy (SECON) issued a number of decisions relating to antidumping cases affecting U.S. agricultural products. In January 2006, SECON officially announced the resolution of the investigation of dumping charges it had filed on behalf of the Mexican Pork Council against importers and exporters of U.S. pork, deeming that there was not sufficient evidence to impose antidumping duties.

In April 2006, SECON decided to continue antidumping duties on U.S. beef and beef by-products after completing a sunset review investigation. 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. In addition, Mexico's modification of the beef dumping duties in 2004 in response to the findings of a NAFTA Chapter 19 panel, which determined that SECON did not sufficiently demonstrate that U.S. beef imports had damaged Mexico's beef industry, is still pending the Chapter 19 panel's approval. Mexican policies in this area have reduced the number of U.S. suppliers and altered product trading patterns. Industry representatives assert that \$100 million to \$500 million in revenue is lost each year due to antidumping duties in the beef sector.

On September 11, 2006, SECON published the final resolution of Mexico's antidumping investigation on U.S. long-grain white rice. Mexico undertook the investigation after the December 2005 World Trade Organization (WTO) ruling that Mexico had not properly conducted its previous investigation that had resulted in SECON's June 5, 2002 finding that assessed compensatory duties against U.S. rice exporters. In the September 2006 final resolution, SECON terminated the measures, concluding that the imports during the reference period did not constitute price discrimination and thus did not cause damage to the domestic rice sector.

SECON continues to assess antidumping duties on U.S. imports of red and golden delicious apples. On December 29, 2004, SECON suspended the application of the 46.58 percent antidumping duty on U.S. red and golden delicious apples exported by members of the Northwest Fruit Exporters (NFE) and established a reference price system for NFE members. In February 2005, a Mexican court nullified the reference price system, and on May 26, 2005, in response to an order from a Mexican court, SECON announced the elimination of the 46.58 percent antidumping duty for NFE members and the beginning of a new antidumping investigation on U.S. red and golden delicious apples exported by NFE members. On November 2, 2006, SECON announced the final results of its investigation and imposed final duties ranging from 6.4 percent to 47.05 percent on red and golden delicious apples from NFE members. The original antidumping duty of 46.58 percent still applies to red and golden delicious apples from exporters who are not NFE members.

In July 2003, Mexico put in place an industry-negotiated NAFTA safeguard on U.S. chicken leg quarters that will remain in effect until December 31, 2007. The safeguard takes the form of a tariff-rate quota (TRQ) on chicken leg quarters. The TRQ preserves market access for U.S. exporters at levels achieved in recent years. Pursuant to the NAFTA, Mexico agreed to provide compensation to the United States, including a commitment not to impose any additional import restrictions on U.S. poultry products and to eliminate certain sanitary restrictions on U.S. poultry products.

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On December 22, 2006, the Mexican Congress approved legislation repealing the 20 percent tax on certain beverages or products made with sweeteners other than cane sugar, including HFCS (beverage tax). Mexico had imposed the beverage tax on January 1, 2002. As a result of the tax, HFCS sales fell dramatically and industry estimated that the annual cost of the beverage tax was roughly \$944 million in lost U.S. HFCS sales, in addition to sizeable investment losses. The Mexican Congress had renewed the beverage tax each year since 2002, including for 2006. The new legislation repealed the beverage tax effective January 1, 2007. Mexico agreed to eliminate the tax in response to findings by a WTO panel and the Appellate Body that vindicated the U.S. position that the beverage tax was inconsistent with Mexico's WTO obligations.

On July 27, 2006, the United States and Mexico concluded an agreement on market access for sweeteners through January 1, 2008, when, under the NAFTA, all remaining duties on agricultural goods will be eliminated. The sweeteners agreement provides Mexico duty-free access to the U.S. market for 250,000 metric tons raw value of raw or refined sugar in Fiscal Year (FY) 2007 and at least 175,000 metric tons raw value of raw or refined sugar for the first three months of FY 2008 (October 1, 2007 through December 31, 2007). Under the agreement, Mexico will provide reciprocal access for U.S. HFCS: 250,000 metric tons in FY 2007 and at least 175,000 metric tons for the first three months of FY 2008 (October 1, 2007 through December 31, 2007). Mexico will also provide, for the first time, duty-free access for U.S. sugar of not less than 7,258 metric tons raw value for each of the marketing years 2006, 2007 and 2008. Mexico had previously opposed the establishment of such a quota due to the longstanding trade dispute over sugar.

On August 18, 2006, Mexico removed duties that had initially been placed on imports of several U.S. agricultural products on August 18, 2005. Tariffs ranging from 9 percent to 30 percent had been imposed on chewing gum, other confectionaries, certain fortified milk products and certain wines. However, on September 14, 2006, SECON announced the imposition of a 110 percent tariff on dairy blends for a period of 48 calendar days, from September 14, 2006 to October 31, 2006. Mexico took these actions based on its view that the United States had failed to comply with a WTO recommendation that the Continued Dumping and Subsidy Offset Act (CDSOA), known as the "Byrd Amendment," be brought into conformity with U.S. WTO obligations. The President signed legislation in February 2006 to repeal the CDSOA. The duties were ended on November 1, 2006.

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 port of entry do not always reflect agreements reached between U.S. Department of Agriculture officials and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at border points of entry, seaports and airports. While this situation improved during 2006, significant quantities of U.S. agricultural goods were still subject to rejection or delays at the Mexican border.

Mexico banned imports of U.S. beef in December 2003, following the detection of a positive case of Bovine Spongiform Encephalopathy (BSE) in Washington state. In March 2004, Mexico announced that it would accept U.S. boneless beef from cattle less than 30 months of age and it subsequently lifted restrictions on a number of offals and processed boneless beef products. In early 2006, Mexico lifted its ban on U.S. bone-in beef and in October 2006 the United States and Mexico reached an agreement allowing the import of U.S. dairy breeder cattle into Mexico. Mexico currently bans or restricts U.S.

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exports of some live cattle, ground beef and certain offals. The United States is working intensively to reopen the market as quickly as possible.

In June 2004, despite the lack of a protocol for returning live animals or adequate inspection facilities in Mexico, the Mexican Congress approved a measure requiring that the inspection of imported live animals take place in Mexico. The lack of adequate inspection facilities has hampered the importation of live animals. While Mexico's Congress appears to agree that the law should be changed, the provision remains in place pending agreement upon other modifications to the Animal Health Law.

In September 2005, Mexico's Secretariat of Health implemented a rule regulating the meat sector, establishing a zero-tolerance for the presence of salmonella in raw meat. This standard could lead to unnecessary product recalls and export restrictions for U.S. meat exporters.

In October 2005, Mexico lifted its Low Pathogenic Avian Influenza (LPAI) restrictions on poultry imports from nine U.S. states, but restrictions on eleven counties in Texas remain in place following a 2004 detection of High Pathogenic Avian Influenza. In August 2006, Mexico briefly closed its border to poultry shipments from the state of Michigan due to a LPAI finding in wild birds, but swiftly removed the restriction after receiving additional information from U.S. officials demonstrating that there was no danger to commercial poultry operations. U.S. officials continue to work with Mexican officials to ensure that no unnecessary measures or restrictions are taken.

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 non-uniformity at border ports of entry. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, non-transparent, and unreliable. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level from \$1 to \$50. However, Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits if the hours of customs operation on the U.S. and Mexican sides of the border were harmonized. Similarly, 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 registry without prior notice or subsequent explanation, effectively preventing U.S. exporters from shipping goods to Mexico.

Mexico requires import licenses for a number of commercially sensitive products. It also uses estimated prices for customs valuation of a wide range of products imported from the United States and other countries, including apples, milled rice, beer, distilled spirits, chemicals, wood, paper and paperboard products, textiles, apparel, toys, tools and appliances.

Since October 2000, the Mexican government has imposed a burdensome guarantee system for goods subject to estimated prices. Importers cannot post bonds to guarantee the difference in duties and taxes if the declared value of an entering good is less than the official estimated price. Instead they must 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 cash deposit is not returned for three months and is only returned if the Mexican government has not initiated an investigation and if the supplier in the country of exportation has provided an invoice certified by its local chamber of commerce. Mexican banks charge as much as \$500 to open an account for this purpose and \$50 for each transaction, making this a burdensome and costly regulation for businesses on both sides of the border. The governments of the United States and Mexico are discussing an exchange of customs data that would result in the elimination of the estimated pricing regime.

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. Mexico claims that there must be a need for additional bodies before it will recognize additional bodies. In January 2005, Mexico published a *convocatoria* (formal announcement, or “call”) stating that one or more Mexican government agencies are requesting applications from certification bodies for recognition with respect to electrical goods and electronics.

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, are still pending. The publication of the *convocatoria* was a positive first step, suggesting a willingness on the part of the Mexican government to consider additional certification bodies in the electrical and electronics sectors. Unfortunately, EMA has strongly resisted entry by non-Mexican certification bodies, both prior to and since the publication of the *convocatoria*. If U.S. certification bodies were able to certify products for the Mexican market, the potential increase in U.S. exports could be significant. There are estimates that the two U.S. companies with pending applications could generate \$2 million to \$3 million each annually in the product certification business in the electrical and electronic sectors.

In the telecommunications sector, Mexico initially indicated that it could be ready to begin implementation of Phase I of the Inter-American Telecommunications Commission’s (CITEL) Mutual Recognition Agreement (MRA) by June 2006 and possibly implementation of Phase II 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. certification bodies to certify equipment as meeting Mexican technical requirements. Mexico, however, did not meet the June 2006 goal and now estimates that it will not be ready to implement Phase I until the second quarter of 2007. Mexican implementation of Phase I and II of the CITEL 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 push the Mexican government on this issue.

Mexico has over 700 technical regulations called Normas Oficiales Mexicanas (NOMs) issued by a number of different agencies, each with its own conformity assessment procedures. While the Secretariat of Economy, the Secretariat of Agriculture (for a limited sub-set of its NOMs), the Secretariat of

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Communications and Transport (for one of its NOMs), and the Secretariat of Environment and Natural Resources have published some of the conformity assessment procedures, they have not published others.

On January 17, 2006, in Washington, D.C., then U.S. Trade Representative Portman and Mexican Secretary of Economy Sergio García de Alba signed an agreement on trade in tequila. Under the agreement, exports of tequila from Mexico to the United States will continue without interruption. Key elements include: a prohibition on restrictions of bulk tequila exports to the United States; a prohibition on Mexican regulation of tequila labeling or marketing outside of Mexico; a prohibition on Mexican regulation of the labeling, formulation, and marketing of products containing tequila outside of Mexico; creation of a “tequila bottlers registry” that identifies approved bottlers of tequila; continuation of current practice with respect to addressing Mexican concerns regarding the bottling of tequila in the United States; and establishment of a working group to monitor the implementation of the agreement. The working group met on November 15, 2006 to review the operation of the agreement.

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 “e-government” Internet sites to increase transparency of government processes and establish guidelines for the conduct of government officials. “Compranet” allows on-line processing of government procurement and contracting. While implementation has been successful, there is still a need for further regulatory and technological improvements throughout the Mexican government.

As of January 1, 2003, NAFTA limits the total value of contracts that Mexico’s parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission, respectively, may remove from coverage under 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 2006 value of the set aside for these entities was \$380 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Under NAFTA and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Mexico is obligated to implement certain standards and procedures for the protection of intellectual property, including procedures and penalties to be applied in certain cases of copyright piracy and trademark counterfeiting. Despite a fairly extensive set of IPR laws and an increase in the number of seizures and arrests during 2005 and 2006, the extent of IPR violations in Mexico remains dramatic. Monetary sanctions and other penalties, when imposed, are minimal and largely targeted at the bottom-tier of the piracy chain, for example, the small-scale vendors of infringing materials, who are numerous and easily replaced. In 2005, seizures of pirated goods increased 19 percent over 2004 (from 108.8 million articles seized to 129.5 million), and the number of articles seized in 2006 rose another 155 percent over 2005 to a total of 331 million articles seized. However, in 2005, only four people were sentenced to imprisonment for IPR violations. Three were sentenced to three years in prison, and another to one and a half years. In 2006, only one person was sentenced to prison for IPR crimes. Unfortunately, pirates and counterfeiters are often released and return to their illegal activities. 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 enforcement deficiencies.

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A concerted intelligence and enforcement effort to target organized crime, which is increasingly behind commercial piracy and counterfeiting in Mexico, is necessary to deter large-scale infringement activity, which is facilitated by the proliferation of Mexico's informal economy. Well-known markets selling pirated and counterfeit goods, such as Tepito in Mexico City, San Juan de Dios in Guadalajara, and some others in Monterrey and San Luis Potosi, continue to operate openly. Currently, it is estimated that six out of every ten new jobs generated in Mexico are in the informal sector. In 2003, the Procuratorate General of the Republic (PGR) created a dedicated IPR unit, which combines federal prosecutors and police, to make the enforcement regime more effective and efficient. In 2004, PGR authorized its Organized Crime Division to investigate cases of piracy and counterfeiting. In September 2006, PGR took the first step in combating organized crime related to intellectual property infringement by apprehending eight leaders of criminal gangs.

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.

On the legislative front, an initiative to give PGR the power to prosecute intellectual property crimes without first receiving a complaint from intellectual property holders or legal representatives has remained stalled in the Mexican Congress for more than two years. In May 2006, a law approved by the Legislative Assembly of the Federal District that would have allowed local authorities to close commercial establishments selling pirated or counterfeit goods was vetoed by Mexico City's mayor.

Copyright Protection

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates growing each year. Although enforcement efforts by the Mexican government seem to be improving, piracy levels continue to rise, resulting in closures of legitimate copyright-related businesses, according to industry sources. Pirated sound and motion picture recordings are widely available throughout Mexico, where piracy has shifted from traditional formats to optical discs (CD, DVD, CD-ROM). The International Intellectual Property Alliance estimates that trade losses due to copyright piracy in Mexico totaled \$1.3 billion in 2005, with pirated products taking 65 percent of the total music market; 64 percent of the business software market; 62 percent of the motion picture market; and 75 percent of the entertainment software market. In July 2003, the Mexican Congress amended the 1996 Mexican copyright law, and in September 2005 published the implementing regulations, thereby bringing the law into effect. Industry associations and Indautor, the Mexican government agency that regulates copyrights, claim that, in general, the new legislation brings Mexico into compliance with its obligations under the NAFTA IPR Chapter and the WTO TRIPS Agreement. Industry associations remain concerned, however, about exclusive rights to the public performance and exhibition of audio-visual works; Mexican contract formalities that could restrict the exercise of rights; and the requirement that publishing contracts include certain obligations (e.g., the number of editions; the number of copies or reproductions of each edition; whether the material delivery is or is not exclusive; and the remuneration that the author or copyright holder should receive). The amendment also did not raise the minimum amount that an infringer has to pay to a rights holder to compensate for the injury caused by infringement. The law provides that the indemnification for moral and economic damages cannot be lower than 40 percent of a work's sale price.

Patent, Trademark, Pharmaceutical and Agricultural Chemical Data Protection

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), an independent agency that operates under the auspices of the Secretariat of Economy.

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U.S. pharmaceutical and agricultural chemical companies are concerned about the lack of coordination between IMPI and other Mexican agencies with regard to government procurement of unauthorized copies of patented pharmaceuticals. In 2003, the Secretariat of Health modified Mexican health regulations to require that, starting with purchases scheduled for delivery on January 1, 2003, IMSS (Mexican Social Security Institute) and ISSSTE (Social Security Institute for Government Workers) would purchase only legitimate versions of products patented in Mexico. Unfortunately, it appears the new regulations are not being fully implemented because of financial constraints at IMSS and ISSSTE.

In September 2003, the Secretariats of Health and Economy implemented a Presidential decree regarding cooperation between the two agencies. According to the decree, IMPI is required to publish a list of pharmaceuticals covered by a patent in Mexico. A company applying to the Secretariat of Health for safety and health registrations for sale of pharmaceutical products must show proof of patent and proof that test data was obtained in a legitimate matter. According to the regulation, failure to present proof of patent and test data will result in denial of the registration. Also, if a company provides false information, it is now subject to both civil and criminal proceedings. Implementation remains weak, however. U.S. industry reports that the Federal Commission for Protection from Sanitary Risks, which handles drug registration, still continues to authorize the manufacture of pharmaceutical products by unauthorized companies. Stricter compliance with the 2003 decree would also help eliminate unauthorized copies of patented pharmaceuticals from the supply chain for IMSS and ISSSTE.

Mexico took a step forward when it published a Presidential decree in May 2006 that amends the Mexican Health Law and the Mexican Penal Code to raise to the felony level the act of selling, distributing, or transporting counterfeit pharmaceuticals, or fostering the forgery, of or tampering with, pharmaceuticals, medicines, active ingredients, raw materials, or additives used in products for human consumption. This law also applies felony status to committing or fostering the forgery of, or tampering with, the packaging of such products, as well as to the selling, distributing, or transporting of such forged or tampered packaging.

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. The time can be lengthened by jurisdictional and procedural disputes within the Mexican government, as well as by internal coordination problems within the Mexican Institute of Industrial Property (IMPI) and between IMPI and the Procuratorate General of the Republic.

Border Enforcement of Intellectual Property Rights (IPR)

NAFTA Article 1718 and Article 51 of the TRIPS Agreement obligate Mexico to allow U.S. IPR holders to apply to Mexican authorities for suspension of release of counterfeit trademark or pirated copyright goods. IPR holders seeking to use the procedure must obtain an order from IMPI that directs customs officials to detain the merchandise. Companies requesting such actions generally report positive outcomes. However, U.S. industry has sought increased cooperation and communication between IMPI and Mexican customs in order to prevent the release of counterfeit goods into the Mexican market.

SERVICES BARRIERS

Telecommunications

The 2005-2006 Global Information Technology Report's Networked Readiness Index of 115 nations ranked Mexico number 55, up from 60 the year before, on a scale measuring the degree of information and communication technology development. Mexico ranked well in the readiness and usage indices, but poorly in the environment component index, earning especially low scores in the effectiveness of law-making bodies and burden of government regulation. The report cites the Mexican government's passivity in dealing with this sector and Mexico's consequent lack of competitiveness in telecommunications. It calls for a more independent Federal Telecommunications Commission (COFETEL) to foster increased competition. An October 2006 OECD report entitled *ICT Diffusion to Business: Peer Review Country Report Mexico* singled Mexico out as being the second most expensive country as far as residential telephone rates are concerned, and the most expensive for business charges, due to the continuing low levels of competition in the domestic telephony market. The report recommended that the regulatory environment in communications be strengthened in order to allow markets to operate more effectively, thereby helping to reduce communications prices and improve services.

Promoting competitiveness in the telecommunications market continues to be an enormous challenge for Mexico. Although the Fox Administration initially identified this as a priority goal for Mexico, virtually no progress was made in its six years in office, and hopes that the new administration can do better are high.

Telmex dominates the market and is perceived to exercise influence over the legislative process, the courts, governmental policy departments (in particular the Secretariat of Communications and Transport, or SCT), and the telecommunications regulatory agency COFETEL. (For example, Telmex successfully lobbied SCT for several years to deny cable television operators concessions to enter the telephone business until SCT assured Telmex that it would have the right to also provide video services).

In March 2006, Mexico's Congress passed the Radio and Television Law, which, among other things, granted COFETEL stronger regulatory powers (see television below regarding other effects of the law). COFETEL subsequently underwent a complete change in commissioners in July 2006. These enhanced powers are welcome, but it remains to be seen whether COFETEL will have the political muster to use them. The United States will monitor to see whether COFETEL will be able, and willing, to use such enhanced powers to improve the competitive environment in the Mexican telecommunications market.

The recent debate over the "Convergence Accord," SCT's proposal to allow telecommunications companies to provide so-called triple-play services (voice, data and video), highlighted the degree to which COFETEL and the Federal Competition Commission (COFECO) are asserting their independence with regard to concerns over Telmex's market dominance. Soon after SCT released its "convergence" plan, COFECO voiced support for the claims of cable companies that the accord would unfairly advantage Telmex. COFETEL also voiced opposition, asserting that "triple play" was already possible under existing legislation. The final version of the Convergence Accord, published on October 3, 2006, took into account some of the concerns raised and did impose some limits on Telmex's ability to use its market dominance for anticompetitive purposes. For example, it establishes a committee to ensure that Telmex complies within 200 days with the requirements that it guarantee interconnection, interoperability, and number portability before allowing Telmex to change its concession to allow video services. It also gives power to COFETEL and Hacienda (Mexico's finance ministry) to determine whether Telmex should pay a fee to modify its license to provide video services. The provisions of the

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published accord also allow mobile phone companies, radio communications systems and satellite TV providers to expand their portfolio of services.

After an almost two year delay, in September 2006 COFETEL attempted to take a first step in resolving a dispute between fixed and mobile carriers by announcing termination rates for fixed-to-cellular calls. This was also designed to pave the way to implement a long distance “calling party pays” (“CPP”) system for wireless services that will shift all interconnection charges to the company (and ultimately the customer) from whence calls originate. The announced rates were set to start (retroactively) from 2005 at 1.71 pesos/minute (about 16 U.S. cents) and gradually decreased to .90 pesos/minute (about 8 U.S. cents) by 2010. COFETEL claims that the rates, plus rounding and billing fees, are cost-oriented, although it has not responded to the U.S. Government request for information on the basis used for calculating the per minute rates. The announced rates, however, have not taken effect due to injunctions filed against COFETEL, both by Telcel asserting that the rates are too low and by long-distance carriers asserting the opposite. In the meantime, Telcel and some fixed and wireless companies notified COFETEL that they had reached an agreement on a termination rate of 1.54 pesos/minute (14 U.S. cents) for 2006. COFETEL accepted this arrangement, and the CPP system for international calls entered into effect on November 4, 2006. Several carriers have already negotiated rates through 2010, with only a handful not yet having agreed to implement CPP. There are U.S. industry estimates that the higher interconnection rates agreed upon between the companies will cost U.S. industry and consumers hundreds of millions of dollars.

U.S. companies who form joint ventures with Mexican partners to obtain authorizations (called “concessions” under Mexican law) to provide public network and satellite-based services routinely face delays in obtaining their authorizations, with time frames extending far beyond the four-month period established in COFETEL’s Satellite Communication Regulations. The lack of clarity regarding the roles of COFETEL and the SCT in granting the authorizations makes it difficult for the companies to seek help in resolving delays.

COFETEL has made headway on approving the petition of the Federal Electronics Commission to allow data service to be provided over electric lines (“broadband over powerline”).

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 March 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.

U.S. firms remain unable to penetrate the Mexican television broadcast market, despite the fact that both Televisa and TV Azteca benefit from access to the U.S. market. TV Azteca has used the Mexican legal system against a U.S. firm trying to enter this sector. Such actions have included TV Azteca personnel directing a raid, with the support of Mexico City auxiliary police, on production facilities to stop production of a show in Mexico and thereby hinder or discourage additional work. Mexico’s television advertising market is estimated to be worth in excess of \$2.5 billion annually.

Competition

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. There have

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been calls, including by key members of the Calderon transition team, to open up sectors of the Mexican economy currently dominated by monopolies or duopolies, though doubts remain over whether the new law and the new administration will be able to make these sectors truly competitive.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's oil and gas policy is highly restrictive with regard to private equity investment. The 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 many years under this restriction. Recently, the Mexican government has explored ways of allowing additional foreign investment in the energy sector that are consistent with its constitution, hoping to attract capital that will strengthen the highly-leveraged national oil company, Pemex. So far the reform efforts have had little success.

Other laws limit participation in certain sectors or activities (e.g., forestry exploitation) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real property 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 non-restricted sectors that exceed a 49 percent share of an investment with a value greater than \$150 million (as adjusted each year for growth in Mexico's nominal GDP). All of these restrictions are incorporated into the NAFTA.