MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $74.3 billion in 2007, an increase of $10.0 billion from $64.3 billion in 2006. U.S. goods exports in 2007 were $136.5 billion, up 1.9 percent from the previous year. Corresponding U.S. imports from Mexico were $210.8 billion, up 6.3 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 $22.4 billion in 2006 (latest data available), and U.S. imports were $14.8 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $11.4 billion in 2005 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $1.7 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $84.7 billion in 2006 (latest data available), up from $75.1 billion in 2005. U.S. FDI in Mexico is concentrated largely in the manufacturing, finance, and nonbank holding companies 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 nontariff 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

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 $12.7 billion in agricultural products to Mexico in 2007, compared to $10.9 billion in 2006. 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 U.S. corn, dry beans, nonfat dry milk, and orange juice.

During the past year, Mexico's Secretariat of Economy (SECON) issued a new decision relating to ongoing antidumping cases affecting U.S. apples. Mexico is the largest export market for U.S. apples. 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 members of the Northwest Fruit Exporters (NFE). On July 3, 2007, SECON ruled that the initial antidumping duty on U.S. apples established in 2002 is without effect, leaving the November 2006 decision in place for NFE members only and no duties for non-NFE members.

In April 2006, SECON decided to continue antidumping duties on U.S. beef and beef by-products for an additional 5 years after completing a sunset review investigation of the initial duties imposed in 2000. In addition, Mexico's modifications 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, were finalized in May 2007 when the Chapter 19 panel decided the modifications were consistent with its earlier findings. In addition, in September 2007, SECON declined to initiate an annual review requested by a U.S. exporter of beef. 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.

December 31, 2007 marked the end to safeguard measures Mexico had put in place on U.S. chicken leg quarters. As of January 1, 2008, there are no tariffs or trade related restrictions on U.S. chicken leg quarter imports into Mexico.

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 (USDA) officials and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at border points of entry, seaports, and airports. Despite continued work during 2007 to minimize these types of barriers, significant quantities of U.S. agricultural goods were still subject to rejection or delays at the Mexican border. For example, in December 2007, Mexico closed 10 ports of entry for pork and did not provide a satisfactory explanation.

Mexico banned imports of U.S. beef in December 2003, following the detection of a positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. 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 cattle less than 30 months of age 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 continues to ban or restrict U.S. exports of some live cattle, ground beef, and certain offals. The United States is working intensively to fully reopen the market for live cattle and beef products based on the guidelines of the World Organization for Animal Health (OIE) as quickly as possible.

In 2003, Mexico agreed to a gradual opening of its market to U.S. potatoes. This opening had been delayed following a rise in nematode interceptions on potato shipments; however, U.S. producers have taken successful steps to reduce pests, and are now seeking Mexico's fulfillment of its 2003 agreement to grant access beyond a 26 kilometer zone within the international border.

On November 21, 2007, the Secretariat of Health informed USDA that Mexico would lift the ban on imports of U.S. spinach. In September 2006, Mexico had banned U.S. spinach from entering Mexico due to an outbreak of *Escherichia coli* in spinach produced in California. The lifting of the ban stipulates that the U.S. industry will provide on each shipment a USDA/APHIS phytosanitary certificate that specifies the state of origin in which the product was produced and that the product (if produced in California) was produced under the "Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens," and by a producer that has signed the California Leafy Green Products Handler Marketing Agreement (LGMA). Finally, the bill of lading must bear the LGMA Service Mark.

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. On July 25, 2007, Mexico published modifications under its new Animal Health Law which included a provision that allows inspections for live animals to resume on the U.S. side of the border.

In October 2005, Mexico lifted its Low Pathogenic Avian Influenza (LPAI) restrictions on poultry imports from nine U.S. States, but restrictions on 11 counties in Texas stemming from the 2004 detection of High Pathogenic Avian Influenza remained in place until they were finally lifted on July 19, 2007. 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.

Beginning in May 2007, Mexico suspended the approval of any new U.S. meat processing facility to export product into Mexico. A growing number of companies are now effectively excluded from shipping into Mexico despite meeting all sanitary and health guidelines outlined by the USDA Food Safety Inspection Service. The United States provides access to all Mexican meat processing facilities that are approved to export by Mexico's competent authorities.

Biotechnology

Mexico has not established any significant barriers to the importation of crops or food derived from biotechnology. While Mexico currently lacks implementing regulations for its Biosafety Law passed in February 2005, the implementing regulations are expected in the next few months. These regulations will 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 also 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. However, 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. 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 some 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 3 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.

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, have been 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 recently 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. There are estimates that the two U.S. companies with pending applications could each generate $2 million to $3 million annually in the product certification business in the electrical and electronic sectors.

In the telecommunications sector, Mexico has yet to implement Phase I of the Inter-American Telecommunications Commission’s (CITEL) Mutual Recognition Agreement (MRA), which it was scheduled to do by June 2006, and implementation of Phase II, due to be completed by March 2008, is unlikely. 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 or its amended target of 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 press the Mexican government on this issue.

Mexico has over 700 technical regulations called Normas Oficiales Mexicanas (NOMs) 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.

As a result of a trade dispute with El Salvador over Mexico's "plant requirement," Mexico was compelled to remove (via a Presidential decree) from its health regulations the requirement for Salvadoran drug companies to have a manufacturing plant in Mexico in order to be able to register, and therefore import and sell, pharmaceutical products. A draft amendment to extend this treatment to other foreign pharmaceutical manufacturers was shelved near the end of 2007, leaving El Salvador as the only country that does not face the "plant requirement."

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 establish guidelines for the conduct of government officials. "Compranet" provides on-line government procurement and contracting. While implementation 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 remove 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 2006 value of the set aside for these entities was $380 million.

Mexico is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite a fairly extensive set of IPR laws and a clear commitment to stronger enforcement on the part of the Mexican government, the extent of IPR violations in Mexico remains significant. Monetary sanctions, when imposed, are low, and criminal convictions, though up from last year, remain rare due to legal and judicial barriers to effective IPR protection. Mexican prosecutors say they have shifted the focus of their enforcement efforts from confiscation of infringing goods to seizures of more valuable assets, such as real estate and equipment, and to higher quality arrests. In 2007, the special IPR unit of the Attorney General's Office (PGR), which was formed in 2003, reported seizures of more than 190 million infringing articles, versus 332 million articles seized in 2006. It also reported the dismantling of 291 small-scale laboratories and 11 large-scale factories for production of various sorts of infringing products, and the seizure of 16 buildings. Of the seized goods, 7,667 were disc burners being used to pirate music, movies, and software. This number exceeds seizures of burners from the previous 6 years combined. In addition, the special IPR unit indicted 166 persons for criminal IPR infringement in 2007, versus 158 in 2006. However, in 2007, only five of these persons were convicted and sent to jail, compared to two in 2006. Many of those indicted spent up to several months in jail awaiting a verdict on their cases. Administrative enforcement in Mexico is handled by the Mexican Institute of Industrial Property (IMPI). In 2007, IMPI increased its administrative enforcement staff and conducted 3,798 inspection visits, seized over $1 million worth of infringing products, and imposed fines worth more than $3 million.

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 enforcement. 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 the past year, Mexico City authorities have 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. Industry estimates that trade losses due to copyright piracy (not including movie industry losses) in Mexico totaled $1.2 billion in 2007, with pirated products taking the majority of the following markets: music, business software, home videos, and the entertainment software market.

In June 2006, the Mexican federal government and concerned industries signed a national agreement in which all committed to cooperation in combating intellectual property infringement. President Calderón has publicly pledged his administration's commitment to combat intellectual property crimes and other forms of illegal commerce. In March 2007, the government of the State of Mexico signed a similar state-level accord. The municipal government of Toluca (the capital of the State of Mexico) signed a city-level accord subsequently. Industry representatives report significant cooperation between federal agencies and State of Mexico and Toluca authorities in protecting IPR since then. Other state and city governments, starting with Morelos and Ciudad Juarez, are expected to sign such agreements in 2008. In a separate initiative, the government of the State of Jalisco signed an agreement with IMPI and the Business Software Alliance in 2007 to ensure that all the software used by state government offices is properly licensed.

An initiative to give PGR the power to prosecute intellectual property crimes *ex officio* (*i.e.*, without first receiving complaints from right holders or their legal representatives) was approved by the Mexican Senate in April 2007 and is awaiting action in the Chamber of Deputies, Mexico's lower house.

U.S. pharmaceutical 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 authorized versions of products patented in Mexico. However, it appears the new regulations are not being fully implemented, possibly due to 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 to ensure that marketing approval is not granted for unauthorized copies of patented pharmaceuticals. Since the beginning of 2007, there have been no new reports of registrations of unauthorized copies of pharmaceuticals, though several cases of registrations granted in 2006 to patent-infringing products remain to be resolved.

Mexico published another Presidential decree in May 2006 that amended 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 4 months, administrative actions related to trademark enforcement (*e.g.*, fines and closures) 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 IMPI and PGR.

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 should be held accountable to the government for the design and implementation of access pricing rules that are pro-competition. Promoting competitiveness in the telecommunications market continues to be a challenge for Mexico. The Calderon Administration has stated that increasing competition in Mexico's telecommunications sector is a top priority.

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.

In August 2007, the Mexican Supreme Court (SCJN) ruled that Article 28 of the April 2006 Radio and Television Law was anticompetitive. Article 28 allowed broadcasting companies to keep and use at no cost the spectrum freed through digitalization. The Court ruled that spectra have to be granted through public bidding to ensure competition and prevent the creation of monopolies. Currently the Mexican Legislature is working on a new media law, based on the SCJN ruling. The Court also ruled that Cofetel commissioners should be appointed by the President and could not be rejected by the Senate.

Regarding Cofetel, there is still much uncertainty regarding its future leadership. The SCJN is expected to decide whether two officials who were rejected as Cofetel commissioners by the Senate in late 2006 will be reinstated. The current Cofetel leadership has been applauded by pro-competition analysts for insisting that Telmex comply with interconnection, interoperability and number portability requirements before receiving permission to complete its triple-play offering and provide video. Telmex has repeatedly stalled in signing interconnection agreements with many large cable television operators.

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

In October 2007, the Mexican Secretariat for Communications and Transport (SCT) published its plan for spectrum auctions for wireless frequencies with the goal of encouraging private sector investment in the deployment of wireless broadband throughout the country. The bands being auctioned are 1.9 GHz, 3.4-

3.7GHz, 1.7-2.1 GHZ and 71-76/81-86 GHz. Because the spectrum is for wireless utilization, foreign companies are welcome to participate.

Regarding fixed line telephony, the relevant committee in the Mexican Chamber of Deputies is currently analyzing a proposal to eliminate the existing restrictions to foreign investment.

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.

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 Calderon administration have called for opening up sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has occurred (see section on services barriers). Still, it remains to be seen 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. 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, although the Calderon administration has identified energy reform as a priority.

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 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). Mexico included all of these restrictions into its NAFTA commitments.