MEXICO

In 1997, the U.S. trade deficit with Mexico was $14.5 billion, a decrease of $1.7 billion (10.5 percent) from the deficit of $16.2 billion in 1996. U.S. merchandise exports to Mexico were $71.4 billion in 1997, an increase of 25.8 percent from the same period in 1996. In 1997, Mexico became the second largest export market for the United States, surpassing Japan. Imports from Mexico were $85.9 billion in 1997, an increase of 17.7 percent over the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Mexico in 1996 was $18.8 billion, an increase of 17.3 percent from 1995. U.S. FDI is concentrated largely in the manufacturing and financial sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico, entered into force on January 1, 1994. The NAFTA progressively eliminates tariffs and non-tariff 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 standards and for encouraging environmentally-friendly practices and bolstering environmental protection 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 non-tariff restrictions on certain agricultural items will be phased out over a 15 year period.

The NAFTA parties implemented the fifth annual tariff reductions on January 1, 1998. This reduced Mexico's average duty on U S. goods from 10 percent prior to the NAFTA to below three percent. Currently, eighty percent of U.S. manufactured goods enter Mexico duty free. In 1996, the NAFTA countries completed a trilateral agreement to accelerate tariff reduction on certain goods. The United States, Mexico and Canada embarked on a second round of accelerated tariff reduction negotiations due to be completed in 1998. The NAFTA's tariff provisions also protected U.S. exporters from the Government of Mexico's 1995 response to its macroeconomic " peso" crisis when it raised tariffs from 20 to 35 percent (and applied quotas) on textile, apparel and footwear articles imported from countries with which Mexico had no free trade agreement.

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 response has been excessive; that is, its action penalizes U.S. exports to a greater extent than the U.S. action affected Mexican broom exports. The United States requested consultations under the dispute settlement provision of the NAFTA concerning Mexico's retaliatory actions. 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.

Antidumping Actions

The U.S. Government is concerned about 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 provisional antidumping measure on HFCS. U.S. exporters have complained about a lack of transparency in Mexico's antidumping procedures, and about inconsistencies between Mexico's actions and its international obligations. U.S. exporters have also complained that the process in Mexico for appealing antidumping determinations can be time-consuming and cumbersome.

Administrative Procedures and Customs

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, including the lack of 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.

Other customs-related problems include requirements to list serial numbers on invoices, laborious inspections at the border, a requirement that importers be registered with the Ministry of Finance, difficulty in clearing low-value shipments to importers not on the importer registry, lack of standard procedures to address complaints, and unavailability of prompt and reliable information on Mexican regulations.

Exporters of agricultural products complain that the Mexican government administers NAFTA tariff rate quotas for a number of products in a trade-distorting manner. The exporters state that obtaining import licenses can be very cumbersome and time-consuming, and that the government manipulates the timing of auctions for licenses to the disadvantage of U.S. exporters.

Both the United States and Mexico maintain 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 partially harmonized its personal duty exemptions for returning residents in late 1995, raising its monthly limit from $350 to the U.S. level of $400 and permitting pooling by family members (e.g., a family of four can bring back $1,600 in goods duty-free). Pursuant to the provisions included in the Treasury Department's FY 1998 appropriation, the United States remains interested in greater harmonization of these provisions by the three NAFTA countries, including broader product coverage for Mexico's duty exemptions.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Standards

Mexican sanitary and phytosanitary (SPS) standards have created barriers to exports of certain U.S. agricultural goods, including grains, citrus, potatoes, apples, stone fruit, and meat. However, recent progress has been made in resolving SPS issues surrounding cherries, Christmas trees, and sorghum. 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. 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. U.S. Government maintains an ongoing dialogue with Mexico on these issues in the NAFTA Sanitary and Phytosanitary Measures Committee.

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.

Through 1997, only Mexican entities could qualify to be recognized as competent to perform conformity assessment. The requirement to perform testing in Mexico-based laboratories had 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.

Since all imports are subject to inspection at the border as well as at the retail level, and domestically produced goods face no equivalent border inspection requirement (domestic goods are subject only to spot inspections in the market), enforcement of compliance with NOM certification appears to be more stringent in the case of imports. The lack of sampling or "spot" inspection at the border results in delays and additional costs to U.S. exporters not incurred by domestic Mexican producers. U.S. exporters also report inconsistencies in certification enforcement and determination at different ports of entry.

Mexico

On October 24, 1997, the Mexican Ministry of Commerce and Industrial Development (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 "report of test" (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.

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. Private sector accreditation body(ies) in Mexico will be able to apply for recognition to provide accreditation services for the range of conformity assessment activities: Testing and calibration laboratories, certification bodies, and verification units. This is a significant change in Mexican policy and it may take some time before bodies in Mexico are approved by SECOFI. Until the private sector accreditation body is established (currently projected for spring 1998), the DGN will continue its accreditation activities.

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 and will continue to be monitored closely by the U.S. Government. These labeling standards took effect in 1997. Exporters have changed or are in the process of changing their packaging to comply with these standards. 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

During the October, 1997 trilateral NAFTA government procurement meeting in Ottawa, the Governments of Canada, the United States and Mexico reaffirmed their assent -- made by ministers at the March 1997 NAFTA Commission meeting -- to raise the threshold from $50,000 to $100,000 for contracts which may be "set aside" for "national-only" bidding. Unlike Canada and the United States, which will do this by executive order, Mexico will have to obtain congressional approval to make the same change. This amendment, when carried out, will allow NAFTA governments to simplify the procurement procedures used to purchase goods and services below $100,000 resulting in significant cost savings and a more efficient administrative procurement process.

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 intensively to reduce Mexico's overly-extensive draft list. If Mexico does not soon establish a satisfactory core priority list, Canada and the United States may have to explore other options available under the Agreement.

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 have been passage of a new copyright law and increased penalties for copyright violations, Mexico's ratification of the international convention for the protection of new varieties of plants (UPOV), and passage of an integrated circuit designs law in December 1997. Mexico has not yet released implementing regulations for the UPOV.

In addition, the number of search and seizure actions undertaken by the PGR (Mexican federal Attorney General's office) in recent years has increased, but remains uneven. Mexico and the United States have created a bilateral working group on IPR to discuss enforcement and other matters. The group met three times in 1997, and should meet on a regular basis in 1998.

Copyright

The government of Mexico passed a copyright law on December 24, 1996, which addressed a number of inadequacies in the former law. The 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 new law appears to provide a satisfactory legal framework, in practice, criminal penalties have been infrequent and mild.

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 1996 totaled $414 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 been sentenced to jail.

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.

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. companies 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. The United States will work closely with Mexico to assure that Mexico is providing effective border enforcement of intellectual property rights, as the NAFTA requires.

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 may use dubbing; all other films are restricted to using sub-titles. Because the market preference is for dubbed films, however, this provision would act as a barrier to U.S. (English language) films. Although Mexican trade officials gave verbal indications in the past that in order to make the law consistent with NAFTA requirements U.S. films would be exempted from this provision when Mexico promulgates its implementing regulations, Mexico has taken no corrective action yet. U.S. industry is pursuing remedies available to it under Mexican law.

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.

The NAFTA will eventually remove most operating and investment restrictions on land transportation services, thus facilitating the freer flow of goods and passengers across the border. On December 18, 1995, the United States and Mexico were to have permitted access to each other's border states for the delivery and backhaul of cargo. However, on that date, the United States announced it would accept applications from Mexican motor carriers to operate international services between Mexico and the states of California, Arizona, New Mexico, and Texas, but that the final processing of applications would be postponed until continuing concerns about commercial vehicle safety and security were addressed.

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 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 intenational traffic in Mexico and exacerbate the longstanding 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.)

Mexico

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. Mexico requires that 58 percent of the settlement rate on inbound international traffic be paid to Telmex even if Telmex is not the international carrier responsible for the traffic. This surcharge gives Telmex an additional incentive not to negotiate lower settlement rates and provides Telmex with revenue from services that are being supplied by its competitors. The Government of Mexico also 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. Each of these measures and policies reinforces Telmex's market dominance and seriously erodes the basis for effective competition in Mexico's telecommunications market. The 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. We continue to monitor implementation of these standards in the NAFTA Telecommunications Standards Subcommittee (the TSSC). One issue which could be problematic relates to a standard for immunity to radio frequency interference. We remain to be convinced that the standard Mexico has introduced is necessary, and plan additional consultations on this issue in the TSSC. Last year's section 1377 review also noted progress on an agreement relating to the exchange of test data relating to product safety. A final agreement was concluded on April 18. We are unaware of any problems relating to the implementation of this agreement.

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 controlled by 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 and Northern Pacific Railroad 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). Regulations governing the concessions are currently being drafted and the first airport concessions are not likely to be granted before mid-1998.

While Mexico actively seeks and approves foreign investment in natural gas transportation, distribution and storage systems, (for example, concessions in Mexicali, Hermosillo, and Chihuahua), Mexico 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 to the WTO 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.