

# MEXICO

## TRADE SUMMARY

U.S. goods exports in 2013 were \$226.2 billion, up 4.7 percent from the previous year. Corresponding U.S. imports from Mexico were \$280.5 billion, up 1.0 percent. The U.S. goods trade deficit with Mexico was \$54.3 billion in 2013, down \$7.3 billion from 2012. 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 \$27.4 billion in 2012 (latest data available), and U.S. imports were \$15.1 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$37.6 billion in 2011 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$4.9 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was \$101.0 billion in 2012 (latest data available), up from \$90.8 billion in 2011. U.S. FDI in Mexico is primarily concentrated in the manufacturing, nonbank holding companies, and finance/insurance sectors.

## Trade Agreements

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (“the Parties”), entered into force on January 1, 1994. Under the NAFTA, the Parties progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the Parties concluded supplemental agreements on labor and the environment, under which the Parties are obligated to effectively enforce their environmental and labor laws, among other things. The agreements also provide frameworks for cooperation on a wide variety of labor and environmental issues.

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns that our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

## IMPORT POLICIES

### Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial products and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated its 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*).

Mexico imposes a value-added tax (VAT) on sales of goods and services. Certain food products are exempt from the VAT. U.S. producers have complained that, while Mexico imposes the VAT on imports of U.S. nutritional supplements at the time of entry, it does not collect the VAT on sales of similar domestic products at the point of sale.

The Mexican government passed fiscal reform in October 2013, which included harmonization of the VAT along the northern border to 16 percent, imposition of the VAT on temporary imports, a new sugary beverage tax, and taxes on “junk” food, pet food, and chewing gum. The “junk food tax” is an additional 8 percent tax applied to nine food categories, and is based on the caloric density of those foods, which includes cereals, snack foods, confectionary, and flavored beverages.

### **Agricultural Products**

The United States exported \$18.9 billion in agricultural, fishery, and forestry products to Mexico in calendar year 2013, compared to \$19.7 billion in 2012. Mexico is the United States’ third largest agricultural export market.

### **Chicken**

On February 8, 2011, the Mexican Secretariat of Economy (SECON) announced an antidumping investigation on U.S. fresh, chilled, and frozen chicken leg quarters (CLQ). SECON issued the final determination in the investigation on August 6, 2012. Final dumping margins ranging from 25.7 percent to 127.5 percent were identified, but corresponding antidumping duties were not imposed. Rather, the Mexican Foreign Trade Commission (COCEX) determined that additional duties might increase prices at a time when Mexico’s chicken industry was suffering an outbreak of highly pathogenic avian influenza. On September 3, 2012, interested U.S. parties filed an appeal of the final antidumping determination with the NAFTA Secretariat. The NAFTA panel is currently being composed. On October 9, 2012, members of the Mexican poultry industry filed a notification with SECON asking it to rescind its decision not to apply antidumping duties and to deem illegal its decision to identify, in its final determination, lower dumping margins than it identified in its preliminary determination. The U.S. Government continues to monitor the situation while all duties are in abeyance and the respective administrative processes are stalled.

### **Import Licensing**

On December 5, 2013, Mexico published, in the Mexican government gazette, new licensing procedures for the importation of certain steel products. These procedures were made effective on January 27, 2014. Two of the stated goals of the procedures are to combat fraud and improve statistical monitoring. Although the new import licensing system is supposed to issue licenses automatically, industry representatives have reported long delays in the review and issuance of licenses. These administrative delays have led to disruptions back through the supply chain, as shipments must remain at the border, thereby incurring additional costs. The U.S. Government is collecting additional information on the problem and will work with industry stakeholders and the Mexican government to address the issue.

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

Despite improvement in some areas, U.S. exporters continue to express concerns about Mexican customs administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; and uneven enforcement of Mexican standards and labeling rules. Numerous U.S. companies reported in 2012 that the Servicio de

Administración Tributaria (SAT), Mexico's tax authority, is verifying NAFTA origin for the entry of products dating back to 2007. While verifications are permitted under NAFTA, the breadth of these verifications and the extent of the information being requested were reportedly overly burdensome and required the submission of confidential business information with no assurance that it would be protected from disclosure. In some cases, SAT reportedly denied an exporter's claim for NAFTA preference, even after the submission of documentation demonstrating that the products meet NAFTA's rules of origin requirement. The fines and penalties in such cases can be very high (in excess of \$10 million), and there are substantial costs associated with complying with the verification and even greater legal costs for appealing the rulings. Following discussions with various stakeholders, SAT committed to adopt new procedures to address industry complaints, including a "selective sampling" procedure implemented on a case-by-case basis. The U.S. Government will continue to monitor the situation and urge SAT to resolve all pending audit cases in a timely manner.

Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level (below which shipments are exempt from customs duties) from \$1 to \$50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but exporters cite delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law. The U.S. and Mexican Governments are actively working to find a solution that would allow pre-clearance pilot programs.

On June 1, 2012, the Mexican government implemented the Ventanilla Unica de Comercio Exterior Mexicana (VUCEM), or Single Window for Trade. The VUCEM allows users to transmit trade information required by Mexican authorities electronically. Mexican importers and U.S. exporters have experienced some delays and difficulties with the process, but the Mexican government has been working to address these concerns.

## **GOVERNMENT PROCUREMENT**

The Mexican government uses several "electronic government" Internet sites to increase the transparency of government procurement processes and to provide guidelines for the conduct of government officials. One such site, CompraNet, provides an online interface for conducting government procurement at the federal level. CompraNet was developed by Mexico's Ministry of Public Administration to modernize and increase transparency in the procurement of goods, services, leases and public works for the federal public administration and the governments of Mexican states that use the online service. Under Mexican legislation, all federal agencies must post on CompraNet the calls for bids, terms, notes, results and contracts related to their procurement. In addition, all state, national, and international bids funded with federal monies are announced through CompraNet.

The 2012 law on Public-Private Partnership (PPP) allows the Mexican government to enter into infrastructure and service provision contracts with private companies for up to 40 years. The PPP Law also provides more legal certainty to private investors through the equal distribution of risks, facilitating access to bank loans, and harmonizing existing public-partnership models into one federal law. All investors are allowed to participate in bidding processes, except for some restricted sectors in accordance with the existing Foreign Direct Investment Law.

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

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

Mexico was listed on the Watch List in the 2013 Special 301 report. The report noted inadequate intellectual property rights (IPR) enforcement and the wide availability of pirated and counterfeit goods mostly via physical and online notorious markets. Criminal enforcement of IPR suffers from weak coordination among federal, state, and municipal officials, limited resources for prosecutions, lack of long-term sustained investigations to target high-level suppliers of counterfeit and pirated goods, and the need for deterrent level penalties. The United States continued to encourage Mexico to provide its customs officials with *ex-officio* authority; to provide Mexican Customs and the Mexican Industrial Property Institute (IMPI) with the authority to act administratively against the transshipment of alleged counterfeit and pirated goods; to give the Attorney General's Office the authority to prosecute transshipments of alleged counterfeit and pirated goods; and to enact legislation to strengthen its copyright regime, including by implementing the World Intellectual Property Organization (WIPO) Internet treaties and by providing stronger protection against the unauthorized camcording of motion pictures in theaters. Mexico took some positive steps in 2013, such as formally joining the Madrid Protocol, which provides a simple streamlined process for rights holders to apply for trademark protection in Mexico and other member countries. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

## **SERVICES BARRIERS**

### **Telecommunications**

OECD surveys have recommended that Mexico improve mandatory access to the local loop; formally regulate fixed-to-mobile termination charges; and introduce mandatory roaming to enable smaller mobile companies to use the network of Telcel, (Mexico's largest mobile phone company). The OECD also suggested that the industry regulator, Cofotel (the Federal Telecommunications Commission), needs greater independence both from leading companies in the sector and from its parent ministry, the Ministry of Communications and Transportation (SCT).

In June 2013, the Mexican Congress passed (and then the Mexican states ratified) a sweeping constitutional reform that aims to open up the telecommunications sector to more competition and improve services for Mexican consumers, addressing the majority of concerns outlined in the OECD survey of Mexico's telecommunications sector. The reform will directly affect telecommunication giant America Movil, which serves 70 percent of mobile subscribers, and television heavyweights Televisa and TV Azteca, which together hold 90 percent of their respective market of free-to-air TV. The reform creates a new telecommunication regulator, the Federal Telecommunications Institute (IFT), and gives both IFT and the Comision Federal de Competencia Economica (CFCE) constitutional autonomy and more regulatory authority, including market regulation and tools for combating monopolies and monopolistic practices.

Furthermore, the reform amends the constitution to address the telecommunication industry's abuse of legal injunctions (amparos). Under the amendment, IFT's regulations would not be subject to delays upon the institution of an amparo and would remain in effect while a case is being reviewed. The fixed and satellite telecommunications market has been opened up to 100 percent foreign direct investment and the government plans to develop a shared public telecommunications network geared toward the latest 4G/4G LTE technology to take advantage of reclaimed spectrum in the 700MHz band.

Although the recently enacted reform may address a number of the services barriers that have deterred investment and stunted the growth and development of Mexico's telecommunications industry, the Mexican legislature needs to pass implementing legislation that outlines how regulators will determine

and treat dominant players in the market and established the “rules of the road” for new market entrants. The lack of such legislation has created uncertainty in the market for both existing participants and possible new entrants. Legislators have stated publicly that they will review the legislation in the first quarter of 2014.

## **Broadcasting**

In Mexico, pay television, which is the primary outlet for foreign programmers, is subject to significantly more stringent advertising restrictions than free-to-air broadcast television, which is the primary outlet for domestic operators. The two national broadcasters, Televisa and TV Azteca, control about 90 percent of the national broadcast television market. In June 2012, the Dirección General de Radio, Televisión y Cinematografía (RTC) notified affected cable channels that the programmers were now limited to six minutes per hour of advertising. This announcement followed a decade in which pay TV programmers were allocated an average of 12 minutes per hour for advertising (without exceeding 144 minutes per day). There was no official change in law or regulation, and, prior to announcing the change, the RTC had confirmed in a 2011 letter to the cable channel industry association that the longstanding practice was lawful. Free-to-air broadcasters may allot their permitted 259 minutes per day of advertising with no hourly limits. Mexican authorities have indicated that they continue to work on establishing “a clear legal framework” for pay TV advertising that will occur soon.

## **INVESTMENT BARRIERS**

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

In December 2013, Mexico’s Congress passed energy reform legislation that opens Mexico’s state-run oil industry to private sector participation and allows greater private investment in power generation. The legislation was ratified by Mexican states that same month. The energy reform amends the Mexican constitution to allow the private sector to enter into competitive contracts that include profit-sharing, production-sharing, and license contracts with the government or state-owned petroleum company Pemex for the exploration and extraction of hydrocarbons. The reform also allows private sector companies to participate in downstream operations, such as refining, petrochemicals, transport, retail, and supply. The Mexican constitution still mandates state ownership of hydrocarbons. Legislation to implement the reform is expected to be submitted to the Mexican Congress in early 2014.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of Mexico’s coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). There is legislation currently pending in Mexican congress that would revise this restriction. An interagency National Foreign Investment Commission reviews foreign investment in Mexico’s restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and which have a value greater than \$165 million (adjusted annually).