MEXICO

In 1996, the U.S. trade deficit with Mexico was $16.2 billion, an increase of $809 million from the U.S. trade deficit of $15.4 billion in 1995. U.S. merchandise exports to Mexico were $56.8 billion, an increase of $10.4 billion (22.6 percent) from the level of U.S. exports to Mexico in 1995. Mexico was the United States' third largest export market in 1996. U.S. imports from Mexico were $73.0 billion in 1996, an increase of $11.3 billion (18.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Mexico in 1995 was $14.0 billion, a decrease of 10.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Mexico is concentrated largely in the manufacturing and finance sectors.

North American Free Trade Agreement

The United States, Canada, and Mexico implemented the North American Free Trade Agreement (NAFTA) on January 1, 1994. The NAFTA is a region-wide trade agreement that 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 also contains supplemental agreements which provide for cooperation on labor standards and environmental issues.

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, with remaining tariffs and non-tariff restrictions on certain agricultural items phased out over 15 years (to be phased out entirely on January 1, 2008.)

The fourth annual tariff reductions were implemented by the NAFTA parties on January 1, 1997. This reduced Mexico's average duty on NAFTA-qualifying U.S. goods from 10 percent prior to the NAFTA to an estimated 2.9 percent.[1] The NAFTA's tariff provisions have also protected U.S. exporters from Mexico's decision in 1995 to raise tariffs from 20 to 35 percent and apply quotas on textile, apparel, and footwear articles imported from countries with which Mexico does not have a free trade agreement.

[1] Based on the estimated trade distribution in *Potential Impact on the U.S. Economy and Selected Industries of the NAFTA*, U.S. International Trade Commission, Publication No. 2596, January 1993.

Mexico

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 injury 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. The USITC recommended relief in the form of higher tariffs in its report to the President in August 1996. On November 28, 1996, the President proclaimed tariff relief for three years on imports of two categories of broom corn brooms. On December 12, Mexico instituted increases in preferential import duties on eight U.S. products (fructose, wine, wine coolers, brandy, Tennessee whiskey, notebooks, flat glass, and wooden furniture) in compensation for the U.S. safeguard action on broom corn brooms. The United States believes that Mexico's response has been excessive, that is, its action penalizes U.S. exports to a greater extent than U.S. action affected Mexican broom exports. The United States has requested consultations under the dispute settlement provision of the NAFTA concerning Mexico's retaliatory actions. Mexico has already requested the establishment of a NAFTA Chapter 20 dispute panel to review the U.S. safeguard action.

Administrative Procedures and Customs

The Mexican Congress passed a Customs Reform Law, effective April 1, 1996. Modifications to the new law were instituted in late 1996. The new law increases the transparency of the system, provides greater clarity regarding importer responsibilities, and permits greater flexibility for duty payments. The new customs law also gives Mexican customs authorities the right to act in cases of suspected violations of intellectual property rights.

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, including the lack of prior notification of procedural changes and the differing interpretation that customs officials at various border posts give to regulatory requirements for imports. This has 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 requirements.

Other customs-related problems include requirements to list serial numbers on invoices, laborious inspections at the border, the use of "reference prices," difficulty in clearing low value shipments to importers not on the importer registry, re-registration requirements enacted with little prior notification, lack of standard procedures to address complaints, and unavailability of prompt and reliable information on Mexican regulations. These policies have primarily affected U.S. exporters of certain products, including footwear, textiles, beer, and consumer electronics. In February 1997, Mexico enlarged its list of "sensitive" products to include meat and meat products.

The United States and Mexico each maintain their own 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 crossings 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). While NAFTA obligations do not cover these provisions, 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

Standards

Mexican phytosanitary standards have also created barriers to exports of certain U.S. agricultural goods, including grains, citrus, Christmas trees, potatoes, and apples. However, recent progress has been made in resolving sanitary and phytosanitary (SPS) issues surrounding cling peaches, apricots, and nectarines. 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. While Mexico is using "emergency" rules less often, it has not totally abandoned their use for ordinary rule-making. The United States remains concerned about the far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grain, and maintains an ongoing dialogue with Mexico on these issues in the NAFTA Sanitary and Phytosanitary Measures Committee. Procedural requirements regarding SPS verification often slow down agricultural exports to Mexico.

On February 20, the U.S. Department of Agriculture announced that Mexico will allow the importation of U.S. cherries from Washington, Oregon, and California, estimated to be worth $8 million dollars to U.S. cherry growers. The United States will begin exporting sweet cherries in mid-April from California and at the end of May from Washington and Oregon.

Certification

Mexico’s Law on Metrology and Standardization mandates that products subject to technical regulations (“normas oficiales Mexicanas,” or “NOMs”) be certified by Mexico’s Direccion General de Normas (DGN) or an authorized independent certification body. DGN uses a national accreditation program (SINALP) to evaluate the competency of laboratories to perform the testing to specific NOMs; test data from those laboratories is the basis upon which certification is granted or denied. Under current Mexican procedures, only facilities based in Mexico can apply for recognition as competent to perform conformity assessment. The requirement to perform testing in Mexican-based laboratories has added cost and uncertainties for U.S. suppliers. It has proven particularly difficult in sectors where technical capability is non-existent or insufficient to meet the demand, or resides solely in the laboratories of competing manufacturers. As a result of the NAFTA (Chapter 9 on Standards-Related Measures), however, Mexico will be required to accredit or otherwise recognize testing and certification performed by U.S. or Canadian bodies by 1998.

U.S. exporters have encountered other difficulties arising from Mexico’s implementation of its certification requirements. Because all imports are subject to inspection at the border, enforcement of compliance with NOM certification appears to be more stringent for imports, resulting in delays and costs not incurred by

domestic producers. Domestic goods are subject only to spot inspections in the market. In addition, under current policy, certifications of a particular model cannot be shared among different firms or between foreign suppliers and various customers. Instead, each importer must obtain its own product certification regardless of whether a certification has already been obtained by another importer. The inability to obtain direct certification causes numerous problems and costs for U.S. exporters who deal with multiple importers and for exporters who wish to change their importers or distributors. To avoid this problem, some U.S. companies have set up trading companies in Mexico to act as their importer of record, but such an option is generally not feasible for small U.S. retailers and manufacturers. On January 3, 1997, the Mexican Government published for public comment proposed revisions to its certification procedures. It appears that the proposal will eliminate the lack of transferability of product certification by establishing a registry of certified products.

Labeling Requirements

Changes in Mexico’s mandatory labeling requirements have been the subject of ongoing discussion. In particular, implementation of NOM-050 and NOM-051 on labeling of consumer products and processed foods and non-alcoholic beverages, respectively, will affect a broad range of industries and will be closely monitored by the U.S. Government. The NAFTA Committee on Standards-Related Measures provides an ongoing forum for discussion of these and other issues related to standards, technical regulations and conformity assessment procedures.

GOVERNMENT PROCUREMENT

The NAFTA and Mexico's Federal Procurement Law, both implemented in 1994, gave U.S. suppliers growing access to the procurement market of the Mexican Government, including the state-owned oil company, PEMEX, and federal power utility, CFE, the two largest purchasing entities in the Mexican Government. In 1995, one U.S. company received orders from PEMEX for $15 million and for $5 million. In early 1996, PEMEX awarded a U.S. company a contract for an "actual time" measurement control system to automate PEMEX gas pipeline systems. The system should be operational by the end of 1998.

In an October 1996 trilateral government procurement meeting, Mexico for the first time gave provisional approval to raise from $50,000 to $100,000 the size of contracts which may be set aside for national-only bidding. When the change has been implemented, all three NAFTA governments will be able to allocate somewhat larger procurements to help minority-run or smaller-sized companies.

Under the NAFTA, Mexico was required to complete its list of services excluded from NAFTA coverage by July 1, 1995. Mexico did not submit its proposal until September 1995. This list includes a range of services that broaden Mexico's current exclusions. This issue is under active discussion by the NAFTA Working Group on Government Procurement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

As a member of the NAFTA and the WTO, Mexico has committed itself to implement and enforce a very high level of intellectual property rights (IPR) protection. Notable achievements have been Mexico’s

signing (but not yet ratifying) the International Convention for the Protection of New Varieties of Plants (UPOV) and the Patent Cooperation Treaty, and reactivating its Interministerial Commission for the protection of IPR. The latter is a high-ranking interagency body that met for the first time in more than two years in March 1996. In addition, the number of search and seizure actions undertaken by the PGR (federal Attorney General's office) in recent years has increased, but nevertheless 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 1996, and expects to meet on a regular basis throughout 1997.

Copyright Enforcement

In spite of this activity, piracy remains a major problem in Mexico, with U.S. industry loss estimates continuing to increase in 1996. The U.S. recording industry reports that 386 raids were conducted in 1996, leading to the seizure of five million pirated cassettes and 13,000 illegitimate compact disks. However, there were no convictions or sentences issued in 1995 or 1996 against sound recording pirates. Raids to combat video piracy declined in 1996. Eighteen indictments have issued, but all are still pending. Piracy of cable television signals and video games also continues to be a major problem.

Piracy of business software is also a continuing concern. Approximately 22 criminal copyright cases have been filed since 1992. However, only one indictment has issued in these cases (some have been settled). No trials have taken place or verdicts or sentences issued by the courts. In January 1997, the Mexican Government seized substantial amounts of pirated software from a Mexican regional airline.

Copyright Legislation

The Government of Mexico passed a new copyright law on December 24, 1996, which addresses a number of inadequacies in the former law. The new law substantially increases protection for computer programs, textile designs, and several other types of copyrighted material. Criminal penalties in several areas have been increased, and administrative procedures have been introduced as well. Major outstanding questions remain as to the consistency of the new law with Mexico’s obligations under NAFTA and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), particularly regarding the lack of criminal penalties for sound recording piracy, the absence of civil remedies, and the possible decriminalization of end-user piracy. It is unclear at this point whether the Mexican Government will address these problems, which would likely require further legislative action.

Patents and Trademarks

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), a free-standing body (formally the Patent and Trademark Office of the Trade Ministry, SECOFI). An increasing number of raids have been conducted in recent years, and administrative remedies have become more useful to U.S. trademark owners.

Mexico

Plant Varieties

In 1996, the Mexican Government approved the Plant Varieties Protection Act, as required by the NAFTA. Mexico now has legal authority in line with the substantive provisions of UPOV. 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. From 1991 through mid-1994, Mexico accepted approximately 200 plant patent applications from U.S. plant breeders, but has not yet acted on these applications.

Border Enforcement

NAFTA Article 1718 required Mexico to adopt 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 law on customs administration 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 customs 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 owners seeking to use customs resources to prevent importation of infringing goods must obtain from a competent authority an order which directs customs 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 is working closely with Mexico to assure that Mexico is providing effective border enforcement of intellectual property rights, as required by the NAFTA.

In December 1992, Mexico promulgated legislation for the film industry containing a troublesome provision against film dubbing. Although Mexican trade officials gave oral indications that, in order to make the law consistent with NAFTA requirements, U.S. films would be exempted from this provision when Mexico promulgates the implementing regulations to the law, 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. small package delivery firms are experiencing significant difficulties in receiving the national treatment that Mexico is obligated to provide them under NAFTA. Despite numerous promises and an offer of U.S. reciprocity, contingent on Mexico's granting national treatment, Mexico has not yet granted full operating authority to U.S. firms in this sector. (U.S. firms are operating with temporary limited authority.) This issue has been the subject of ongoing 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.

NAFTA will eventually remove most operating and investment restrictions on land transportation services, thus facilitating the freer flow of goods and services across the border. Under the terms of the agreement, U.S. and Mexican companies could begin applying on December 18, 1995, for approval to provide cross border truck services into U.S. and Mexican border states. 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 final processing of applications would be postponed until continuing concerns about commercial vehicle safety and security were addressed.

The NAFTA also calls for both parties to lift restrictions on the provision of regular route, cross-border scheduled bus service on January 1, 1997. Implementation of these provisions has been delayed temporarily. The U.S. and Mexican Governments are continuing in their efforts to resolve the situation.

Telecommunications

Prior to NAFTA, Mexico had taken steps to reform its telecommunications sector: privatizing Telephones de Mexico (TELMEX), the national telephone company; liberalizing 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 codifying many of these changes in June 1995.

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.

During the Administration’s section 1377 review of telecommunications trade agreements in 1996, Mexico was cited for not complying with its NAFTA telecommunications standards obligations under Chapter 13 of the North American Free Trade Agreement, which requires that Mexico have in place by January 1995 procedures to accept telecom test data. Mexico did so for test data relating to terminal attachment standards, but has yet to establish standards for the certification of terminal attachment equipment in accordance with NAFTA criteria -- protection against network and user harm. Without both sets of accreditation procedures in place for both sets of data, U.S. suppliers cannot export telecom equipment to Mexico. This issue has been the subject of ongoing bilateral consultations between the U.S. and Mexican Governments, resulting in an agreement to a NAFTA-consistent set of terminal attachment standards in the February 12, 1997, meeting of the NAFTA Telecommunications Standards Subcommittee (TSSC).

NAFTA eliminated all investment and cross-border service restrictions in enhanced or value-added telecommunications services and private communications networks, most of them as of January 1, 1994, with the remainder, limited to enhanced packet switching services and videotext, eliminated on July 1, 1995. The principal remaining restriction in the telecommunications sector is the 49 percent equity limit for foreign investment in basic telecommunications services (basic telecommunications are excluded from most obligations in the NAFTA). However, the NAFTA contains language that would allow the United States, Canada, and Mexico to negotiate an agreement on basic services in the future.

Mexico

In the recently concluded WTO negotiations on basic telecommunications services, Mexico made commitments on all basic telecom services. It adopted the reference paper on regulatory commitments. Mexico required the use of Mexican infrastructure for provision of domestic satellite service until 2002, and guarantees only up to 49 percent foreign ownership for all services other than cellular.

INVESTMENT BARRIERS

Ownership Reservations

Mexico maintains state monopolies in a variety of sectors -- including oil and gas exploration and development and basic petrochemicals -- thereby preventing U.S. private investment. In May 1995, the Mexican Government legalized the privatization of the national railroad system. This will allow up to 100 percent foreign control of 50-year concessions to operate portions of the railroad system, with a second 50-year period also available. The Northeast Railway concession has since been awarded, and bids on the North Pacific Railway are due by mid-year 1997. Similarly, the airport law passed in December 1995 provides for airport concessions of 50 years to private investors, with foreign ownership limited to 49 percent in most cases (waivers are available in specific circumstances), with a second 50-year period also available. Regulations governing the concessions are currently being drafted and the first airport concessions are not likely to be granted before the end of 1997.

While Mexico is actively seeking and approving 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.