

III. TRADE POLICIES BY MEASURE

(1) Overview

1. Over the last four years, Mexico's trade regime has been subject to divergent influences. The main thrust of liberalization of the economy has come within the framework of NAFTA and other free trade agreements; however, unilateral action led to the m.f.n. liberalization of over 1,000 items to duty-free levels. In some areas, the NAFTA has spearheaded important improvements that have also benefited third countries, for example, through the streamlining of Mexico's customs operations and the modernization and stricter enforcement of intellectual property laws. On the other hand, variations in treatment between NAFTA and other partners have emerged in areas such as customs valuation. Since the last Trade Policy Review, there has been increased use of contingency measures, mostly anti-dumping, and high m.f.n. tariffs have also been applied in some important sectors, using the flexibility available under ceiling bindings.

2. As a result of the Uruguay Round, Mexico reduced its ceiling bindings rate for manufactures from a general rate of 50 per cent to 35 per cent. Mexico's Uruguay Round commitments had little effect on the applied simple average MFN tariff of 13.6 per cent in 1997, although tariffication in agriculture created several tariff peaks, and increased tariff dispersion and the number of applied rates. Unilateral action led to MFN duty increases on certain goods (e.g. beef, clothing and footwear) and MFN duty reductions on machinery and inputs not produced in Mexico. Via the new Law on Metrology and Standardization, enacted in 1992, there has also been a significant increase in the number of mandatory standards in Mexico, and discussions have been held within the NAFTA about the possible protectionist effects of marking and labelling.

3. Certain aspects of WTO Agreements have not yet been incorporated in Mexican legislation. Although the authorities have emphasized that, from a legal point of view, this creates no inconsistencies because international treaties have the force of domestic law, incorporation of all WTO rules in the domestic statutes would increase the transparency of Mexico's legislation and provide a greater degree of legal security for economic operators. This would be particularly important with respect to legislation on contingency measures, as Mexico operates one of the world's most active trade defence systems. The growing use of such measures has partly offset the liberalization undertaken since the mid-1980s; they might also undermine the competitiveness of Mexican exports, as contingency measures have often affected primary and intermediate goods. Mexico has not signed the WTO Agreement on Government Procurement, and restricts participation in national public tenders to national suppliers and domestic goods. Mexico also maintains a programme in favour of the automotive industry that has been notified under the provisions of the WTO Agreement on Trade-Related Investment Measures (TRIMs). Mexico's NAFTA partners will benefit from the liberalization of both public procurement and investment measures; however, such benefits are not extended to other trading partners.

4. In part to offset the anti-export bias resulting from trade measures affecting imports and an overvalued exchange rate prior to the 1994 financial crisis, Mexico has adopted a number of measures to support exports. These include various official credit programmes and tariff concession programmes, whose budgetary and economic impacts do not appear to have been fully quantified, despite the important role they seem to have played in the expansion of Mexico's exports during recent years. Under the NAFTA, Mexico will modify several of these programmes, including the *maquiladora* regime, but assistance under the programmes may continue to be granted to exports to non-NAFTA countries.

5. The entry into force of a new competition law in 1993 and the subsequent establishment of the Federal Competition Commission were important steps complementing Mexico's privatization programmes; their further development could help to ensure that the high market concentration observed in certain activities does not impair the thrust to achieve greater economic efficiency.

(2) Measures Directly Affecting Imports

(i) Registration and documentation

6. The streamlining of customs operations has continued since 1993, and included the further computerization of operations, greater use of the random merchandise verification system and precautionary seizures when irregularities appear to exist. Increased transparency in the customs system, greater clarity on importers' responsibilities and greater flexibility for duty payments was expected to result from the new Customs Law that came into force in 1996 (Chapter II(2)). Significant changes were also made to the regimes permitting the production, transformation or repair of products in fiscal areas. Exports through maritime customs offices may be verified within such areas. The functions of customs agents and brokers have become more precisely defined, and formal recognition has been given to the similar roles they play.

7. The Customs Law requires importers to be registered in the Register of Importers, created for statistical and enforcement purposes. The specific registration requirements are set out in the regulations to the Customs Law. The regulations also require importers to be registered in sector-specific registers to import products such as pork, poultry, eggs, fats and oils, beer, rubber, pencils, footwear, wines and liquors, tobacco products, textiles, diapers, iron and steel products for the automotive industry, bicycles and toys. The authorities pointed out that the establishment of such sectoral registers was requested by the chambers of industry and commerce.

8. Importers must present: (i) an import declaration accompanied by a declaration of shipment; (ii) for imports exceeding US\$1,000, a commercial invoice in Spanish, English or French, or an accompanying Spanish translation; and (iii), if applicable, prior import permits or documents showing the origin of the merchandise. All imports must be handled by customs brokers. Customs fees and other charges are described in section (vi) below.

9. Mexico's customs system makes use of "customs advisors" (specialists authorized by the Minister of Finance) to assist with the verification of merchandise selected through the random verification system, or for which particular problems have been identified. This programme was started in late 1993 and now operates at a national level. Representatives of industries and chambers of commerce play an indirect role in the verification of goods for customs purposes by participating in the training of customs agents. The Ministry of Finance may authorize private firms to provide handling, warehousing and custody services for imported and exported merchandise, as well as data processing and other services.

10. As a complement to the streamlining of customs procedures, various federal ministries and levels of government are undertaking joint efforts to improve the physical infrastructure at international crossing points. The problem of old infrastructure is particularly marked in the southern border and the Federal Government is giving it special attention; in that region, the random selection process used elsewhere for customs revisions has been recently adopted, resulting in what the authorities consider to be significant efficiency gains, several bridges have been built to facilitate the transit of goods at the northern and southern borders. The Government is also continuing its efforts to stamp out contraband; a committee was established in March 1995 within the National Programme to Fight

Contraband, which seeks to strengthen cooperation among Mexican agencies engaged in fighting contraband.

11. Isolated problems have been claimed to affect certain aspects of Mexico's customs administration, but significant improvements have also been noted concerning customs transparency and efficiency, with traders and Mexican customs brokers reportedly agreeing that customs procedures have improved dramatically in recent years.¹ Moreover, many problems would appear to have been addressed by Mexico's new customs legislation.

(ii) Customs valuation and inspection

12. As part of the Single Undertaking of the Uruguay Round, Mexico became automatically bound by the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement).² Although, Mexico invoked various provisions available to developing countries for the delayed application of, and reservations under the Agreement, the authorities noted that the Mexican legislation is already in line with the Agreement.³ The replies supplied by Mexico to the checklist on customs valuation were circulated to WTO members in February 1995.⁴

13. Mexican legislation does not include certain interpretative notes to the Customs Valuation Agreement (notes to Article 8.1(b)(ii)). In this regard, the Mexican authorities have pointed out that, although some of the provisions of the Agreement have not been incorporated into the Customs Law, under the Mexican legal system any international treaty signed in accordance with the provisions of the Mexican Constitution has the same legal force as a federal law (Chapter II(2)).

14. Mexican legislation defines the transaction value as the price paid for the goods, provided that, *inter alia*, the goods are sold to the importer (rather than buyer as indicated in the Customs Valuation Agreement); for purposes of the determination of the transaction value, the importer is considered to be the buyer of the imported goods, thus excluding brokers, agents or the carriers. When the customs value cannot be determined on the basis of the transaction value, the following methods are applied, in priority order: transaction value of identical goods, transaction value of similar goods, unit price, constructed value, or the previous methods with added flexibility; the order of the third and fourth methods may be reversed at the request of the importer. Duties for the importation of used goods are based on the transaction value.

¹USTR (1995) and (1996).

²Mexico was also a signatory to the Tokyo Round Agreement on Customs Valuation.

³Provisions of the Customs Valuation Agreement invoked by Mexico related to Article 20.2 (delayed application of the computed value method); Annex III, paragraph 3 (reservation concerning reversal of sequential order of Articles 5 and 6); Annex III, paragraph 4 (reservation concerning application of Article 5.2 whether or not the importer so requests). Pursuant to the provisions of the Protocol to the Customs Valuation Agreement, the Mexican Government reserved the right to delay implementation of Articles 4 and 6 of the Agreement for a period of three years from 1 January 1995.

⁴WTO document VAL/1/Add.25/Suppl.3, 20 May 1994.

15. In 1994, Mexico introduced a new system to combat customs under-invoicing; this requires the deposit of guarantees, and involves the use of estimated prices when there is no evidence that the declared price is a valid arm's-length commercial transaction. Estimated prices have been published in the Official Journal for products such as electronics, textiles, apparel and shoes. The Ministry of Finance can review and determine customs values using the valuation methods set out in the Customs Law when the importer does not comply with established regulations. Such revisions have typically involved under-valued goods; the Ministry conducts these revisions after goods have gone through customs clearance to avoid creating bottlenecks. The conditions under which appeals are possible are governed by the Fiscal Code of the Federation.

16. On 1 January 1994, the valuation basis was changed from an f.o.b. to a c.i.f. method, with the exception of imports considered as "originating" under the NAFTA rules of origin (section (iii) below). This change was the subject of discussions at a number of meetings of the WTO Committee on Customs Valuation and formal consultations under the WTO dispute settlement mechanism were held in 1996 (Table AII.2); during discussions, it was argued that, *inter alia*, the application of the c.i.f. method increased the duty levied on products sourced outside the NAFTA region compared to the same products sourced within the region.

17. The concept of "prior inspection" has been included in the Customs Law to grant the party completing the import documentation the right to request the inspection of the merchandise before customs clearance in cases when the characteristics of such merchandise have not been clearly determined. The authorities noted that this did not constitute a compulsory preshipment inspection requirement.

(iii) Rules of origin

18. For imports benefiting from preferential entry from Latin American countries, including Chile, the rules of origin applied by Mexico are those established by LAIA or those specified in Mexico's free-trade agreements with Costa Rica and Bolivia, as well as the Group of Three agreements with Colombia and Venezuela. NAFTA rules of origin apply to imports from Canada or the United States. Preferential imports must be accompanied by a certificate of origin issued by the exporting country, according to the LAIA or other agreed regional formats. The origin of goods may be certified through different methods. The NAFTA, and Mexico's free-trade agreement with Costa Rica provide for self-certification, whereby the exporter of the good completes the certificate of origin without the involvement of the authorities. Bolivia requires the exporter to complete the certificate of origin, and then request the competent authorities to certify it. Other agreements, mainly those in the LAIA framework, require the exporter or producer of the good to complete a questionnaire which serves as the basis for the authorities to complete a certificate of origin.

19. Rules of origin under NAFTA classify goods as "originating" if they are wholly obtained or produced in the NAFTA countries, produced entirely in the territory of NAFTA countries exclusively from originating materials, or produced from non-originating materials which undergo a change of tariff classification in the NAFTA region and comply with other requirements. A regional value content (RVC) test is used to determine origin in the case of goods produced entirely in the territory of the NAFTA countries from non-originating parts, or if the parts used in the production of the final good are classified under the same tariff heading or sub-heading as the finished good; in some cases, a combination of a tariff change and an RVC test may be used. The NAFTA also provides for specific rules of origin for textiles and clothing, to be reviewed in 1998, and for automotive vehicles (Chapter IV(4)). NAFTA rules of origin contain provisions relating to "accumulation", giving various producers the choice of pooling their production with that of their NAFTA suppliers for origin purposes.

20. Mexico does not generally apply specific rules of origin to imports from m.f.n. sources. However, special origin certification requirements were introduced in September 1994 for products identical or similar to those subject to countervailing or anti-dumping duties. These rules were designed to guard against the evasion of such duties (mostly by products from the Peoples's Republic of China), including by transshipment via third countries. The rules apply to products from countries not subject to the dumping or countervailing orders. The same requirements apply to all products imported under MFN treatment, including from countries with which Mexico has free-trade agreements, but not to preferential imports complying with the relevant preferential rules of origin. The special certificates of origin must be completed according to the legislation of the country exporting the product. If the certificate of origin does not comply with such requirements, the anti-dumping or countervailing duties in force are applied. For textiles, clothing and footwear, the certificate of origin must comply with the legislation of the country where the last major production process took place, and follow specific instructions. For countries not members of the WTO, an additional requirement is that certificates of origin must be verified by an approved private inspection company; *Bureau Veritas*, the *Société Générale de Surveillance* (SGS) and the *Inspectorate* have been authorized by SECOFI for this purpose.

21. Some WTO Members have expressed concern that these specific origin certification requirements impose excessive informational demands on traders, and could impede the normal flow of exports from third countries. The Mexican authorities noted that the rules were applicable only to items identical or similar to those subject to anti-dumping or countervailing duties and affected by massive duty evasion; to give more time to its trading partners to adapt to the new rules, Mexico allowed importers a four-month grace period to comply with the rules.

(iv) Tariffs

22. Revenues from import taxes peaked in 1992 when they reached the equivalent of 1.1 per cent of GDP; that proportion has since fallen, to 1.0 and 0.9 per cent in 1993 and 1994, and to only 0.6 per cent in 1995 and 1996. In 1993, import tax revenues attained an absolute value of almost 12.7 billion pesos, or 6.5 per cent of total federal budget revenue; that proportion fell to 4.0 per cent in 1995 and 1996. This decline reflects the phasing in of tariff preferences under the NAFTA and the other four free-trade agreements in force, as well as, the reduction in economic activity and import values in 1995.

23. The authority to modify tariffs, considered to be import taxes, is delegated by Congress to the President of the Republic under the Foreign Trade Act of 1993. The Act also establishes the Foreign Trade Commission, which is responsible for submitting recommendations on tariff rates to the President through SECOFI; tariff changes are issued through Presidential decrees published in the Official Journal.

24. Mexico grants at least MFN treatment to all countries, whether WTO Members or not.

(a) Tariff structure

25. The structure of the Mexican tariff schedule has undergone several modifications since 1993. This has resulted from unilateral tariff changes, the tariffication scheme agreed as part of Mexico's Uruguay Round engagements, and the existence of different preferential tariff schedules under Mexico's free-trade agreements. Over time, the process of liberalization envisaged under those agreements will simplify the tariff system applied to most imports, but not to MFN trade, as duty-free treatment expands; this process has already reduced significantly the average MFN tariff on a trade-weighted basis, but not the simple average (see below).

26. Mexico's import tariff structure is based on the Harmonized Commodity Description and Coding System (HS). There were 11,177 lines included in the MFN tariff schedule in force in Mexico in January 1997;⁵ there were 11,828 lines in 1992. Tariffs are *ad valorem*, with the exception of ten items subject to specific rates and 45 items subject to compound rates. Specific rates apply to sugars, cocoa with sugar, and syrups; estimated *ad valorem* equivalent rates range from 10 per cent to just over 120 per cent.⁶ Compound rates apply mostly to food products and beverages. The *ad valorem* component of such rates varies between zero and 20 per cent, but the *ad valorem* equivalent estimated for the specific component was considerably higher in several cases. Considering both components together, the highest *ad valorem* equivalent rates were estimated for refined sugars and molasses (up to almost 300 per cent), and waters and ethyl alcohol (around 100 per cent).

27. The simple average applied MFN tariff, including the *ad valorem* equivalents of specific and compound rates, was 13.6 per cent in 1997; excluding specific lines and the specific rate component of compound rates, the average tariff was 13.2 per cent. Those averages were similar to the average MFN tariff in 1992. Tariff dispersion, as measured by the standard deviation, was estimated at 14.6 percentage points including *ad valorem* equivalents; excluding specific lines and specific rate components, the standard deviation was 12.7 percentage points. This represents a substantial widening of tariff dispersion relative to the situation in 1992, when the standard deviation was 4.5 percentage points. This broad distribution is illustrated in Chart III.I. In 1992, applied tariffs ranged from zero to 20 per cent, with five rates applicable; in 1997, tariffs on industrial goods ranged up to 35 per cent, with eight separate rates. The inclusion of agricultural tariffication made a maximum of 260 per cent with 23 different rates applied.

28. The most common tariff rate was 10 per cent, applied to 38 per cent of tariff lines (49 per cent in 1992), followed by the 15 per cent rate applied to some 26 per cent of all lines. Duty-free entry was granted to 13.9 per cent of all tariff lines in 1997, a substantial increase on the 1992 figure of 2.4 per cent. The number of tariff peaks in early 1997 was substantially larger than in 1992, largely the result of the tariffication process for agricultural products. Product groups with relatively high average tariffs in 1997 were (HS codes in parentheses): meat (02), dairy products (04), tobacco products (24), clothing (61-62), and footwear (64); those with relatively low average tariff include oil seeds (12), organic chemicals (29), fertilizers (31), and pulp of wood (47).

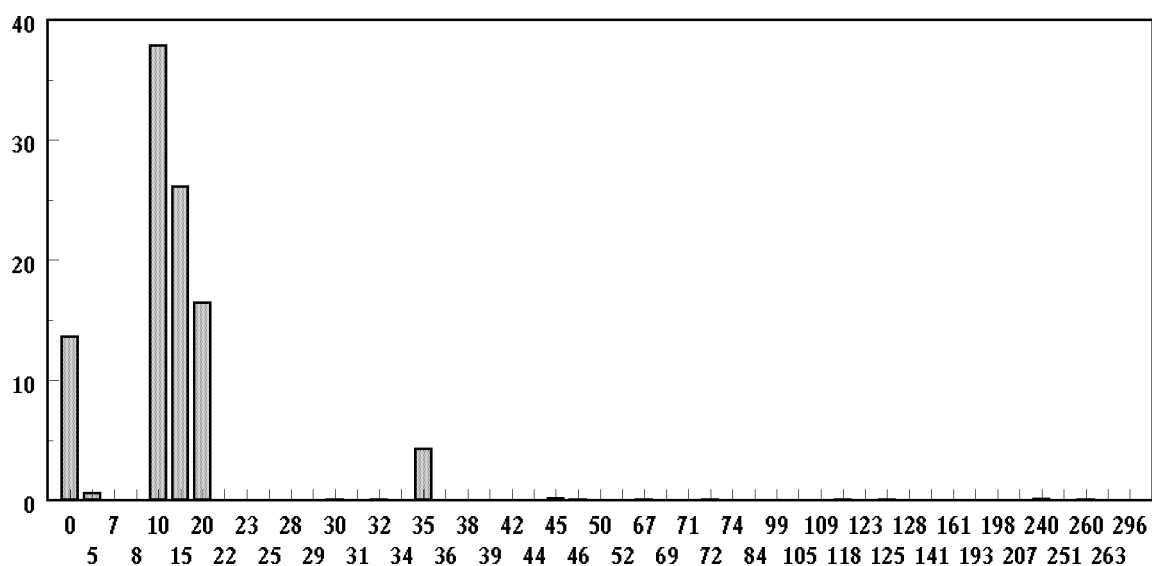
29. Change since 1993 to the tariff structure have blurred Mexico's previously clear tariff escalation pattern: in 1997, the average *ad valorem* duty applied to primary products was higher than for semi-processed products (Table III.1). This is partly because of the elimination of duty on certain machinery and equipment not produced in Mexico as well as the introduction of in-quotas duty-free treatment on some tariffied products. Tariff escalation is now particularly marked in basic metal industries and in textiles, clothing and leather, with the average tariff on finished products in these industries being at least 2.5 times higher than the tariff on raw materials (Chart III.2). Tariff escalation may also be observed in wood products and in paper products. On the other hand, in food, beverages and tobacco, the average duty on semi-manufactured products was higher than on finished products.

⁵This excludes items marked as prohibited (17 tariff lines), and items in HS Chapter 98, which identifies goods imported under special operations (66 lines). Estimates in this section were computed by the WTO Secretariat based on tariff data provided by the authorities.

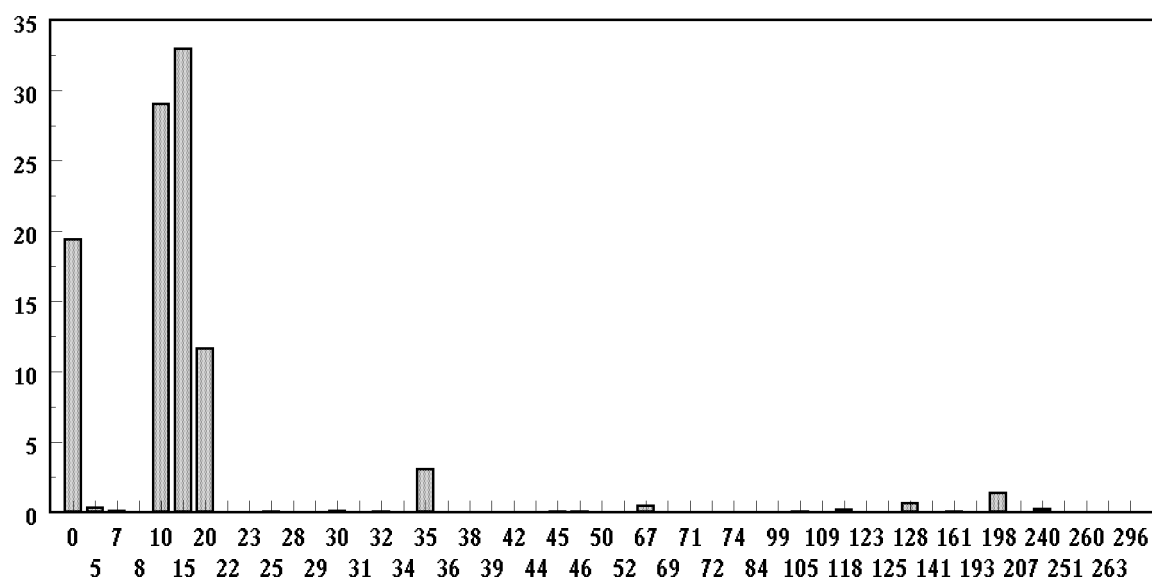
⁶These estimates are only indicative because *ad valorem* equivalent rates vary over time as the c.i.f. value of imports changes, which in turn reflects fluctuations in costs and world prices.

Chart III.1
Frequency distribution of m.f.n. rates and imports, 1997

Per cent of total tariff lines, 1997



Per cent of total value of imports, 1997



Note Tariff lines reflect the tariff structure in place in January 1997, incorporating the 1996 changes to the Harmonized System.
Imports correspond to values for 1996, converted from the 1992 to the 1996 Harmonized System.

Source: WTO Secretariat based on data provided by Mexican Government.

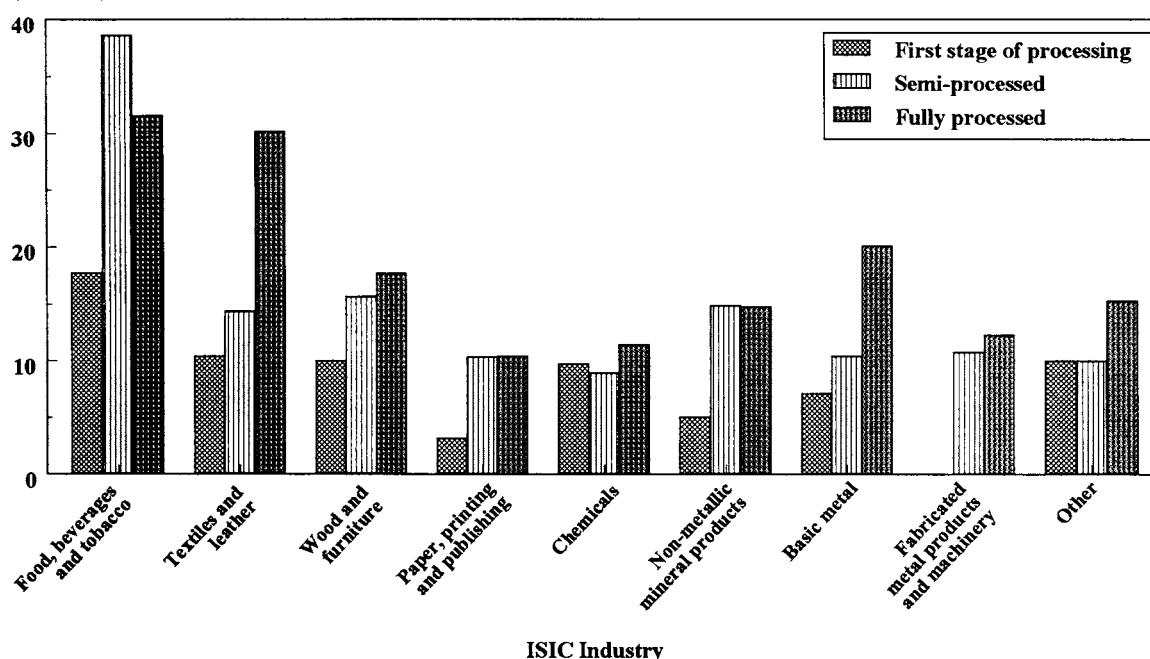
Table III.1
Simple average applied MFN tariff, by stage of processing, January 1997
(Per cent)

	Primary products	Semi-processed products	Fully-processed products
No. of Tariff lines	889	3,904	6,384
Simple average	12.3	10.8	15.5
Tariff range	0-251	0-296	0-260
Standard deviation	15.3	10.7	16.2
Import 1996 (per cent of total, first three quarters)	7.7	16.5	75.8

Source: WTO Secretariat based on data provided by the Mexican Government.

Chart III.2 Tariff escalation by 2-digit ISIC industry

(Per cent)



Source: WTO Secretariat based on data provided by the Mexican Government.

30. Mexico unilaterally expanded the number of duty-free items from under 300 in 1992 to close to 1,600 in 1996. Mexico has also increased applied MFN rates on certain products. In 1993, tariff increases were implemented for cattle (from 0 to 15 per cent), beef (from 0 to 25 per cent), and polypropylene (from 0 to 10 per cent). In 1995, Mexico increased tariffs on leather products, clothing and footwear (Chapter IV(4)). Between 1992 and 1997, the average tariff increased by a factor of two or more in the following HS groups (HS code in parentheses): meat (02), dairy products (04), cereals (10) and tobacco products (24).

31. The authorities indicated that increases in applied tariffs are used to counteract difficulties faced by domestic producers (e.g. of live bovine animals, bovine meat, footwear and textiles). The authorities stressed that such increases have taken place within the margins permitted by Mexico's WTO bindings, and stated that safeguard measures *per se* would be taken only when the required tariff increases exceeded such bindings (see also section (xvi) below).

32. Mexico applies preferential tariff rates on products imported from Bolivia, Costa Rica, and Colombia and Venezuela under the terms of its free-trade agreements with those countries and under the Economic Complementation Agreement with Chile. More significant in practice is the similar process affecting imports from Canada and the United States under the NAFTA (section (f) below); by 1 January 1996 the average Mexican tariff on products imported from the United States had fallen to 4.2 per cent, from 13 per cent prior to the NAFTA, while the average U.S. tariff on Mexican products had fallen to 0.65 per cent from 2.07 per cent.⁷

(b) Tariff bindings

33. As part of its accession to GATT in 1986, Mexico bound its entire tariff schedule at a maximum 50 per cent *ad valorem*. Mexico preserved the option, never used, to apply a surcharge until the end of 1994, and in certain cases import quotas and licences were set for imports under bound rates. In the Uruguay Round, Mexico agreed to reduce bound rates from the general base rate of 50 to 35 per cent *ad valorem* for non-agricultural products, with certain exceptions. As shown in Table III.2, those exceptions affect a relatively wide range of manufactured products, with 50 per cent the highest bound rate. Because of tariffication, a number of agricultural products are subject to much higher bound rates. In several cases such bindings take the form of mixed rates expressed in terms of both *ad valorem* and specific rates; in those cases, the rates shown in Table III.2 are only indicative of likely minimum bound rates.

34. Bound rates are being reduced in equal annual stages between 1995 and 2004. Additional duties above the bound tariff level may be imposed under the Special Safeguard Provisions of the WTO Agreement on Agriculture (section (xvi) below). Since December 1995, Mexico's binding commitments have been successively waived to allow the 1996 changes to the Harmonized System to be introduced into its WTO Schedule; in May 1997, the waiver was extended until 31 October 1997.⁸

35. The majority of tariff lines are bound at ceiling rates, i.e. bound rates are higher than applied MFN rates. After 1986 the gap between applied and bound rates increased as a result of the unilateral liberalization undertaken by Mexico. More recently, the reductions negotiated as part of the Uruguay Round should lessen the possible variance of applied rates, giving greater certainty for traders and investors, although the current level of bound rates is still well above applied MFN rates. Further reductions would be consistent with Mexico's intention to establish a *de facto* maximum import tax of 20 per cent for reasons of competitiveness and efficiency.⁹

⁷Figures supplied by the Mexican authorities.

⁸WTO documents WT/L/124, 16 January 1996, WT/L/173, 25 July 1996, and WT/L/216, 20 May 1997.

⁹Blanco (1994), p. 96.

Table III.2
MFN tariff and bindings, by HS chapter
(Per cent)

HS Description	1996 imports (% of total) (3 first quarters)	MFN rate (January 1997)		Bindings (at end of implementation period)	
		Simple average	Range	Simple average	Range
Total	100.0				
01 Live animals.	0.1	11.2	0-45	29.5	9-45
02 Meat and edible meat offal.	0.7	72.5	0-260	71.0	22.5-254
03 Fish/crustacean, mollusc & other aquatic invertebrate	0.0	19.1	0-20	34.7	30-35
04 Dairy prod; birds eggs; natural honey; edible prod.	0.7	40.3	0-128	57.8	18-125.1
05 Products of animal origin, nes or included.	0.1	9.3	0-20	29.1	0-36
06 Live tree & other plant; bulb, root; cut flowers etc.	0.0	9.0	0-20	28.5	25-36
07 Edible vegetables and certain roots and tubers.	0.2	16.3	0-251	40.1	9-245
08 Edible fruit and nuts; peel of citrus fruit or melons.	0.2	20.7	0-74	37.6	22-45
09 Coffee, tea, maté and spices.	0.0	23.3	0-72	36.0	25-72
10 Cereals.	2.5	36.7	0-198	54.7	9-194
11 Prod mill indust; malt; starches; inulin; wheat gluten.	0.1	20.9	10-161	46.2	36-158
12 Oil seed, oleagi fruits; miscell grain, seed, fruit etc.	1.5	4.7	0-45	24.3	0-45
13 Lac; gums, resins & other vegetable saps & extracts.	0.0	10.5	0-15	25.5	10-36
14 Vegetable plaiting materials; vegetable products nes.	0.0	10.0	10-10	32.3	20-45
15 Animal/veg fats & oils & their cleavage products	0.6	21.1	0-260	45.4	18-254
16 Prep of meat, fish or crustaceans, molluscs etc.	0.1	19.7	15-20	39.3	35-45
17 Sugars and sugar confectionery.	0.2	89.8	10-296	126.5	45-210.4
18 Cocoa and cocoa preparations.	0.1	23.7	8-39	71.7	37-156
19 Prep of cereal, flour, starch/milk; pastrycook prods.	0.1	17.3	10-46	39.4	22.5-109
20 Prep of vegetable, fruit, nuts or other parts of plants.	0.1	21.8	20-52	39.0	25-45
21 Miscellaneous edible preparations.	0.2	27.1	0-141	57.5	18-156
22 Beverages, spirits and vinegar.	0.1	25.5	10-109	41.7	36-47
23 Residues/waste from food indust; prep animal fodder	0.3	11.1	0-20	37.4	22.5-45
24 Tobacco and manufactured tobacco substitutes.	0.0	51.1	20-67	51.8	45-67.5
25 Salt; sulphur; earth & ston; plastering mat; lime cem	0.4	9.1	0-20	33.9	0-50
26 Ores, slag and ash.	0.2	8.9	0-10	33.6	0-35
27 Mineral fuels, oils & product of their distillation;etc.	2.0	8.4	0-15	34.0	0-50
28 Inorgn chem; compds of prec met, radioact elements	0.7	9.1	0-10	34.8	0-50
29 Organic chemicals.	2.7	7.4	0-35	35.3	10-50
30 Pharmaceutical products.	0.5	13.3	0-20	35.4	25-50
31 Fertilisers.	0.3	0.3	0-10	30.2	10-50
32 Tanning/dyeing extract; tannins & derivs; pigm etc.	0.6	11.1	0-20	35.3	10-50
33 Essential oils & resinoids; perf, cosmetic/toilet prep.	0.3	13.8	10-20	32.1	18-50
34 Soap, organic surface-active agents, washing prep.	0.2	15.0	0-20	35.6	35-50
35 Albuminoidal subs; modfd. starches; glues; enzymes.	0.2	12.4	0-20	32.8	9-50
36 Explosives; pyrotechnic prod; matches; pyrop alloy	0.0	15.0	10-20	35.0	35-35
37 Photographic or cinematographic goods.	0.4	13.8	5-20	34.8	20-35
38 Miscellaneous chemical products.	1.1	11.3	0-20	34.9	20-50
39 Plastics and articles thereof.	6.6	12.9	0-20	34.7	10-50
40 Rubber and articles thereof.	1.7	12.9	0-20	35.0	20-50
41 Raw hides and skins (not furskins) and leather.	0.5	7.9	0-10	27.6	9-37
42 Articles of leather; saddlery/harness; travel goods	0.2	29.1	10-35	35.0	35-35
43 Furskins and artificial fur; manufactures thereof.	0.0	13.8	10-35	27.2	20-35
44 Wood and articles of wood; wood charcoal.	0.4	15.8	10-20	34.7	10-35
45 Cork and articles of cork.	0.0	14.0	10-20	35.0	35-35
46 Manufactures of straw, esparto/other plaiting mat;	0.0	20.0	20-20	35.0	35-35
47 Pulp of wood/of other fibrous cellulosic mat; waste	0.5	3.3	0-10	27.2	10-35
48 Paper & paperboard; articles thereof	2.6	10.1	0-20	34.2	0-50
49 Printed books, newspapers, pictures & other product	0.5	10.5	0-20	33.8	0-50
50 Silk	0.0	13.0	10-15	31.3	20-35
51 Wool, fine/coarse animal hair, horsehair yarn/fabric	0.1	10.7	0-15	32.2	9-50
52 Cotton.	0.7	14.6	0-15	35.4	35-45
53 Oth. veg. textile fibres; paper yarn & woven fabric	0.0	10.0	0-15	34.2	9-45

Table II.2 (cont'd)

HS	Description	1996 imports (% of total) (3 first quarters)	MFN rate (January 1997)		Bindings (at end of implementation period)	
			Simple average	Range	Simple average	Range
54	Man-made filaments.	0.7	13.7	0-15	35.0	35-35
55	Man-made staple fibres.	0.4	13.8	0-15	35.0	35-35
56	Wadding, felt & nonwoven; yarns; twine, cordage	0.2	14.0	5-20	34.9	30-35
57	Carpets and other textile floor coverings.	0.1	20.0	20-20	35.0	35-35
58	Special woven fab; tufted tex fab; lace; tapestries	0.4	17.3	10-20	35.0	35-35
59	Impregnated, coated, cover/laminated textile fabric	0.3	14.8	10-20	34.7	20-50
60	Knitted or crocheted fabrics.	0.1	20.0	20-20	35.0	35-35
61	Art of apparel & clothing accs, knitted or crocheted.	0.9	35.0	35-35	35.0	35-35
62	Art of apparel & clothing accs, not knitted/crocheted	1.7	35.0	35-35	35.2	35-50
63	Other made up textile articles; sets; worn clothing	0.1	30.0	20-35	35.0	35-35
64	Footwear, gaiters and the like; parts of such articles.	0.1	33.5	10-35	35.0	35-35
65	Headgear and parts thereof.	0.0	18.5	15-20	35.0	35-35
66	Umbrellas, walking-sticks, seat-sticks, whips, etc.	0.0	18.8	10-20	35.0	35-35
67	Prepr feather/down; arti flower; articles human hair.	0.0	20.0	20-20	35.0	35-35
68	Art of stone, plaster, cem., asbestos, mica/sim mat.	0.2	15.3	10-20	35.0	35-35
69	Ceramic products.	0.2	15.6	0-20	35.2	35-50
70	Glass and glassware.	0.6	14.9	0-20	35.0	10-50
71	Natural/cultured pearls, prec stones & metals, coin	0.2	8.7	0-20	35.0	35-35
72	Iron and steel.	2.5	9.4	0-15	34.6	20-50
73	Articles of iron or steel.	3.3	13.7	0-20	34.9	20-50
74	Copper and articles thereof.	0.9	12.4	0-20	35.0	35-35
75	Nickel and articles thereof.	0.0	7.7	0-10	26.1	0-35
76	Aluminium and articles thereof.	1.2	13.1	0-20	34.5	10-35
78	Lead and articles thereof.	0.1	10.5	10-15	35.0	35-35
79	Zinc and articles thereof.	0.0	10.5	10-15	35.0	35-35
80	Tin and articles thereof.	0.0	11.3	10-20	35.0	35-35
81	Other base metals; cermets; articles thereof.	0.2	10.1	10-15	35.0	35-35
82	Tool, implement, cutlery, spoon & fork, of base met	0.5	15.6	0-20	35.1	35-50
83	Miscellaneous articles of base metal.	0.8	17.5	10-20	35.2	35-50
84	Nuclear reactors, boilers, mch & mech appl., parts	14.9	10.1	0-20	35.0	20-50
85	Electrical mchy equip parts thereof; sound recorder	23.3	12.9	0-20	34.1	10-50
86	Railw/tramw locom, rolling-stock & parts thereof	0.0	10.3	0-20	34.4	10-50
87	Vehicles o/t railw/tramw roll-stock, parts/accessories	8.0	14.9	0-20	36.6	10-50
88	Aircraft, spacecraft, and parts thereof.	0.1	10.3	0-20	33.6	10-35
89	Ships, boats and floating structures.	0.0	13.2	0-20	34.6	20-35
90	Optical, photo, cine, meas, checking, precision, etc.	2.8	10.7	0-20	34.3	10-50
91	Clocks and watches and parts thereof.	0.1	14.7	10-20	34.4	20-35
92	Musical instruments; parts and accessories	0.0	10.9	0-20	35.0	35-35
93	Arms and ammunition; parts and accessories thereof.	0.0	16.0	0-20	35.0	35-35
94	Furniture; bedding, mattress, matt support, cushion	0.7	17.0	0-20	35.0	35-35
95	Toys, games & sports requisites; parts & access	0.3	16.9	10-20	34.9	25-35
96	Miscellaneous manufactured articles.	0.3	18.2	10-20	35.0	35-35
97	Works of art, collectors pieces and antiques.	0.0	0.0	0-0	35.0	35-35

Source: WTO Secretariat based on data provided by the Mexican Government.

(c) Seasonal tariffs

36. Since 1993, Mexico has maintained seasonal tariffs for sorghum, soybeans and safflower seeds. Importation is duty free during the following periods: sorghum, 16 December-15 May; soybeans, 1 February-31 July; and safflower seeds, 1 January-30 September. During other periods a tariff of 15 per cent applies to the first two products, and a 10 per cent tariff to safflower seeds.

(d) Tariff quotas

37. In 1993, Mexico applied no tariff quotas to imports from MFN sources. Under the Uruguay Round Agreement on Agriculture, tariff quotas were introduced to ensure the entry of specific quantities of agricultural products. Such products include poultry meat, cheese, beans, wheat, barley and maize, for which initial and final in-quota bound rates were set at 50 per cent and quota levels remain unchanged.¹⁰ Similar tariff bindings were made for products such as cocoa, coffee, concentrated milk and products containing sugar; for coffee, quota levels are to be increased by some 70 per cent between 1995 to 2004, similar to the increase in the global quota for the other products mentioned. Powdered milk is subject to a constant in-quota duty-free bound rate and a fixed quota level. For most products, by far the largest quota share was assigned to the United States and, less frequently, Canada, by virtue of historical shares. Tariff quotas also apply to the tariff bindings for newsprint paper.¹¹

38. The authorities indicated that, in practice, Mexico has employed tariff quotas only in the case of powdered milk, for which a zero in-quota duty has been set for both preferential and MFN imports.

39. The Foreign Trade Act of 1993 and its Regulations require that import (and export) quotas be assigned through public bids, although other mechanisms are allowed if it is so stipulated in international treaties signed by Mexico or at the discretion of SECOFI, which has often exercised such prerogative. Certificates granted through public bids are nominative and transferable. Information on the operation of MFN tariff-quotas for agricultural products, including their administration, is provided in Chapter IV(2).

40. In 1993, some imports benefiting from tariff preferences within the LAIA were subject to tariff quotas administered by SECOFI and allocated among importers according to past import levels. Under the agricultural agreements negotiated as part of the NAFTA, Mexico converted its quantitative restrictions to a system of tariff quotas; in Mexico, such tariff quotas are generally allocated through auctions and direct assignments. Under the NAFTA, each party may count the NAFTA in-quota quantity under a tariff quota towards the satisfaction of WTO in-quota volumes of tariff quotas or minimum levels of access. However, duties applicable to WTO members and NAFTA parties may differ. The Mexico-Canada agricultural agreement provides for the elimination of all tariffs and tariff quotas with the exception of tariffs and tariff-rate quotas on dairy, poultry and egg products and tariffs on sugar and sugar-syrup products. Mexico and the United States have agreed to eliminate all tariff and tariff-rate quotas without exception, under Annexes 302.2A and 703.2A of the NAFTA.

(e) Concessional entry

41. Rule 8 of Mexico's General Import Tariff Law allows for concessional entry of parts and components. According to this rule, parts and components can be classified under a single tariff item, and are subject to a zero or 10 per cent tariff. In 1993, 39 items could be imported under this regulation. At that time, duty-free entry was granted for authorized iron and steel products for use in the manufacture of automotive parts and components. In 1997, Rule 8 applied to 54 items; new tariff lines have been created to promote the national production of armoured vehicles, trailers, compact discs, and toys.¹²

¹⁰Part I, Section I-B, WTO Schedule LXXVII - Mexico.

¹¹Part I, Section II, WTO Schedule LXXVII - Mexico.

¹²Poder Ejecutivo Federal (1996b), p. 169.

A "special steel" programme was introduced in December 1991 to allow autoparts manufacturers to import duty free certain specialty steels.

42. Temporary imports are exempt from import taxes as well as anti-dumping and countervailing duties. Such imports are defined by the Customs Law as those allowed to enter the country for a limited period and a specific use, and then returned abroad without changes; the time limits vary between one month (e.g. trailers) to twenty years (e.g. airplanes, helicopters, vessels, railway carriages). *Maquiladoras* and firms with export programmes authorized by SECOFI may also import temporarily goods used in processing or repair activities. Goods to be used by public health institutions, except vehicles, may be also imported duty free.

43. Details on export-oriented concessional programmes (e.g. PITEX, ECEX, the *maquiladora* regime) are provided in section (3) below.

44. Under the NAFTA, Mexico's drawback and duty deferral programmes may remain unchanged until 1 January 2001, except for a prohibition of duty concession on colour television and video monitor tubes from third countries for export to North America.¹³ The NAFTA also prohibits the adoption or expansion of any concessional programmes linked to the fulfilment of performance requirements.

(f) Tariff preferences

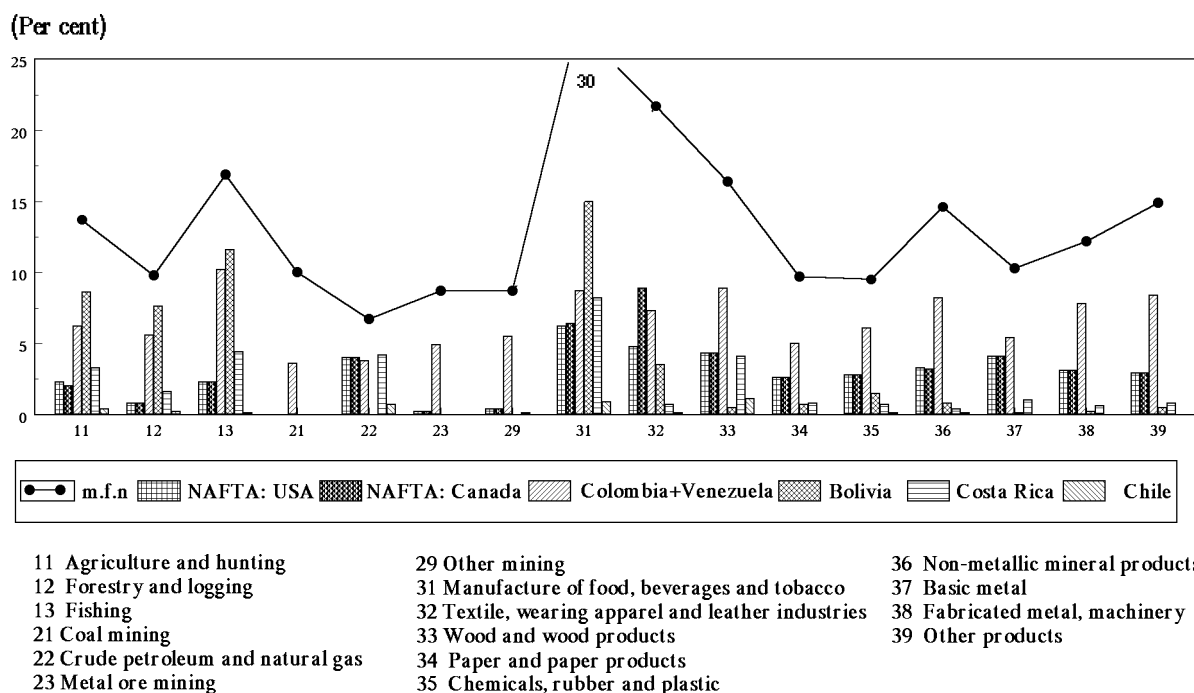
45. Since the previous Trade Policy Review of Mexico, there has been a sharp increase in the importance of tariff preferences in Mexico's trade. In 1993 Mexican tariffs were generally applied on a MFN basis, while in 1996 almost 90 per cent of Mexico's exports and 80 per cent of its imports took place under free trade agreements, with NAFTA accounting by far for the largest share (Chapter II(3)). Due to the reductions in preferential rates, the gap between applied MFN and preferential rates is growing; significant differences also exist across free-trade agreements for some industries (Chart III.3). However, these differences should disappear over time as preferential duties fall to zero.

46. Mexico is engaged in the progressive elimination of duties vis-à-vis other NAFTA members on industrial goods, which, depending on the product, took place on 1 January 1994, or will be completed in equal annual stages on 1 January 1998, 2003 or 2008. Rules for the elimination of tariffs on agricultural products are contained in bilateral arrangements. About one-half of U.S.-Mexico bilateral agricultural trade became duty free at the entry into force of the NAFTA; other tariffs will be eliminated no later than 2002, except for highly sensitive products (e.g. Mexican imports of corn and dry beans) for which tariff phase-outs should be completed by 2007.

47. Imports from LAIA member countries benefit from preferential tariffs under various mechanisms, including partial-scope agreements, which Mexico has signed with all LAIA countries, the free-trade agreements signed by Mexico with Bolivia, and Colombia and Venezuela, and the Economic Complementation Agreement with Chile. Preferential duties are also part of the free-trade agreement between Mexico and Costa Rica. Tariff preferences are granted by Mexico under the GSTP and the CPC (Chapter II(3)). No significant modifications appear to have affected any of these mechanisms over the last four years; imports under these arrangements are negligible.

¹³Under Annex 303.8 of the NAFTA, major Mexican importers were exempted from this prohibition, but this exemption will be gradually phased out and terminated in 2000.

Chart III. 3
Average m.f.n. and preferential tariff, by ISIC group, 1997



Source: WTO Secretariat calculations based on data provided by Mexican authorities.

(v) Variable import levies

48. Variable levies were applied until September 1994, when they were replaced by specific duties either used alone or as part of compound tariffs. The products affected by such duties are described in section (iv) above.

(vi) Other levies and charges

49. The authorities indicated that no changes have been made since 1993 to other charges collected exclusively on imports. A customs processing fee of 0.8 per cent of the declared customs value is levied to cover processing costs; importation or exportation of natural gas by PEMEX is not subject to the fee. Temporary imports destined for the *maquiladora* industries pay a fee of 0.176 per cent. The NAFTA requires Mexico to eliminate customs user fees on NAFTA-originating goods no later than 30 June 1999; such fees may not be increased in the meantime. User fees for imports from Colombia, Costa Rica and Venezuela will be eliminated in July 1999, and from Bolivia in 2003. Other taxes levied at the border are described below.

50. The main internal tax applied in Mexico is the value-added tax (VAT), levied equally on domestic and imported products. The VAT on imports is levied on the customs value of imports (see section (ii) above) plus import duties and any other additional import charges. During the period under review, VAT was applied at 15 per cent except during the period January 1994 to April 1995, when it was 10 per cent. Currently two other VAT rates are applied: a 10 per cent rate for activities undertaken in the border areas, except property transfers; and a zero rate on the sale of non-industrialized animal

and vegetable products, pharmaceuticals, ice, water, agricultural machinery, *ixtle* (a jute-like fibre), fishing boats, fertilizers, greenhouses, food products (except beverages other than milk, juices and syrups), certain domestic services, and exports of goods and services.

51. Other internal taxes are also levied on a number of products, whether imported or domestically produced. These taxes include the Special Tax on Products and Services (IEPS), levied at variable rates and taxable bases according to the product. For example, alcoholic beverages are taxed on the sales price at each stage of processing at rates that vary between 21.5 and 60 per cent; tobacco products are taxed on the final retail price at rates of 20.9 or 85 per cent; and gasoline and diesel are taxed on depending on their values uses and composition. Exports are zero-rated, with exemptions also granted to persons engaged in small business activities.¹⁴ The tax on new automobiles (ISAN) was eliminated in late 1995 but partially reintroduced in 1997. However, vehicles with a maximum price of 65,000 pesos are exempt; a reduction of 60 per cent granted in 1997 for other vehicles, should fall to 30 per cent in 1998.

52. No "other duties and charges" were recorded in Mexico's WTO list of bindings with respect to any item.¹⁵

(vii) Minimum import prices

53. Mexico does not apply reference or minimum import prices.

(viii) Licensing and authorization

54. Currently, according to the authorities, prior import permits are required for 184 tariff lines, including crude oil and basic petrochemicals, some pharmaceuticals, arms and explosives, automobiles drugs, and several used goods (clothing, machinery, computer equipment, and transport equipment).

55. Under the NAFTA, Mexico may still require permits for the importation of certain new automotive goods during five years (10 items) or ten years (20 items), for the importation of used goods for ten years (90 tariff lines) and of used automotive goods (30 tariff lines) for 25 years.

(ix) Import prohibitions

56. Mexico's 1997 tariff schedule identifies 17 tariff items as prohibited; such items correspond to the goods identified as prohibited in the Secretariat report for the previous Trade Policy Review of Mexico for reasons of public safety, health, morality or child protection.¹⁶ Imports of used cars remain prohibited. Mexico also applies trade (import and export) prohibitions to a number of countries as provided for in United Nations Security Council resolutions.

¹⁴Activities generating an annual income or with assets of up to 15 or 77 times the minimum salary, respectively.

¹⁵WTO Schedule LXXVII - Mexico.

¹⁶The HS items involved are 03019901, 12119002, 13021102, 13021902, 28332903, 29035903, 29035905, 29109001, 29251901, 29310005, 29391002, 30034001, 30034002, 30044001, 30044002, 49089005, and 49119105.

(x) Import quotas

57. Mexico currently applies no import quotas. In 1993 import quotas were applied to powdered milk, evaporated milk, and processed cheese; all agricultural products were tariffed under the Uruguay Round Agreement.

(xi) Import surveillance

58. Mexico did not maintain import surveillance mechanisms at the time of its previous Trade Policy Review, but since 1994 it has made use of commercial inspection companies to examine the country of origin of imported goods identical or similar to those subject to trade defence measures (section (iii) above).

(xii) Import monopolies, cartels or sole distributors

59. No import monopolies, cartels or sole distributors appear to exist in Mexico other than certain activities of the state company PEMEX (section (4)(ii)).

(xiii) Countertrade

60. As a general principle, the Mexican Government discourages countertrade; official agencies are barred from engaging in such arrangements, or using special offset requirements as part of their procurement activities. The authorities indicated that, to their knowledge, the private sector had not been involve in countertrade or similar arrangements during the period under review.

(xiv) Technical requirements

61. Compulsory technical regulations in Mexico cover health, and safety, as well as environment and consumer protection. Mexico was a member of the GATT Committee on Technical Barriers to Trade. As part of the Single Undertaking of the Uruguay Round, Mexico automatically became bound by the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). The national enquiry point foreseen in Articles 10.1 and 10.3 of the TBT Agreement is the General Directorate for Standards (*Dirección General de Normas* - DGN). Since 1995, Mexico has made some 65 notifications under the TBT Agreement, and about 110 notifications under the SPS Agreement.¹⁷ To ensure compliance with the Code of Good Practice provided for in the TBT Agreement, the adoption of this Code has been made an accreditation or registration requirement for Mexican standardization bodies.

(a) Standards, testing and certification

62. Mexican standards can be either voluntary or mandatory. Mandatory standards, or Official Mexican Norms (NOMs), aim to establish specifications for goods, services or processes to ensure safety, the protection of human life, animals, plants or the environment, or prevent deceptive practices. Voluntary standards, designated as Mexican Norms (NMXs), are used as guidelines for consumers and producers, and as instruments of quality promotion. Mexico's standards system is comprised of six private national standardization bodies and nine ministries (SECOFI and the Ministries of Agriculture, Communications and Transport, Energy, Environment, Health, Labour, Tourism, and Social

¹⁷WTO document series G/TBT/N and G/SPS/N/MEX.

Development). The National Standardization Commission formulates standardization policies, coordinates the agencies related to standards, and approves the annual national standardization programme. The Commission is a national body with representation from all regulatory government agencies involved in standards and technical regulations, private national standardization bodies and representatives of academic, industrial, commercial and consumer groups.

63. The legal basis for Mexico's conformity assessment and standardization system is the Law on Metrology and Standardization (LFMN) of 1 July 1992. The Law was amended by a decree of 20 May 1997; the reforms entered into force on 1 August 1997. They cover areas such as standardization, metrology, conformity assessment, accreditation, vigilance and sanctions. For NOMs the reforms established the obligation to consider other NOMs, NMXs and international standards during the elaboration process, and to present a "Regulatory Impact Declaration". NMX provisions established a more detailed elaboration process and an obligation to submit the NMXs to public consultation, and broadened the regulatory system. Both NOMs and NMXs must be reviewed every five years. The concept of "conformity assessment" was introduced, to be carried out by private bodies including certification bodies, verification units and laboratories. "Accreditation entities" are now responsible for accrediting conformity assessment bodies, with the support of technical organizations. Regulatory agencies must publish their conformity assessment procedures and available mechanisms to undertake mutual recognition agreements with foreign entities. On sanctions, fines have been linked to the infraction severity; accreditation, approvals and authorizations are cancelled in cases of non-compliance with the provisions of the law.

64. The Industrial Policy and Foreign Trade Programme (PPICE - Chapter II(2)) considers the collaboration between the private and public sectors on the elaboration of NOMs and NMXs for products acquired by the public sector as the ideal tool to support the development of national suppliers.¹⁸ The current programme for economic deregulation envisages issuing regulations under the LFMN to encourage the elaboration of NOMs as both regulatory instruments and tools to promote the national industry.¹⁹

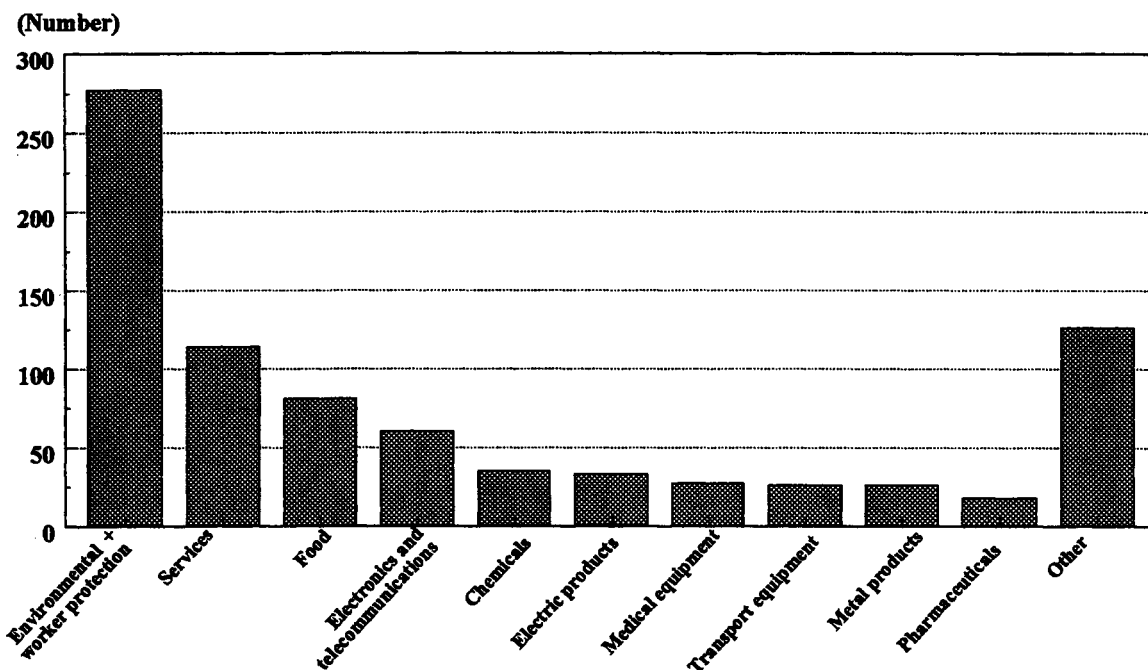
65. The authorities indicated that there have been no cases when international standards have been found inadequate; such standards are typically taken as reference for the elaboration or updating of Mexican standards. However, Mexico does not follow international standards when it considers that protection levels for the country must be higher than those established internationally. The authorities noted that the percentage of Mexican standards identical to ISO or other international standards varies according to the activity: in electronics it reaches about 80 per cent, while in other areas it may only be 10 or 20 per cent (e.g. pollution emission limits, country-of-origin determinations and tourist services). Standards from other countries are not adopted as Mexican standards, although certain Mexican standards are based on foreign norms, especially those of the United States. The proportion of NOMs in partial or total concordance with international standards is about 65 per cent.

¹⁸SECOFI (1996), p. 82.

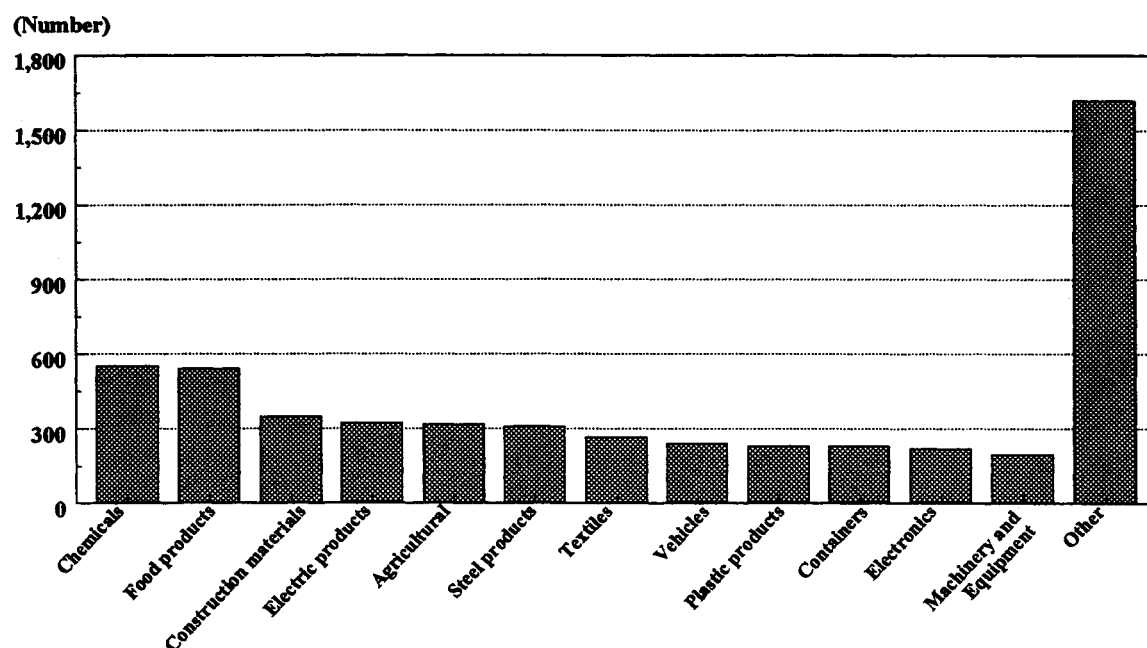
¹⁹SECOFI (1996), p. 129.

Chart III.4
Official Mexican Norms (NOMs) and voluntary Mexican Norms (NMXs), 1997

(a) NOMs, including emergency norms, in force and planned



(b) NMXs in force



Source: Mexican authorities.

66. Procedures for the establishment of new standards or the revision of existing ones involve the regulatory agency, through an internal technical body, presenting a preliminary project to the National Advisory Committee and elaborating a Regulatory Impact Declaration. The latter is presented to the Deregulation Unit for analysis; if the proposed standard has a high economic impact the Declaration must include a cost-benefit analysis. Once the preliminary project is approved it is published in the Official Journal for a 60-day public consultation period. Comments are analyzed, responded to and published. The standard is then issued in a definitive form. Similar public consultation procedures are followed for NOMs and NMXs. NMXs are drawn up and issued by national standardization bodies. When no such standardization body exists for a sector, NMXs are issued by the DGN. The standardization body responsible for the standard must demonstrate conformity with the WTO Code of Good Practice.

67. Under the LFMN, regulatory agencies are authorized to issue emergency NOMs when they conclude that there is imminent risk of damage; such decisions are notified to the Foreign Trade Committee for consideration of their trade effects. Emergency NOMs may be applied for up to six months; a second six-month period is allowed but the regulatory agency must submit to SECOFI a regulatory impact report. Longer application periods require normal adoption procedures. Such NOMs are notified to the WTO contact points. In June 1997, there were ten emergency NOMs in force (on areas such as natural gas, LPG, vehicle identification numbers, vehicle pollution controls, fly control in fruit and sea turtle protection).

68. There has been a significant increase in the number of mandatory standards in Mexico; in 1997 there were some 823 NOMs in force, compared with 303 in 1992. In 1997, most NOMs related to environmental and worker protection, followed far behind by services and food (Chart III.4). The number of voluntary standards has increased only slightly, from close to 5,300 in 1992 to just under 5,400 in 1997. NMXs cover a wide range of items, the largest number relating to chemical and food products. The authorities noted that standardization activity increased with the entry into force of the LFMN in 1992, as all regulatory agencies had to review their technical regulations. As at June 1997, 521 NOMs had been modified. NMXs increased only slightly because the LFMN retained all the voluntary standards elaborated before 1992.

69. Under the Foreign Trade Act, SECOFI is responsible for publicizing in the Official Journal, the NOMs for which compliance must be verified by the customs authorities at the point of entry into Mexico; only imports identified by their HS codes may be subject to such verification. Notwithstanding any verification that may be made at the point of entry, compliance with NOMs may also be verified once products are within the Mexican territory. The current lists of NOMs to be verified by customs were published on 2 June 1997. Certain imports, notably those covered by temporary import regimes (section (iv) above), are exempt from compliance with NOMs. In the case of domestic products, compliance with NOMs is verified at the production or distribution points.

70. In areas where no NOMs exist, products must comply with, in priority order, international standards, specifications established by the country of origin, or the producer's standards. No distinction is made between imported and domestically produced goods as regards compliance with technical regulations and standards. Certification of compliance with NOMs is carried out by the accredited certification bodies and by the regulatory agencies. Certificates issued by Mexico apply to the product model and are available to each importer; it is not necessary to test each shipment. Imports only require the presentation of a copy of the certificate; periodical or random samplings are carried out on certified products. Mexico maintains mutual recognition agreements with U.S. laboratories in areas such as tyres and telecommunications equipment. Mexico also participates in programmes of international bodies such as Quality Assessment Recognition System (QSAR), the International Laboratory

Accreditation Conference (ILAC), the InterAmerican Accreditation Cooperation (IAAC) and the National Council of Laboratory Accreditation (NACLA).

71. Mexico's network of 65 calibration laboratories is overseen by the DGN. The National Centre for Metrology (CENAM) was created in 1994 to help oversee laboratories; offer technical support in areas such as calibration, evaluation and development of models; study methods to elaborate National Measurement Standards; and support harmonization with international practices. The laboratories in this network are responsible for ensuring the provision of the equipment used by private testing laboratories. The National System of Testing Laboratories (SINALP) is in charge of providing the test data used by government agencies and accredited certification bodies. The LFMN opened the possibility of creating private certification bodies, and eight such bodies were in operation in mid-1997. In January 1997, a proposal to establish policies and procedures for certification was published for public consultation in the Official Journal; comments from 35 bodies and enterprises were received and analyzed by a technical working group. Taking account of such comments, a final document was to be published in 1997.

72. No changes were made to metrology regulations in Mexico as a result of the entry-in-force of the NAFTA, which does not provide for mutual recognition among domestic and foreign certification authorities. However, the NAFTA calls for mutual recognition of the equivalence of standards-related measures and for efforts to work towards establishing compatible measures. It also provides for the accreditation of conformity assessment bodies of the other members. A Committee on Standards-Related Measures is responsible for monitoring the implementation and administration of these provisions; it oversees four sectoral subcommittees responsible for harmonizing, to the extent possible, standard-related measures in the areas of telecommunications equipment, automobiles, textile labelling, and land transport. Within this framework, Mexico is taking steps to recognize technical test results performed in other NAFTA countries, and to harmonize type approval process for telecommunications equipment. The Sub-Committee on Labelling of Textile and Apparel Goods is working on the harmonization of care symbols. Mexico is a member of the NACLA, a body created in the United States to establish common accreditation policies. Mexico is also a member of a new Trilateral Committee on Food Labelling, which seeks to promote the harmonization of labelling rules in the three NAFTA countries.

73. Mexico maintains a cooperation programme with the European Union to promote quality and to support the creation of Mexican standardization and certification bodies. The second stage of the programme foresees the strengthening of private accreditation entities, which is expected to support the establishment of mutual recognition agreements. Mexico participates in ILAC and QSAR seeking to establish multilateral agreements; it has also participated as an observer in IAAC meetings, with the aim of becoming a full member in the near future.

74. Despite the progress achieved in recent years, the authorities believe that the national system of normalization and quality control does not yet meet the needs imposed by international competition.²⁰ The relevant infrastructure is concentrated in the country's central region and some industries or regions are still inadequately served by the laboratory system. The number of private normalization and certification agencies is small and there is a need to increase the number of verification units to strengthen compliance with official norms.

²⁰SECOFI (1996), pp. 109-111.

75. Certain complaints have been made about the possible protectionist effects of Mexico's standards regime, although the absence of complaints to the WTO suggests that any such effects may be small. Some importers have questioned the need for NOMs in certain cases, arguing for NMXs instead. Complaints have also been raised to the effect that certain NOMs are excessively strict; products mentioned include electrical goods, tyres and wool clothing.²¹

(b) Marking, labelling and packaging

76. Commercial information requirements (including labelling and marking) must be included in NOMs in accordance with laws such as the Federal Law on Metrology and Standardization, the Federal Consumer Protection Law and the General Health Law. The same marking and labelling requirements apply to domestic and imported products.

77. In January 1996, SECOFI published two NOMs relating to labelling requirements: NOM-050-SCFI-1994 establishing general packaging and labelling requirements; and NOM-051-SCFI-1994 establishing specific labelling requirements for food and non-alcoholic beverages. The two NOMs were to enter in force on 1 November 1996, but application of most of their provisions was delayed until March, July or November 1997 to allow additional time for their dissemination and give producers time to sell out existing stocks. The authorities emphasized that both NOMs were based on international standards, and elaborated in accordance with the TBT Agreement.

78. Under NOM-050-SCFI-1994 labels must show (in Spanish) at least the following information: the product name; quantity or weight, as established in NOM-030-SCFI; country of origin; appropriate warnings for dangerous products; expiry date if applicable; for domestic products (and imports, in certain cases), name and fiscal domicile of the producer; for imported products, name, and fiscal domicile of the importer, and data that may be affixed to the product after customs clearance but prior to retail sale. NOM-051-SCFI-1994 requires labels to include the following information: the product name; list of ingredients; quantity, as established in NOM-030-SCFI; country of origin; identification; expiry date; nutritional characteristics and any relevant warnings.

79. Certain aspects of Mexico's practices with respect to marking and labelling have been the subject of criticism. These have related to past requirements for affixing labels before the product concerned arrived in Mexico, the degree of detailed information required in labels, verification procedures that take place at customs and not at the point of sale; the national Chambers of Commerce have also argued that packaging and labelling requirements should be promulgated in NMXs, and not NOMs. Questions have also been raised about the process followed in 1994 for changing labelling rules, reportedly done with little previous notice.²²

(c) Sanitary and phytosanitary regulations

80. Mexico's sanitary legal framework is based on the Law on Metrology and Standardization of 1992, the Federal Animal Sanitary Law of 1993 and the Federal Plant Sanitary Law of 1994. The authorities are of the view that current legislation on sanitary and phytosanitary measures is in accordance

²¹OECD (1996), p.42. Problems reportedly encountered by U.S. exporters to Mexico are described in USTR (1995) and (1996).

²²European Commission (1997) and USTR (1995).

with WTO rules on technical barriers. Nevertheless, changes to the statutes are to be made in relation to the accreditation of certification entities, test and calibration laboratories, and verification units, activities previously controlled by the Government but which will be undertaken by private firms in the future. The government agencies in charge of administering sanitary, phytosanitary and health regulations are the Ministry of Agriculture and the Ministry of Health. The Mexican authorities have a maximum period of three days to decide on applications for sanitary or phytosanitary certificates.

81. Measures to prevent the introduction of diseases take the form of NOMs applied to imported plants and animals. In 1995, there were in place some 75 such norms affecting plant products and 46 for animals; there were 97 phytosanitary inspection sites at entry points. The authorities verify and certify the sanitary conditions of federal-inspection type (*tipo inspección federal*, TIF) plants and support similar action by foreign sanitary authorities. In 1995, there were close to 150 TIF plants, of which 28 were accredited to export to the United States, 20 to Japan and two to the European Union. Mexico has concluded agreements with 16 countries concerning animal health and with ten regarding plant health.

82. In order to protect its domestic livestock industry, Mexico maintains import bans on beef and certain dairy products from countries which Mexico does not recognize as free from foot-and-mouth disease. Prohibitions are also in place on imports of cattle and beef from countries affected by "mad cow disease" (bovine spongiform encephalopathy).

83. Isolated complaints have been raised about Mexico's practices concerning phytosanitary measures.²³ However, none of those issues has been raised in WTO fora.

(xv) Anti-dumping and countervailing measures

84. The Industrial Policy and Foreign Trade Programme (PPICE - Chapter II(2)) notes that Mexico operates one of the world's most active trade defence system.²⁴ Intermediate and capital goods were involved in 86 per cent of the cases investigated between 1987 and 1995, accounting for close to 70 per cent of the value of imports affected by trade defence measures. About 70 per cent of all cases related to only three industries: metals and basic metal products, chemicals, and textiles and clothing (Chart III.5). The PPICE links those patterns to three factors: (i) the tendency in high fixed-cost industries to dispose of surpluses at low prices during periods of slow activity; (ii) the growing presence of centrally-planned economies in world markets; and (iii) the continuous appreciation of Mexico's real exchange rate between 1988 and the end 1993 (see also Chapter I). According to the PPICE, the appreciation of the real exchange rate contributed to more intensive use of the anti-dumping system by reducing the competitiveness of national production and increasing the incentive to import.²⁵

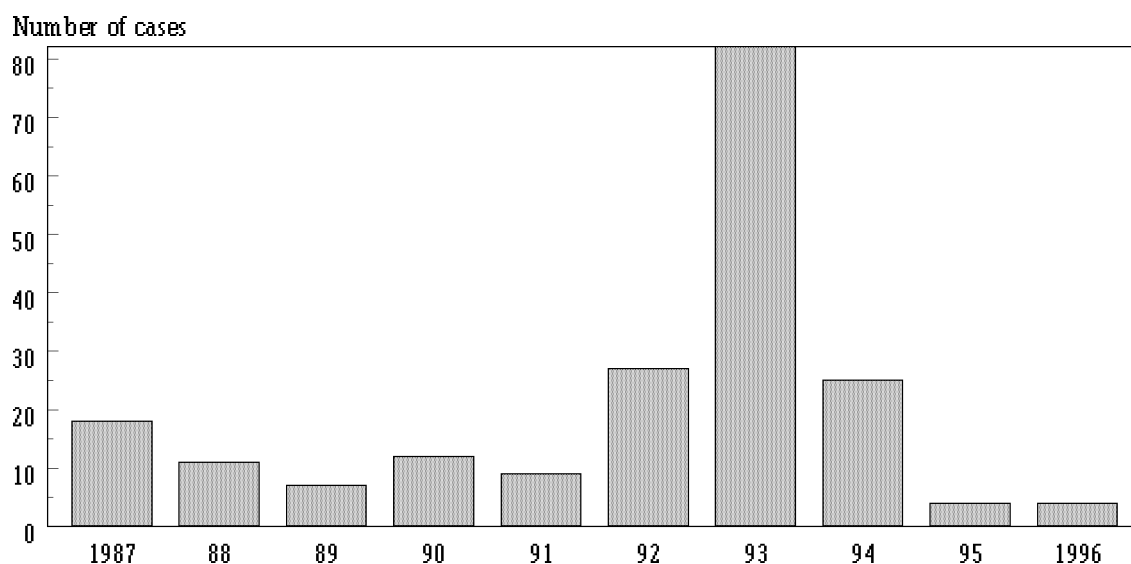
²³These have included the large number and extensive product coverage of sanitary and phytosanitary import regulations published in 1994, initially on an emergency basis; some such regulations, for example on fresh milk, allegedly departed significantly from accepted practices; phytosanitary standards are also claimed to have created barriers to products such as grains, citrus, christmas trees, cherries, and cling peaches (USTR, 1995).

²⁴SECOFI (1996), p. 174.

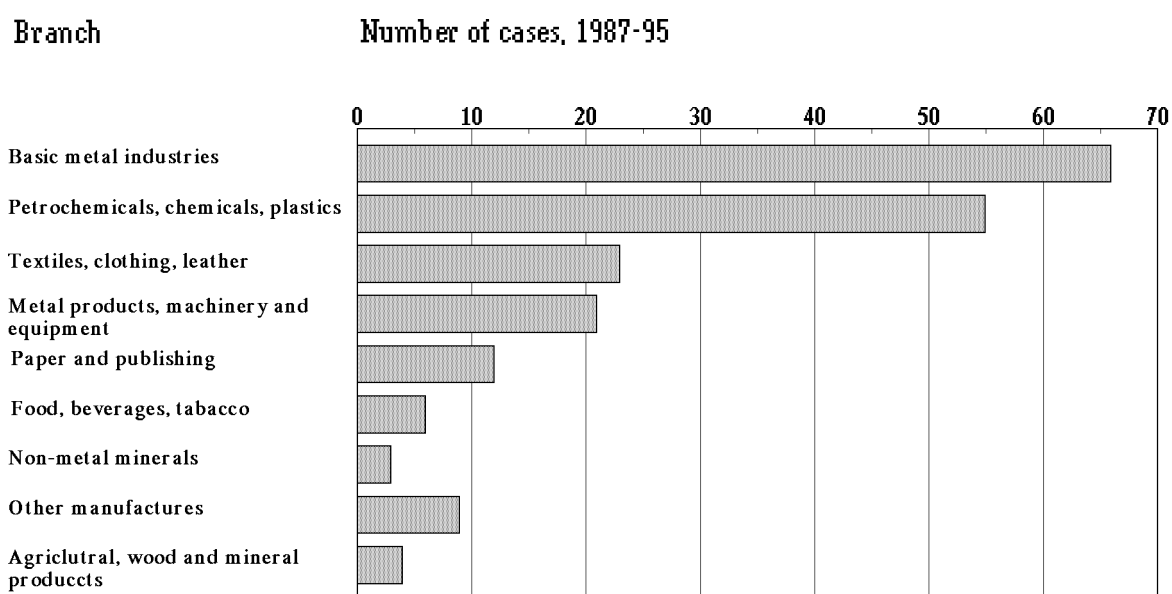
²⁵SECOFI (1996), p. 176.

Chart III.5
Anti-dumping measures, 1987-1996

(a) Cases opened per year



(b) Cases opened per economic branch



Source: SECOFI (1996), *Programa de Política Industrial y Comercio Exterior* pp 174-5.

85. The number of anti-dumping investigations rose sharply between 1990 and 1993, the number of product-country decisions on anti-dumping and countervailing increasing from 27 to 156; this number fell to 107 in 1994.²⁶ The total of product-country decisions reached 135 in 1995, and dropped to 92 in 1996. The large number of cases up to 1994 may be explained by the strength of the peso and the resulting strong import growth, which might have led domestic producers to seek the protection of trade defence measures.²⁷

86. Between January 1993 and December 1996, the countries most affected by Mexican anti-dumping investigations were Brazil, China and the United States. Investigations mainly affected steel, chemical and textile products, and machinery and equipment; other affected products included meat, toys and footwear. Since its implementation, the Mexican trade defence system has mostly affected basic metal products (particularly steel), petrochemicals, plastics, textiles and footwear. Though the number of investigations has fallen since 1993, the number of measures in force remains high. Overall, there has been a clear increase in the number of anti-dumping measures in force since 1993. While in January 1993 there were 20 definitive anti-dumping duties in force, by December 1996 Mexico had some 85 anti-dumping measures in force (Table III.3). In 1996, the main sources affected by anti-dumping duties were, in descending frequency, China, the United States and Brazil.

87. Mexico has used countervailing duty measures sparingly, although the number of countervailing investigations increased since 1993 relative to previous years. Between January 1993 and December 1996, the countries most affected by those investigations were Brazil and the United States; such investigations mainly affected steel and agricultural products. By December 1996, there were eight countervailing measures in force, affecting steel products and meat (Table III.4). Countervailing investigations have led to undertakings from Canadian and U.S. wheat exporters, and a Venezuelan steel producer.

Table III.3
Anti-dumping measures in force, December 1996

Country	Product	Date imposed/effective	Product	Date imposed/effective
Armenia	Plate in coils	12.06.95		
Azerbaijan	Plate in coils	12.06.95		
Belarus	Plate in coils	12.06.95		
Brazil	Special steel	18.11.94	Cold-rolled sheet	27.12.95
	Corrugated rods	11.08.95	Malleable iron connections	04.10.96
	Cold-rolled sheet	27.12.95	Steel hoop and strip	30.03.92
	Corrugated rods	11.08.95	Ceramic wall tiles	04.08.95
	Plate in coils	28.12.95	Electric power transformers	07.09.92
	Plate in sheets	29.12.95	Synthetic rubber	27.05.96
	Hot-rolled sheet	30.12.95		
Canada	Plate in coils	28.12.95	Hot-rolled sheet	30.12.95

Table III.3 (cont'd)

²⁶Data include both preliminary and final decisions (*Poder Ejecutivo Federal*, 1996c, p. 100).

²⁷It has been pointed out that although the trade coverage of these measures appears to be modest, the mere threat of trade defence action can result in reduction or diversion of trade flows, and afford high margins of protection to the domestic industry (OECD, 1996, p.109)

Country	Product	Date imposed/effective	Product	Date imposed/effective
China	Dishware	25.05.92	Made-up articles (knitted/crocheted clothing)	18.10.94
	Maleable iron connections	15.04.93	Made-up articles (not knitted/crocheted clothing)	18.10.94
	Candles	19.08.93	Made-up articles (other textile articles)	18.10.94
	Footwear	30.12.93	Fluorite	18.10.94
	Tyres	22.09.94	Organic chemicals	18.10.94
	Cameras	22.09.94	Pencils	18.10.94
	Bicycles	22.09.94	Pencil sharpeners	18.10.94
	Padlocks	22.09.94	Valves	18.10.94
	Textiles (cotton)	18.10.94	Tools	11.11.94
	Textiles (other vegetable textile fibres)	18.10.94	Machines, appliances and electrical equipment	18.11.94
	Textiles (artificial or synthetic filaments)	18.10.94	Recording, sound production and television sound and image reproduction equipment	18.11.94
	Textiles (synthetic/artificial staple filaments)	18.10.94	Toys	25.11.94
	Textiles (gauze)	18.10.94	Games and articles for recreation or sport	25.11.94
	Locks	14.08.95		
EC	Bovine meat	03.06.94		
Estonia	Plate in coils	12.06.95		
France	Sorbitol	27.09.90		
Germany	Cold-rolled sheet	27.12.95		
Georgia	Plate in coils	12.06.95		
Hong Kong	Jean/denim	9.09.91		
India	Bicycle tyres	07.12.95		
Japan	Sulphuric acid	07.06.95		
Kazakhstan	Plate in coils	12.06.95		
Korea	Short-fibre polyester	19.08.93		
Kyrgyzstan	Plate in coils	12.06.95		
Latvia	Plate in coils	12.06.95		
Lithuania	Plate in coils	12.06.95		
Moldova	Plate in coils	12.06.95		
Netherlands	Cationic starch	25.05.92	Hot-rolled sheet	30.12.95
Russian Fed.	Plate in coils	12.06.95		
Spain	Sodium tripolyphosphate	08.12.92	Regenerated cellulose tubes	25.05.92
C. Taipei	Latten ware	11.10.90	Ball bearings	10.09.96
Tajikistan	Plate in coils	12.06.95		
Turkmenistan	Plate in coils	12.06.95		
Ukraine	Plate in coils	12.06.95	Urea	05.07.95
United States	Acrylic fibres	05.06.91	Hydrogen peroxide	23.12.93
	Polyvinyl chloride (PVC)	05.06.91	Galvanized sheet	02.08.94
	Vinyl flooring in rolls	15.11.91	Caustic soda	12.07.95
	Corrugated rods	23.12.91	Seamless tubes	11.10.95
	Polystyrene (crystal and impact)	11.11.94	Plastic syringes	25.05.92
	Plate in sheet	02.08.95	Regenerated cellulose tubes	25.05.92
	Plate in coils	28.04.93	Telephone connectors	27.11.92
	Hot-rolled sheet	28.04.93	Ammonium sulphate	04.09.96
	Cold-rolled sheet	28.04.93		
Uzbekistan	Plate in coils	12.06.95		
Venezuela	Corrugated rods	23.12.91	Plate in coils	27.12.95
	Cold-rolled sheet	27.12.95	Hot-rolled sheet	27.12.95

Source: WTO documents G/ADP/N/22/MEX, 21 March 1997 and G/ADP/N/22/MEX/Corr.1, 5 May 1997.

Table III.4
Countervailing measures and undertakings in force, December 1996

Country	Product	Effective date
Countervailing duties in force		
Brazil	Hot-rolled sheet	30.12.1995
Brazil	Cold-rolled sheet	27.12.1995
Brazil	Plate in sheets	29.12.1995
Brazil	Plate in coils	28.12.1995
European Union	Bovine meat	03.06.1994
Venezuela	Hot-rolled sheet	30.12.1995
Venezuela	Cold-rolled sheet	27.12.1995
Venezuela	Plate in coils	28.12.1995
Undertakings in force		
Venezuela C. Siderúrgica del Orinoco	Hot-rolled sheet	30.12.1995
Venezuela C. Siderúrgica del Orinoco	Cold-rolled sheet	27.12.1995
Venezuela C. Siderúrgica del Orinoco	Plate in coils	28.12.1995

Source: WTO documents G/SCM/N/23/MEX, 21 March 1997, and G/SCM/N/23/MEX/Corr.1, 16 May 1997.

88. The PPICE acknowledges that the formulation of trade defence policies must take into account that the application of anti-dumping or countervailing duties can have serious effects on the competitiveness of the Mexican productive sector. Particularly in the context of NAFTA, the application of such duties to capital and intermediate goods could increase costs and thus undermine the competitive position in the Mexican market of domestic producers vis-à-vis producers in other NAFTA countries. The PPICE also notes that as the *maquiladora* and PITEX regimes are phased out (section (3) below), subjecting capital and intermediate goods to contingency measures may reduce the competitiveness of Mexican exports in foreign markets. The authorities noted that the Foreign Trade Act contains provisions to prevent any such adverse effects from occurring, including a lesser duty rule, which they indicated is often used, and a public interest clause.

89. The legislation on trade defence measures in force at the time of the previous Trade Policy Review of Mexico was superseded by the Foreign Trade Act (LCE) of 1993 and its Regulations (Chapter II(2)). The new statutes were notified to the WTO Committee on Anti-Dumping Practices in May 1995.²⁸ Mexico's trade defence legislation is now made up of various provisions of the LCE and its Regulations, together with the WTO Agreement on Implementation of Article VI of the GATT 1994 (the AD Agreement) and the Agreement on Subsidies and Countervailing Measures (the SCM Agreement).

90. Among the changes stemming from the new LCE, the authorities highlighted those related to better-defined criteria for requiring confidential information; clearer time-limits for procedures to be completed; a more specific methodology to establish dumping margins, injury and causal links; the impossibility of imposing a duty at the initiation of an investigation; and formal provisions for public hearings. With respect to ex officio and contested administrative proceedings, the LCE extends the right of appeal for reversal of decisions to cover all interested parties and all resolutions having

²⁸WTO documents G/ADP/N/1/MEX/1, G/ADP/N/1/MEX/1/Corr.1 and G/ADP/N/1/MEX/1/Corr.2, G/SCM/N/1/MEX/1 and G/SCM/N/1/MEX/1/Corr.1.

a final character. The LCE also permits interaction between the anti-dumping authorities and the competition policy authorities through the Foreign Trade Commission (COCEX-Chapter II). Instances where SECOFI considers that competition laws have been breached may be reported to the Federal Competition Commission (section (4)(i) below). In turn, the Commission may issue opinions concerning decisions taken by SECOFI involving anti-dumping or countervailing measures.

91. The authorities noted that Mexico's engagements under the NAFTA required making various changes to the LCE, with respect to final determinations (Article 60), review of final countervailing duties (Article 68), access to information (Article 80), alternative dispute settlement mechanisms (Article 97), and appeals against resolutions (Article 98). The entry into force of the NAFTA also made necessary modifications to the Fiscal Code of the Federation affecting the revision of resolutions and the organs involved in alternative dispute settlement mechanisms.

92. Although the LCE was also enacted prior to the WTO AD Agreement and the SCM Agreement, the entry into force of these Agreements has not led to changes in the LCE. In this respect, the authorities have emphasized that both the AD and SCM Agreements apply with the force of law in Mexico and have the same status as the LCE. In the event of any inconsistency between them and the LCE, or of any omission in the latter, the provisions of the Agreements would prevail.²⁹ Nevertheless, to make clearer the consistency of domestic and international trade defence rules, the authorities began preparing the requisite amendments to the present law and planned to propose them to the President of the Republic in 1997.³⁰

93. The LCE defines SECOFI's responsibilities in the area of trade defence; they include investigating the existence of price discrimination or subsidies, injury or the threat of injury, and the causal link between them for anti-dumping, countervailing and safeguards. SECOFI is also responsible for proposing remedial actions and advising Mexican exporters involved in similar investigation abroad. Anti-dumping, countervailing and safeguard investigations are conducted by SECOFI's International Trade Practices Unit (Chart II.1). Among other activities, the Unit is charged with all administrative procedures of an investigation, requesting information from the parties involved, facilitating conciliation meetings, conducting verification visits, approving price undertakings, and setting up, in collaboration with customs authorities, verification mechanisms to ensure compliance. Before issuing final resolutions on trade defence measures, the LCE requires SECOFI to seek the opinion of the Foreign Trade Commission (COCEX - Chapter II(2)). COCEX may suggest changes on countervailing duties for the public interest, but has not so far done so (the term countervailing duty is applied by the LCE to duties imposed in either anti-dumping or subsidies investigations). The Ministry of Finance collects countervailing duties and carries out the acts to apply them.

94. The provisions of the AD and SCM Agreements may be invoked administratively by the investigating authority during investigations; whether the investigating authority applied the proper provisions would be determined through judicial reviews. Only Mexican courts are empowered to try cases relating to possible inconsistencies between Mexican legislation and international treaties. The Fiscal Court constitutes the review authority on anti-dumping and countervailing investigations.

²⁹Article 2 of the LCE states that "the provisions of this Act are a matter of public policy and applicable throughout the Republic, without prejudice to the provisions of the international treaties or agreements to which Mexico is a party". See also Chapter II(2)).

³⁰WTO document G/ADP/W/66, 25 October 1995.

95. The adoption of the LCE in 1993 was an important development, given the central role that anti-dumping plays in Mexico's trade policy and practices. However, the fact that the LCE was adopted prior to the entry into force of the AD and SCM Agreements means that in several areas Mexico's trade defence statutes are at variance with the WTO Agreement. As a result, WTO Members have raised questions on whether the LCE can be interpreted as a proper implementation of the WTO Agreements.³¹ One of Mexico's trading partners has also questioned in WTO fora certain Mexican anti-dumping practices (Table II.2). The Secretariat report for the previous Trade Policy Review of Mexico noted that the period actually taken to complete the various phases of an anti-dumping investigation was generally considerably longer than the statutory maximum. For this review, the authorities indicated that such problems had been overcome, in part by modifying the periods specified in the legislation.

96. Under the NAFTA, each party explicitly reserves its right to retain its anti-dumping and countervailing laws and practices with respect to goods imported from the territory of any other party. However, under a mandate from the NAFTA Commission, a working group was to seek mechanisms to minimize trade defence related disputes. NAFTA establishes a mechanism for independent binational panels to review final anti-dumping and countervailing determinations when such review is requested by a person entitled to judicial review of the determination under the domestic law of the importing country. Up to March 1997, Mexico has been involved in 12 cases involving binational panels, requested both by Mexico or its NAFTA partners; several cases have involved steel products.

(xvi) Safeguard actions

97. Until 1993, Mexico did not have specific domestic regulations to implement safeguard actions under Article XIX of the GATT; in that year safeguards were introduced as part of the new Foreign Trade Law (LCE). The LCE appears not to reflect certain provisions of the WTO Agreement on Safeguards, for example, those concerning the extension of safeguard measures, the interval to be observed between two measures, and methods for fixing quantitative quotas. However, the authorities have noted that the WTO Agreement on Safeguards has the status of a domestic law, in effect complementing the safeguard provisions in the LCE or amending those provisions in the event of any apparent divergence.

98. Safeguard provisions may also be found in the NAFTA and the free-trade agreements signed between Mexico and Costa Rica, Bolivia, Colombia and Venezuela, as well as in Resolution 70 of the Latin American Integration Association (LAIA). The NAFTA recognizes two types of safeguards: multilateral or global (for imports originating in NAFTA and other parties), and bilateral (when the imported product causing injury originates within NAFTA). The NAFTA requires its members to exempt each other from any global safeguard action unless their exports account for a substantial share of total imports and cause or threaten serious injury. The bilateral safeguard permits a temporary "snap-back" to applied MFN tariff rates in the event of import surges resulting from tariff reductions or elimination. The provision under which NAFTA imports may be excluded from multilateral safeguard measures has been questioned in WTO fora, as it raises the possibility that non-NAFTA countries "may be burdened with a disproportionate amount of trade restriction".³²

99. Under the Special Safeguard Provisions of the WTO Agreement on Agriculture, allowing for the imposition of an additional duty above the bound tariff level at a pre-determined trigger volume

³¹WTO document G/ADP/W/13, 11 July 1995.

³²WTO documents WT/REG4/1, 23 June 1995, and WT/REG4/1/Add.1, 22 July 1996.

or price level, Mexico has designated 294 eight-digit tariff items on which such action may be taken³³; however, until now Mexico has not made use of the safeguard provision. Mexico also retained its right to use the transitional safeguard mechanism under the provisions of the WTO Agreement on Textiles and Clothing, but has not made use of this provision. Mexico has also submitted the list of products included in the first and second phases of integration into GATT 1994 (Chapter IV(4) - textiles and clothing).

100. Mexico has never applied any safeguard measures under Article XIX of the GATT. (Section (iv)(a) above contains a description of the use of tariff increases as a means of protection against increased imports.)

(xvii) Measures implemented in exporting countries

101. There are no export restraint agreements limiting exports from foreign countries to the Mexican market.

102. According to Mexican notifications to the WTO, over the last four years countervailing investigations have resulted in price undertakings by a Venezuelan steel producer, and engagements by Canadian and U.S. wheat producers to eliminate subsidies.

(xviii) Balance-of-payments and other measures

103. Mexico has no import restrictions in place to deal with balance-of-payments problems and has never invoked Article XVIII:B of GATT. In response to the financial crisis of 1995, there was recourse to macroeconomic rather than to trade policy instruments, in contrast to the 1982 crisis when import licensing was extended to cover all imports (Chapter I).

(3) Measures Directly Affecting Exports

(i) Registration, documentation and origin certification

104. All exporters must present to the customs office an export declaration accompanied by a commercial invoice and, if applicable, other documents certifying compliance with specific export regulations. Exports must be handled by Mexican customs brokers.

(ii) Export charges and related measures

105. Export taxes are imposed on the f.o.b. value of goods. In 1992, export taxes were levied on 24 six-digit HS items; in 1997, 33 HS items were subject to such taxes, including certain wild animals, cornflour, sugars, human blood, petroleum products and historical heritage goods. Rates ranged from an *ad valorem* rate of 25 per cent, to 200 per cent (cornflour); a specific rate of US\$0.260 per kg. applied to sugars (Table AIII.1). A tariff rate quota for sugar allows exporters holding certificates issued by SECOFI to export without paying the specific export tariff. Under the NAFTA, discriminatory export charges are prohibited except for energy export taxes under specific conditions; Mexico is, however, permitted to impose export taxes on selected basic foodstuffs under certain conditions.

³³Part I, Section I, WTO Schedule LXXVII - Mexico.

106. Government revenue from export taxes is almost negligible. From 31.1 million pesos in 1993, or less than 0.02 per cent of total federal budget revenue, it increased slightly with booming export volumes up to 1996, when it reached 49.1 million pesos, and was expected to amount to 81.1 million pesos in 1997.³⁴ The authorities indicated that export taxes are maintained to ensure the domestic supply of basic goods.

(iii) Minimum prices

107. No minimum export prices are currently used by Mexico.

(iv) Export licensing

108. Thirty-three products are subject to prior export licensing; they comprise petroleum products; animal products, including hides and leather of wild animals; and certain types of gold and coins (Table AIII.1). Under the NAFTA, Mexico may control log exports and require export permits on products subject to quantitative restrictions, tariff quotas and tariff preferences adopted or maintained by another party.

(v) Export prohibitions

109. Currently, 46 items are prohibited for export, against 38 in 1993; these include wild animals and related products, certain plants, narcotics, tropical timber, and archaeological goods (Table AIII.1). Reasons include requirements of international agreements signed by Mexico (e.g. the CITES), control of dangerous substances (e.g. narcotics), sanitary, phytosanitary or health reasons, or to preserve the cultural heritage. Mexico also restricts exports to comply with United Nations resolutions.

(vi) Export quotas

110. Mexico has made no use of export quotas since 1993.

(vii) Export cartels, etc.

111. Although monopolies are generally prohibited under Mexican competition laws (section (4)), export associations that sell their products directly abroad are not considered monopolies, provided that: (i) such products are the principal source of wealth produced in a region, or are not a basic commodity; (ii) the products are neither sold nor distributed in Mexico; (iii) membership is voluntary; (iv) permits issued by agencies of the Federal Government are neither granted nor distributed by such associations; and (v) their incorporation has been authorized. Competition laws do not require notification of such associations (section (4)(i) below). The authorities were not aware of the existence of any export cartels. PEMEX is Mexico's sole exporter of crude petroleum.

(viii) Voluntary export restraints

112. In 1993, Mexico's only export restraint agreement was maintained with the United States under the Multifibre Arrangement (MFA). Since the entry into force of NAFTA in 1994, such restrictions have been governed by the provisions of that Agreement, which subject non-originating Mexican goods to quantitative restrictions; these are to be phased out in stages ending in 2004.

³⁴*Poder Ejecutivo Federal* (1996c), p.60.

(ix) Actions by other countries affecting Mexican exports

113. The authorities note that under NAFTA, the United States maintains quotas on certain Mexican exports, such as orange juice, peanuts, dairy products, brooms, sugars and syrups, and some non-originating textile products subject to transformation in Mexico. The latter are also subject to quota under Mexico free-trade agreements with Bolivia, Costa Rica and Colombia.

114. In 1995, the Mexican authorities provided assistance to more than 250 exporting firms subject to investigations in foreign countries for unfair trade practices.³⁵ The Government has participated since 1995 in the defence of, and given advice to, Mexican exporting firms involved in the agricultural, steel, chemical and capital goods industries in cases involving anti-dumping, countervailing or safeguard measures by foreign governments.³⁶ Reflecting its role as the main destination for Mexico's exports, the United States accounts for most measures affecting Mexican exports, although trade measures have also been taken by other trading partners.³⁷

115. In October 1996, Mexican tomato growers signed an agreement with the U.S. Government, undertaking not to sell tomatoes to the United States below a pre-determined reference price. The agreement sought to settle a U.S. anti-dumping investigation into imports of Mexican tomatoes which would have imposed anti-dumping duties of 17.6 per cent. Mexico and the United States had held consultations on the matter within the WTO framework during 1996 (Chapter II(3)(iii)).

(x) Export subsidies

116. Mexico's WTO notification on subsidies refers to a single non-agricultural export scheme: the Programme of Temporary Imports to Produce Export Goods (PITEX).³⁸ Schemes applied to agricultural products are described in Chapter IV(2). In general, Mexico promotes exports without relying on direct budgetary outlays. Instead, exports are supported by import duty exemptions on machinery, the *maquiladora* regime, or by credits from BANCOMEXT (see below).

117. The understanding between Mexico and the United States on subsidies and countervailing duties, first signed in 1985 was last renewed until April 1994; it is no longer in force.

(xi) Duty and other tax concessions

118. Duty concessions on inputs and machinery are granted, as export incentives, under several programmes administered by SECOFI, including the PITEX and the *maquiladora* regime (the latter is described in section (4)(xii)). The High-volume Exporting Companies Programme (ALTEX), benefits direct and certain indirect export firms; such firms must have foreign sales of at least US\$2 million, or these sales must account for more than 40 per cent of total sales. Benefits granted include simplified fiscal and administrative procedures such as immediate VAT refunds.

³⁵*Poder Ejecutivo Federal* (1995b), Section 4.1.

³⁶*Poder Ejecutivo Federal* (1996b), p. 168.

³⁷See, for example, the Trade Policy Reviews of Brazil, the European Union and the United States.

³⁸WTO document G/SCM/N/3/MEX, 21 November 1996. Mexico was not a signatory to the GATT Subsidies Code.

119. The Foreign Trading Companies Programme (ECEX) targets firms specialized in the marketing of Mexican products overseas. The ECEX was modified in May 1995 to try to improve the programme's results (the 128 firms registered in the programme in 1996 accounted for only 2 per cent of non-oil exports). The modifications included a zero-rated VAT and streamlined customs procedures. Further revisions were made in April 1997. The new Decree targets two types of firms: export promoting firms, which must have a minimum capital equivalent to 200,000 Mexican pesos and annual exports of more than US\$250,000; and export consolidating firms which must have a minimum capital equivalent to 2 million Mexican pesos and annual exports of more than US\$3 million. Both types of firms may subscribe to ALTEX and PITEX; "consolidating" firms benefit from financial assistance and "promoting" firms from promotion assistance by BANCOMEXT. Currently, 28 firms have been registered, and firms registered in the former programme were given four months to register in the new scheme. Firms under ECEX programmes also benefit from faster procedures for VAT refunds and automatic ALTEX certificates; they may also subscribe to the PITEX, as discussed below.

120. The Programme of Temporary Imports to Produce Export Goods (PITEX) covers the temporary importation of raw materials, inputs, machinery and components for use in the manufacture of exports this programme was originally established for a period of five years; it was amended in May 1995 to bring its duration into line with Mexico's international commitments under WTO and NAFTA (see below). The amendment also sought to encourage the substitution of national inputs for inputs imported under the programme or the *maquiladora* scheme and to streamline administrative procedures for small and medium-size suppliers of firms benefiting from the PITEX. As a result, firms involved in indirect exports now receive assistance equivalent to those responsible for direct exports. Benefits granted under the PITEX include temporary duty-free imports (ex-ante) and VAT exemption. Requirements to benefit from the PITEX include exporting at least 10 per cent of total sales and annual foreign sales exceeding US\$500,000. Indirect exporters (firms that supply direct exporters) may also be eligible for temporary import programmes.

121. The expansion of Mexico's exports during recent years was largely based on advantages gained through the programmes for the temporary import of inputs and machinery used for export production.³⁹ According to some observers, Mexico's temporary import regimes have been required to offset the anti-export bias of the country's trade regime and they are also linked to WTO rules allowing the reimbursement or elimination of import taxes but restricting the use of direct export subsidies.⁴⁰ Estimates by the Ministry of Finance indicate that such support reached a value of 3,442 million pesos in 1992 (some US\$1.1 billion at the 1992 average exchange rate).⁴¹ Data for 1993, the latest available to the WTO Secretariat, show that total imports under the PITEX reached US\$4,864 million that year, of which 17 per cent involved machinery, 2 per cent equipment, and the rest related to other inputs. The authorities indicated that it was not possible to determine the value of subsidies granted through the PITEX.

122. The authorities have observed that firms under the PITEX and the *maquiladora* regime enjoy a highly favourable environment, as their imports are not subject to value added tax, anti-dumping or countervailing duties, while their exports to other NAFTA members, or to other countries with which

³⁹SECOFI (1996), p. 24.

⁴⁰Clavijo and Valdivieso (1994), pp. 51-53.

⁴¹Ministry of Finance, *Apoyos y estímulos fiscales a la industria. 1983-1993*, Dirección General de Política de Ingresos, August; presented in Clavijo and Casar (1994), Appendix 5.

Mexico has free-trade agreements, receive preferential treatment.⁴² However, the NAFTA requires Mexico to eliminate minimum export requirements and domestic sales restrictions associated with temporary import programmes. As a result, Mexico will implement a new scheme to reimburse import taxes on inputs incorporated into exports to NAFTA commencing on 1 January 2001. Tax refunds or exemptions under that scheme will amount to the lesser of: (i) the tariffs that would be paid on non-regional inputs if they were to remain in Mexico, or (ii) the total amount of duties paid to other NAFTA members on the exported good. Exporters will have to provide evidence to the Ministry of Finance of the duties paid to Canada or the United States. Firms apparently will still be able to import duty-free inputs and keep them in Mexico up to two years. In the view of the authorities, the new scheme should avoid distortions within the North American market by preventing the benefits of intra-regional free trade to be transferred to non-NAFTA countries.

123. Although Mexico will not be able to grant duty waivers subject to performance requirements, it can continue to grant waivers without demanding the fulfilment of such requirements. Mexico's new tariff-refund system will apply only to trade between NAFTA members; thus, exports directed to non-NAFTA countries may continue to benefit from the existing drawback and duty-deferral programmes.

(xii) Export finance

124. Export finance is mainly provided by BANCOMEXT, the Federal Government bank responsible for supporting the export sector (Chapter IV(5)). BANCOMEXT provides short, medium and long-term financing for the export from (and import into) Mexico of non-petroleum products, through loans and guarantees. BANCOMEXT periodically develops special programmes to promote exports of selected industries.

The following are the main programmes operated by the bank:

- discounted and direct loans to finance working capital and raw material purchases by Mexican manufacturers and exporters; loan maturity for working capital does not exceed 12 months;
- assistance to finance export sales by providing Mexican companies with payment terms comparable to those offered internationally; loan maturity for export sales averages 180 days;
- financing to import goods required to modernize industrial plants and their production processes; the maturity of import credits varies from 180 days to five years, according to the terms offered by export-import banks;
- long-term credits to promote fixed investment to expand export-oriented production capacity and develop new product lines; loan maturity for fixed investment projects does not exceed 20 years;
- financial restructuring programmes to assist Mexican export companies whose participation in international markets is restricted because of their inadequate financial structures; this programme involves refinancing existing short- and medium-term loans denominated in pesos or U.S. dollars, with U.S. dollar debt having a maturity of up to 20 years; and
- guarantees (or "bonds"), provided to commercial banks to support Mexican exporters in international tenders.

⁴²SECOFI (1996), p 151.

125. The amount of credit provided by BANCOMEXT peaked in 1993 at some US\$14.6 billion, decreasing only slightly in 1994; however, support fell sharply in 1995 and 1996 (Table III.5). The early high levels probably reflected the adoption of relatively liberal credit policies, while the subsequent fall was linked to a considerable slow-down in economic activity and steep increase in interest rates. During the earlier years, a large share of all credit was short term. BANCOMEXT's credits appear to benefit a broad range of activities, although the largest beneficiaries have consistently been agriculture and food processing, mining and mineral processing, and tourism.

Table III.5
BANCOMEXT's support to the export sector, 1992-96
(US\$ million and per cent)

	1992	1993	1994	1995	1996 ^a
Total credit (US\$ million)	9,912	14,604	14,183	7,975	6,316
Total credit by type (per cent)	100.0	100.0	100.0	100.0	100.0
Short-term	71.6	72.5	69.9	69.1	55.6
Production	50.0	44.9	40.8	54.0	43.0
Sales	21.6	27.6	29.1	15.1	12.5
Long-term	18.9	20.6	21.9	23.5	40.1
Investment projects	13.7	12.4	13.5	13.5	8.9
Financial consolidation	5.3	8.2	8.4	9.9	31.2
Guarantees	9.5	6.9	8.2	7.4	4.4
Total credit by sector (per cent)	...	100.0	100.0	100.0	100.0
Agriculture and food processing	...	17.7	14.8	18.4	16.5
Fishing	...	0.9	1.2	1.3	1.6
Mining and mineral processing	...	13.3	14.6	17.1	13.9
Tourism	...	4.8	5.8	6.7	12.7
Other manufacturing and services	...	63.3	63.6	56.5	55.4

... Not available.

a Preliminary data to June, except for total credit in US\$ and by sector.

Source: SECOFI (1996c), p. 100; and Mexican authorities.

126. The authorities stated that BANCOMEXT offers its clients "competitive" interest rates to allow them to participate successfully in international markets. The setting of interest rates takes account of the cost of money to BANCOMEXT and its operating expenses, including a profit margin. The interest rates charged have varied considerably since 1993, reflecting the volatility of financial markets since late 1994. To be eligible for export financing, exporters must satisfy a 30 per cent minimum national-content requirement.

(xiii) Export insurance and guarantees

127. BANCOMEXT provides Mexican exporters and banks with both pre-export and post-export guarantees. Pre-export guarantee programmes cover loans granted by Mexican commercial banks to Mexican private entities against non-repayment risks. Coverage ranges from 50 to 70 per cent. Post-export guarantee programmes cover various categories of post-export risk, such as political risk on loans extended by Mexican banks or to Mexican exporters; coverage of up to 90 per cent of the total value of such financing is granted. Insurance against commercial risks associated with loans is provided by the Mexican firm *Compañía Mexicana de Seguros y Crédito, S.A.*

128. Export guarantee facilities are linked to a minimum national-content requirement of 30 per cent.

129. In 1996, export guarantees covered exports with a total value of US\$143 million; in 1995 the total had been US\$554 million. The largest beneficiaries of such guarantees were (amount in

parentheses): manufacturing and services (US\$121 million), mining and mineral processing (US\$18 million), and agro-industries (US\$4 million); in 1995, the respective amounts had been US\$457 million, US\$65 million and US\$32 million.

(xiv) Export promotion and marketing assistance

130. Export promotion activities are carried out by private organizations and the public sector through SECOFI and BANCOMEXT. The latter provides information, advisory and training services; market development; export promotion and coordination; and financial support. Information, advisory and capacitation services are provided through the Foreign Trade Service Centre and the Mexican System of External Promotion (SIMPEX). This system has consolidated the export and investment promotion efforts of official agencies (e.g. SECOFI, BANCOMEXT, NAFIN and the Mexican Investment Board) to ensure their effective coordination. Export promotion activities implemented during the 1980s and early 1990s in the context of the PROFIEX and PRONAMICE programmes, were replaced by the single programme established under the 1996 Industrial Policy and Foreign Trade Programme.

131. The Joint Commission for Export Promotion (COMPEX), created in July 1989, coordinates and undertakes export promotion activities. The Commission, headed by SECOFI, is composed of representatives from other ministries (Foreign Affairs; Finance; Energy; Agriculture; Transport and Communications; and Labour), BANCOMEXT, and from the private sector. In 1995, COMPEX adopted a new strategy focusing on micro, small and medium-size enterprises, strengthening its international programmes, and encouraging an "export culture". More recently, the Commission has increased its programmes to disseminate information on foreign trade issues and strengthen the schemes maintained in collaboration with federal states through a new database; a new scheme for agriculture, set up in collaboration with the Ministry of Agriculture, became operational in April 1997. COMPEX also consolidates public and private export promotion projects through the National Export Guidance System (SNOE), providing information to businesses through 40 export guidance bureaus throughout the country.

(xv) Export-performance requirements

132. Export-performance requirements are contained in the PITEX; the ALTEX and ECEX programmes set minimum export sales requirements (section (xi) above). These programmes are used by Mexico to grant preferential treatment (duty drawback and waiver of import duties) or to promote exports. The 1993 Foreign Investment Law (Chapter II(3)) eliminated most other performance requirements: as stated by the Mexican Investment Board, this was in line with international trends, including the WTO Agreements, to eliminate distortions in international trade.⁴³ Other export-performance requirements will be eliminated on a limited basis under the provisions of the NAFTA (section (xi) above).

(4) Measures Affecting Production and Trade

(i) Competition policy

132. The entry into force of the Economic Competition Law (LFCE) and the subsequent establishment of the Federal Competition Commission (CFC) have made a significant contribution to consolidating Mexico's privatization programme and the general liberalization of the economy undertaken since the mid-1980s. An effective competition policy has become crucial to ensure that the apparently high market

⁴³Mexican Investment Board (1994), p. 12.

concentration prevailing in a number of sectors of the Mexican economy does not impair economic efficiency.⁴⁴

133. The LFCE regulates Article 28 of the Constitution on economic competition, monopolies and free market participation. The law was published on 24 December 1992 and came into effect in June 1993 replacing the obsolete Organic Law on Monopolies of 1934. The LFCE's objective is to protect the process of competition and free market participation through the prevention of monopolies, monopolistic practices and other restrictions that deter the efficient operation of the market for goods and services. All economic agents are subject to the LFCE, including agencies of the federal, state or municipal administrations and professional associations. Article 8 of the LFCE establishes that monopolies and tax corners are prohibited, as are practices that diminish, impair or prevent the competition and free participation in the production, processing, distribution and marketing of goods or services. For the purpose of the law, the powers exercised exclusively by the State in the strategic sectors described in Article 28 of the Constitution, intellectual property rights of artists and inventors, associations of workers formed in accordance with the relevant legislation to protect their interests, and cooperative associations that sell their goods directly abroad, provided that they comply with the conditions established in Article 6 of the LFCE, do not constitute monopolies (section (3)(vii)). However, Article 4 of the LFCE states that the agencies and bodies responsible for the functions in strategic areas are subject to the provision of the FLEC regarding acts not specifically considered as strategic sectors.⁴⁵ Moreover, even when the sectors and activities referred to in Articles 4 to 6 cannot be challenged as monopolies, they may still be challenged for carrying out monopolistic practices which diminish, impair or prevent competition and free market participation.

134. The LFCE empowers the SECOFI to set the maximum price of products and services considered essential for the domestic economy or for mass consumption, in order to prevent shortages. For that purpose, SECOFI is also authorized to agree or coordinate the necessary actions with the producers and distributors concerned. Such behaviour is not deemed as a violation of competition law, but SECOFI, when acting pursuant to this provision, must try to minimize the effects on competition and free market participation. In this regard, the LFCE also provides that the Federal Consumer Protection Agency, under the supervision of the Ministry, shall be responsible for the verification and surveillance of the maximum prices determined by the latter, in accordance with the Federal Consumer Protection Act.

135. The LFCE created the CFC as an autonomous administrative entity of SECOFI responsible for the prevention, investigation and contesting of monopolies, monopolistic practices and anti-competitive mergers. For this purpose, the CFC is empowered to conduct investigations, issue administrative rulings, and impose remedies to anti-competitive market practices. The CFC is composed of five commissioners, appointed for ten years by the President of Mexico. Proceedings may be initiated ex officio or at the

⁴⁴It has been noted that "In 1992, twenty-five companies accounted for 47.1 per cent of Mexico's GDP" and that "One firm, for example, controls 90 per cent of the market for glass in Mexico and 100 per cent of the market for fibreglass. A single firm controls over 60 per cent of the market of cement. Three banks account for 73.9 per cent of total funds in the Mexican banking system. Five firms accounted for approximately 70 per cent of total sales receipts in Mexico's construction industry in 1991. This high level of industrial concentration has been maintained or exacerbated by the ongoing (and otherwise generally salutary) process of privatization". (Newberg, 1994, p. 603.)

⁴⁵Activities defined as strategic under Article 28, and thus reserved exclusively to the State, include postal services, telegraph and radio-telegraph services, petroleum and other hydrocarbons, basic petrochemicals, radioactive minerals, generation of nuclear energy, electricity transmission.

request of an interested party. Mergers exceeding certain pre-established thresholds must be notified. Proceedings are subject to established time limits. Once an alleged responsible party is summoned, it has 30 (calendar) days for the submission of pleas; upon completion of the file, the Commission must issue a decision within 60 days. The Commission may request additional information within 20 days after receiving a notification. The interested parties must provide such information within 15 days unless an extension is justified. The Commission must issue its decision within 45 days; in exceptional cases, the President of the CFC may order an extension of 60 days. If the Commission fails to render a decision within the statutory period, it is deemed to have consented to a transaction.

136. The LFCE distinguishes two broad categories of illegal behaviour (i) absolute; and (ii) relative monopolistic practices. Absolute monopolistic practices include agreements between competitors to fix prices, to restrict production or distribution, to divide markets or to rig bids on contracts. These practices can be denounced by any person and are considered to be anti-competitive *per se*. On the other hand, relative monopolistic practices may only be denounced by an affected party; they include vertical restraints such as exclusive dealing and "tie-in" agreements, as well as certain unilateral conduct, such as price discrimination and predation. In certain cases, this type of conduct is considered to produce pro-competitive effects; therefore, such cases require more detailed examination through a rule-of-reason analysis. Moreover, these cases are only considered illegal when the economic agent involved in the conduct has substantial power in the relevant market. The LFCE establishes fines of up to the equivalent of 375,000 times the minimum general wage prevailing in Mexico City (some 10 million pesos) for having engaged in absolute monopolistic practices and sanctions of up to 225,000 times such wage for engaging in relative monopolistic practices.

137. On mergers, the LFCE has established a policy based on prior notification, intended to prevent concentrations whose purpose or effect is to diminish, impair or impede competition and free market participation. In order to determine whether a concentration needs to be contested or penalized, the Commission evaluates these operations under a rule-of-reason analysis. The LFCE considers fines of up to 225,000 times the minimum wage in Mexico City for participating in a concentration prohibited by this Law, and a fine up to 100,000 times such wage for failures to notify a concentration to the Commission. In addition, the LFCE gives the CFC authority to impose conditions or to block parties from proceeding with a proposed merger and to dissolve a completed merger or order a partial or total divestiture.

138. The LFCE provides for reconsideration of the CFC's resolutions before the Commission itself to amend or sustain an appealed decision. In addition, economic agents have the right to start an action (*amparo*) before a Federal District Court to test the constitutionality of the LFCE or the Commission itself, and to review whether the proceedings before the Commission are developed in accordance with constitutional rights. Some CFC decisions have been reviewed under these provisions; however, actions questioning the Commission's constitutionality have never continued. The authorities expect the federal courts to play a more important role in the future, in the interpretation of the LFCE.

139. LFCE empowers the Commission to review and comment upon existing laws, regulations or amendments. As a result, the CFC collaborates with other public authorities in the development of new regulatory frameworks and policies, as well as programmes and administrative actions. For example, the Commission recently handed down opinions about long-distance telephone regulations, the rules for the airwaves auctions and the rules for the privatization of the railway system. Although these opinions are not legally binding, the authorities believe that they enhance awareness of the importance of competition criteria in the day-to-day activities of the public sector. In this respect, the Industrial Policy and Foreign Trade Programme (PPICE - Chapter II(2)) establishes that the CFC

must collaborate with other federal and state agencies to eliminate excessive regulation of the economy, particularly where such regulation constitutes an artificial barrier to entry or grants preferential treatment.

140. The Mexican authorities consider competition policy an important tool to maintain open access to international markets. In this respect, the PPICE intends to strengthen the collaboration between the CFC and SECOFI on the application of trade defence measures. The authorities noted that both agencies maintain a continuous dialogue through CFC participation in the Foreign Trade Commission (COCEX), giving opinions on SECOFI's final resolutions on anti-dumping, countervailing and safeguard investigations before they are issued. Views are also exchanged on other problems such as market access. The PPICE considers that broad communication among competition authorities may serve as a useful tool to prevent monopolistic practices originated abroad. Hence, the CFC promotes active communication with its counterparts and supports international cooperation within the framework of relevant international fora. In this regard, the authorities drew attention to the cooperation principles established in NAFTA's Article 1501 as well as the OECD's Recommendation Regarding Cooperation with Respect to Anti-Competitive Practices Affecting International Trade.

141. NAFTA Chapter 15 sets the framework for cooperation and enforcement of competition law in the free-trade area to enhance consultation on mutual legal assistance, notification and information exchange related to competition policy. In this respect, NAFTA Article 1504 establishes a Working Group on Trade and Competition, whose objective is to report on issues concerning the relationship between trade and competition in the free-trade area and to make recommendations to the NAFTA Free Trade Commission on further work no later than 31 December 1998. To date, the Group has finalized studies defining a framework for discussions, comparing competition law, and covering other specific issues relevant to trade and competition. Particular emphasis has been given to the identification of differences in competition law and policies between the NAFTA members to assess whether there are implications on trade among the three contracting parties.

142. Between June 1993 and June 1996 the CFC processed 754 files, including mergers, acquisitions, privatizations, monopolistic practices, other restrictions to competition and consultations, of which 675 were concluded. Monopolistic practices and other restrictions to competition accounted for 125 cases. The number of pre-merger notifications received amounted to 305, of which 285 were resolved. The decisions issued included 266 cases in which no objections were made, 18 in which conditions were imposed, and one that was rejected. All cases were concluded within the established time limits. There were two ex officio investigations into state-owned companies, one relating to airport services and the other to PEMEX-Petrochemicals. During this period the Commission examined a number of high visibility cases including the following:

- (i) An ex officio investigation of the competitive conditions in the bank credit-card market, which concluded with the execution of a consent agreement between the main national banks that issue credit cards. This agreement established a transition period to adapt the operation of the payment systems to the new competition provisions.
- (ii) A study of the gasoline service stations market to adapt gasoline station operations to the LFCE. The study demonstrated that it was necessary to increase competition in this market and that transparent guidelines were required for the contracts and conditions established between PEMEX-Refining and private parties wishing to participate in this activity. Therefore, the Commission and PEMEX-Refining executed a consent agreement which sets forth the necessary conditions to meet consumer demand more efficiently, introducing competition criteria for the establishment of new gasoline stations and sales of complementary goods and services.

- (iii) An evaluation of the merger between the telephone firm SERCOTEL, a subsidiary of TELMEX (Chapter IV(5), and Empresas Cablevisión S.A. de C.V., a cable company subsidiary of Televisa, the country's largest television company. In this case, the Commission decided to set conditions on the proposed concentration to secure the competition process.
- (iv) An assessment of the merger between Kimberly Clark Mexico and Crisoba, following the concentration between Kimberly Clark Corporation and Scott Paper; conditions were set by the Commission.

143. Although the enactment of the LFCE is relatively recent, the CFC has played an important role in strengthening the process of competition in markets for goods and services in Mexico. While there has been some criticism of CFC decisions, this may be attributed to the individual interests affected and because of inherent difficulties involved in the application of competition policy in particularly complex cases.

(ii) State-trading, public enterprises and privatization

144. State involvement in the production and supply of goods and non-public services has declined considerably since 1982 when the process of federal public divestiture started. Between December 1982 and July 1996, the process had affected some 1,078 entities (including divestitures in progress), of which 318 involved the sale of companies, 362 liquidations, 174 extinctions, 89 mergers, 39 transfers, and 87 mandatory divestitures when entities did not meet the requirements established in the Federal Law of State-Owned Enterprises. As a result, the number of federal entities fell to 230 in July 1996 (of which 35 were in the process of divestiture), from a total of 1,155 in 1982. Entities still in operation comprise 76 decentralized organizations, 97 enterprises with majority State participation and 22 public trusts. State corporations employed just over 700,000 persons at the end of 1995; in terms of employment the largest entities were involved in the supply of social security services (IMSS with 49 per cent of total parastatal employment, and ISSSTE with 11 per cent), energy (PEMEX, 18 per cent, and CFE, 7 per cent), and railways (FNM, 7 per cent).⁴⁶

145. Between 1980 and December 1996 just over US\$27 billion were collected from the sale of State participation in companies and from concessions of services. Divestitures have included firms in primary activities (fishing and mining), manufacturing (textiles, sugar and steel mills) and services (banking, airlines and telephones); privatization has been less extensive in the energy sector (Chapter IV(3)). Recent privatizations have been more complex as they have affected activities previously considered strategic under the Constitution; moreover, since several of the entities affected were operating under monopolistic arrangements, it has often been necessary to establish a satisfactory regulatory framework.

146. Articles 27 and 28 of the Constitution define various areas considered strategic and reserved exclusively to the State. Under these provisions, certain hydrocarbons and basic petrochemical-related activities, as well as the public distribution of electricity, have been reserved for the national petroleum and electricity companies, PEMEX and the CFE (Chapter IV(3)).

147. Article 28 of the Constitution also provides the legal basis for CONASUPO to establish guidelines for the maximum price of goods considered essential for the national economy or "popular" consumption,

⁴⁶See the glossary for the complete names of the entities listed (data from *Poder Ejecutivo Federal* (1996c), p. 45).

as well as the mechanisms for the distribution of such goods, avoiding unnecessary intermediation which could result in supply shortages or price rises. The company imports milk powder and other foodstuffs such as sorghum and soybeans; most import licences (import certificates after tariffication) granted by SECOFI for the importation of milk powder, maize and kidney beans have traditionally been given to CONASUPO. CONASUPO sets the prices for milk reconstituted from powder on a cost-recovery basis, but these prices are subject to review by SECOFI. The authorities have indicated to the WTO Secretariat that the private sector is also allowed to import powder milk subject only to the payment of the respective tariffs (about 139 per cent *ad valorem* equivalent).

148. The previous Trade Policy Review of Mexico noted that, according to Government information, eight state-trading companies operated in Mexico, of which CONASUPO was the most important. Under the new WTO notification requirements, the Mexican authorities have indicated that there are no state-trading enterprises.⁴⁷

(iii) Marketing and pricing arrangements

149. In early 1997, price controls were used only in relation to cornflour, corn tortillas and pharmaceuticals; this followed the gradual elimination of controls applied in 1993 to sugar, beef, ham, wheat flour, milk, corn, cornflour, bread, fresh fish, soft drinks, bottles and food containers, as well as chemicals and basic pharmaceuticals used in medicines. Price controls are applied equally to domestic and imported products. No products have been subject to price registration requirements since 1993.

150. The system of price controls for pharmaceutical products sold in the private domestic market has been substantially altered since July 1993; before that date, the price of each product was based on production costs, plus fixed margins to cover producers' profits, marketing and distribution. The current system requires each producer to adopt a formula for updating prices, based on movements in the consumer and producer price indices as well as the peso exchange rate. The formula cannot be changed once it has been agreed by the authorities. Within the limits set by the formula, firms are free to modify prices as they deem appropriate; however, at least three months must elapse between price changes, and at the end of each year the annual average of price increments must not have exceeded the increment resulting from the agreed updating formula. The domestic price for new pharmaceuticals whose main active constituent is not marketed in Mexico may be freely established by the firm, but it must not exceed the world price; for other products, the price must be proportional to that of similar products already in the Mexican market.

151. Official prices for tortillas are established for each of three regions into which Mexico has been divided for this purpose. Price controls on cornflour were eliminated in October 1995, except for flour in bulk for use in the tortilla-making industry. Until March 1996, differential regional flour prices were applied, as for tortilla prices; since then, a single price has been set for the whole country.

152. Maize and kidney beans were subject to price supports in 1993; agricultural policies have increasingly favoured income support measures over price support (Chapter IV(2)).

153. Price controls on motor vehicles were eliminated in November 1993; however, since April 1990 the Government and domestic vehicle assemblers have maintained a price-fixing agreement under which prices in Mexico are set with reference to the U.S. price of similar models sold in the United States.

⁴⁷Notification pursuant to Article XVII:4(a) of GATT 1994 and paragraph 1 of the Understanding on the Interpretation of Article XVII. WTO document G/STR/N/1/MEX, 10 March 1997.

All gasolines, diesel, other petroleum-based fuels, as well as petrochemicals are subject to official prices administered by the Ministry of Finance. Tariffs for public services are set by the Ministries of Finance or Economic Development of each Federal State and the Federal District.

(iv) Production controls

154. The authorities indicated that the production of energy, basic petrochemicals or agricultural products was not subject to controls. However, the production levels for crude petroleum are decided by the Government. Petroleum production is set at levels "in concordance with the general principles of Mexico's economic policy"; production of refined petroleum products is a function of processing capacity and the volume of crude destined for refining.

(v) Local-content schemes

155. Local-content requirements are maintained for motor vehicles under a special regime to promote the use of parts and components produced by the domestic automotive parts industry (section (xiv) below). Eligibility conditions for official export finance and export credit guarantees may also include minimum national content requirements (section (3)(xii) and (xiii)). Other schemes seek to increase the participation of Mexican suppliers in domestic public tendering (section (vi) below) or in the in-bond (*maquiladora*) industry (section (xii) below). The NAFTA provides for a regional value content (RVC) for exporters in Mexico wishing to benefit from preferential rates under the Agreement (section (2)(iii)).

(vi) Government procurement

156. Policy objectives on government procurement are spelled out in the Industrial Policy and Foreign Trade Programme (PPICE), which supports greater participation of the national industry in government procurement. The PPICE proposes to promote strategic alliances, supported by the national development banks, to allow national suppliers and buyers to establish direct interactions and the joint formulation of objectives and project planning. The authorities expect those alliances to increase the profitability of construction and industrial firms, improve quality, lower the price of projects and increase the participation of domestic suppliers in public procurement.⁴⁸

157. The basic legal framework for government procurement is defined in Article 134 of the Constitution, which establishes that the public purchase of goods and services must, in general, be undertaken through public tenders involving sealed offers. These guidelines are implemented through various laws, mainly the Law on Public Procurement and Works, Regulations to the Law on Purchases, Leasing and Supply of Services Relating to Movables/Property, Regulation to the Law on Public Works, and the specific chapters on government procurement included in the free-trade agreements concluded by Mexico. The Law on Public Procurement and Works (LAOP) of 30 December 1993, abrogating previous legislation on the matter, defines government procurement as including state expenditure on and execution, preservation, maintenance and control of goods, services and construction services contracted by federal government entities, including ministries, administrative departments, decentralized agencies and government enterprises. The public procurement procedures provided for in the LAOP are described in Box III.1.

⁴⁸SECOFI (1996), p. 83.

Box III.1: Public procurement procedures

The LAOP provides for two types of procurement procedures: (i) public tendering in which all interested suppliers may participate, and (ii) restricted invitations under which an entity may contract suppliers individually either by invitation of at least three suppliers or by a direct award of the contract. Restricted invitations may be used, *inter alia*, for contracts relating to the protection of patents or copyrights; consulting services involving confidential information; and purchases made with a view to commercial resale by government-owned retail stores. Public entities may use restricted invitations when the estimated value of the contract does not exceed an amount specified annually in the federal budget for each entity.

No registration, nationality or residence prerequisites for participating in tenders are imposed on suppliers; lists or registers of approved suppliers are not used.

Public invitations to tender are published (in Spanish) in the Official Journal and in domestic newspapers; restricted invitations are not published. Tenders financed entirely or partly by foreign credits are published according to the guidelines of the credit institution. Offers must be submitted in writing in sealed envelopes. Time-limits of at least 40 days following the date of publication of a tender invitation are allowed in relation to submissions of international bids for purchases, leasing, services and public works, and with respect to domestic tenders for public works. The time-limit for domestic tenders for purchases, leasing and services is at least 15 calendar days following the publication of the tender; this period may be reduced in cases of urgency justified by the purchasing entity. Parties participating in tenders must provide bid security and guarantees.

Contracts are awarded on the basis of the lowest price among the bids meeting the specified technical requirements. The criteria applied to the evaluation of tenders are defined in the invitation to tender and the bidding conditions; entities are not permitted to negotiate the provisions contained in the bidding conditions. Tenders must be submitted in two sealed envelopes: one containing the documentation to identify the bidder and a description of the required technical specifications of the product or service in question, and the second containing the price bid together with the bid security document. The envelope containing the price bid is opened only for tenders whose technical characteristics have been found to meet the specified requirements. All bids are opened in the presence of the participants.

The contracting agency must supply the non-winning bidders, in writing, with the reasons for the non selection of their bid. Within 72 days following the date of the award, the contracting agency must publish in the Official Journal the identity and details of the winning bid. Complaints against the award of a contract may be lodged with Ministry of Comptrollership and Administrative Development (SECODAM).

158. Government procurement legislation does not establish quantitative preferences for national over foreign suppliers or goods, since only national suppliers and domestic goods may participate in national public tenders. National suppliers are defined as enterprises or natural persons incorporated under Mexican legislation; domestic goods are those containing at least 50 per cent of domestic content.⁴⁹ International tenders, i.e. those in which domestic and foreign bidders may participate, may only be used where they are mandatory under international agreements; if market research by the tendering agency shows that there are no appropriate national suppliers; when the resources are obtained through foreign credits; or when the contract is specifically covered by international agreements. Moreover, the LAOP stipulates that foreign suppliers may be refused the right to participate in international tenders

⁴⁹Domestic goods do not include foreign goods which are simply packaged, packed, labelled, diluted in water or any other substance which does not alter their characteristics, or assembled or put together in the country.

when an agreement has not been concluded with their country of origin, or that country does not grant reciprocal treatment to Mexican suppliers.

159. The following government agencies have responsibility for implementing government procurement legislation: the Ministry of Finance, SECODAM and SECOFI. There is no central procurement office in Mexico: federal government agencies, state corporations and Federal States are autonomous in the planning and carrying out of public purchases.

160. The Secretariat report for the previous Trade Policy Review of Mexico noted that prior authorization from SECOFI was required for public sector imports when the purchasing entity belonged to the central government; such authorizations were automatic for goods requiring no import licences. Under the LAOP no preferences are granted either in relation to taxes, customs duties, other charges, or restrictions and formalities related to import regulations. The authorities indicated that procurement is not subject to offset provisions, such as technology transfer or countertrade requirements.

161. Data for 1994 show that state corporations account for about 80 per cent of the total value of public procurement, while ministries and other federal agencies account for the remainder (Table III.6). The national oil company, PEMEX, accounted for the largest share, almost one third of the total, followed far behind by the federal power utility, CFE. Large purchases were also made by health-related entities (the Ministry of Health, the IMSS, ISSSTE and ISSFAM) and bodies associated with the provision of telecommunications and transport services (the Ministry of Communications and Transport, the Institute of Telecommunications, Telecommunications of Mexico, FNM, and ASA).⁵⁰ No data were available on purchases by sub-federal agencies or by type of procurement.

162. Mexico is not a member of the Plurilateral Agreement on Government Procurement, but the authorities indicated that Mexico was willing to consider subscribing to any new agreement on government procurement.⁵¹ Mexico was not a signatory to the GATT Government Procurement Agreement.

163. Provisions on government procurement are contained in the NAFTA and Mexico's free-trade agreements with Bolivia, Costa Rica, and Colombia and Venezuela (G-3). The authorities have noted that those agreements were gradually extending international disciplines and transparency to a growing proportion of Mexico's government purchases.⁵²

164. Under the NAFTA, which covers only purchasing by the Federal Government, both PEMEX and the CFE were required to open up 50 per cent of their procurement contracts to competition from Canadian and U.S. companies, subject to certain exclusions; 70 per cent of PEMEX and CFE procurement contracts must be opened after eight years, and after ten years all transitory procurement restrictions must be eliminated. Except for PEMEX and CFE, Mexico may set aside from the obligations of the NAFTA procurement contracts with a global annual value of up to US\$1 billion until the end of 2002. After that date, the value of set-asides will increase to US\$1.2 billion, and Mexico may then include PEMEX and the CFE contracts. The NAFTA Agreement provides for an independent review authority, which is mandated to receive complaints, conduct enquiries and make recommendations in the event of disputes. In Mexico, SEDOCAM constitutes such authority.

⁵⁰See Chapter IV for further information on these telecommunications and transport related entities

⁵¹See also WTO document WT/REG4/1, 23 June 1995.

⁵²SECOFI (1996), p. 81-2.

Table III.6
Public procurement, 1994
(US\$ million and per cent)

	Value	Per cent
Ministry of Communications and Transport	552.5	6.7
Mexican Institute of Communications	372.8	4.5
Ministry of Health	176.2	2.1
Ministry of Agriculture	165.4	2.0
Ministry of the Navy	111.3	1.3
National Institute of Statistics, Geography and Informatics	84.2	1.0
Other Agencies	213.0	2.6
All Federal Government Agencies	1,675.4	20.2
Petróleos Mexicanos (PEMEX)	2,683.0	32.3
Mexican Institute of Social Security (IMSS)	857.9	10.3
Federal Electricity Commission (CFE)	839.7	10.1
National Council for Education Promotion	747.7	9.0
Administrative Committee for the School Construction Federal Programme	436.7	5.3
National Commission for Free Textbooks	195.4	2.4
National Railroads of Mexico	139.8	1.7
National System for the Integral Development of the Family	88.9	1.1
Paper Producer and Importer Company	70.9	0.9
National Commission for Arid Zones	61.6	0.7
Industrialized Milk (CONASUPO)	60.4	0.7
State Workers Social Security Institute (ISSSTE)	57.7	0.7
Telecommunications of Mexico	52.5	0.6
Airports and Auxiliary Services (ASA)	49.5	0.6
Social Security Institute for the Armed Forces (ISSFAM)	47.7	0.6
Other enterprises	242.0	2.9
All state-owned enterprises	6,631.4	79.8
All public procurement	8,306.8	100.0

Source: Mexican authorities.

(vii) Production subsidies, tax concessions

165. Mexico has informed the WTO that it maintains no measures notifiable under Article XVI:1 of the GATT 1994 or Article 25 of the Agreement on Subsidies and Countervailing Measures, except for the Programme of Temporary Imports to Produce Export Goods (PITEX) and certain programmes in the agricultural sector.⁵³ The PITEX is described in section (3)(xi); agricultural supports are discussed in Chapter IV(2).

166. The 1989 programme to support the production of automobiles for "popular consumption" remains in place; the motor vehicle industry also benefits from other tax concessions and a special import regime (Chapter IV(4)). Fiscal incentives for the computer industry were eliminated in early 1993.

167. A document released with the annual statement to Congress by the President of Mexico explains that assistance is used to support the development of priority activities of general interest, and to provide

⁵³See also WTO document G/SCM/N/3/MEX, 21 November 1996.

basic goods and services at prices below their market level or production cost.⁵⁴ Government assistance amounted to some 30.1 billion pesos (about US\$3.9 billion) during 1996⁵⁵; the main support was provided through:

- CONASUPO, which spent some 6,460 million pesos as a generalized subsidy to tortilla consumers, and for the distribution of corn in rural areas;
- *Apoyos y Servicios a la Comercialización Agropecuaria* (ASERCA) which provided subsidies amounting to about 7,557 million pesos to support agricultural production and the flour industry;
- DICONSA, which used 2,389 million pesos on programmes to supply basic foods to low-income groups;
- the power utility for the Mexico City metropolitan area, *Luz y Fuerza del Centro*, which used about 3,942 million pesos to cover its operational deficit;
- the national railway company, FNM, which was granted 2,073 million pesos to cover its operational deficits;
- the federal road agency, *Caminos y Puentes Federales de Ingresos y Servicios Conexos* (CPFISC), which applied about 3,015 million pesos to strengthen its trust funds for roads; and
- the federal power utility CFE, which needed some 383 million pesos to cover subsidized electricity rates for domestic, industrial and agricultural producers.

Other assistance amounted to 4,297 million pesos and was used mainly to support milk programmes for children and other activities such as the interest rate differentials maintained by BANRURAL.

168. According to the same document, the Government made transfers amounting to 44.8 billion pesos (about US\$5.8 billion) in the first half of 1996 to support educational, health and other public services, and to maintain the production and service levels of state corporations and federal organisms. During that period, transfers to organisms and enterprises under indirect budget control amounted to close to 22 billion pesos, or about half of total federal transfers, while transfers to organisations and enterprises under direct budget control reached just over 2.3 billion pesos.

169. Data from the Ministry of Finance show that the Government used close to 80 billion pesos in financial aid, subsidies and transfers granted to state corporations during the first nine months of 1996.⁵⁶ The total was distributed as follows:

- financial aid (*ayudas*) amounting to 1.5 billion pesos, mostly for social programmes;

⁵⁴Poder Ejecutivo Federal (1996c), p. 66.

⁵⁵Not including the Legislative and Judiciary and autonomous agencies.

⁵⁶*El Economista*, 24 October 1996.

- subsidies, equivalent to some 15.5 billion pesos, 54 per cent of which was destined for entities under direct budget control (notably CFE, CONASUPO, CPFISC and FNM), and the rest for organizations under indirect budget control (mainly ASERCA, DICONSA and BANRURAL); and
- transfers, reaching some 63 billion pesos financed such activities as education and irrigation projects.

(viii) Credit programmes

170. As detailed in the banking section of Chapter IV(5), the number of official credit programmes is relatively large, with special financing programmes available through various specialized institutions, notably the national foreign trade bank, BANCOMEXT, and the national development bank, NAFIN. Credit for the agricultural sector is also directed through the sector's development bank, BANRURAL, and various specific trusts (Chapter IV(2)). The relative importance of development banks in overall financing increased markedly between 1993 and 1996: the total accumulated financing granted by development banks increased from the equivalent of one third of the financing from commercial banks in 1993, to almost half in 1995 and 1996.

171. Most official credit schemes would appear to set interest rates at levels that ensure cost recovery, yet offering implicit assistance by charging interest at below-market rates. Quantifying any such assistance is difficult as market interest rates reflect not only the cost of money to lending institutions but also the costs and risks associated with specific debtors and projects. Interest rates on agricultural loans were in the past much lower than rates applied to other sectors and thus involved subsidized credit; this still appears to be the case, with available estimates showing BANRURAL receiving subsidies of 1,369 million pesos during the first half of 1996 to finance interest rate differentials and other activities. Special programmes, established in favour of micro and small enterprises, may also involve a degree of assistance. However, no estimates are available of the level of assistance, nor, more generally, of the support provided through other official credit programmes. Given the apparent importance attained by such programmes in recent years, explicit assistance estimates would significantly increase the transparency of government support in general.

(ix) Adjustment assistance

172. The Secretariat report for the previous Trade Policy Review of Mexico noted that the Government maintained various adjustment programmes aimed at modernizing industries considered to require additional (transitional) assistance to adapt to the country's new economic conditions. These industries included motor vehicles, specialty steels, pharmaceuticals, textiles, garments, footwear and computers. As discussed in Chapter IV(4), the adjustment programme for the computer hardware industry expired in December 1993; other sectoral programmes still in place are intended to provide temporary support while adjustment takes place, for example, in the textiles, garments and footwear industries. Supporting adjustment is also an aim of the Industrial Policy and Foreign Trade Programme (PPICE), including through the temporary increase of effective levels of protection to boost profitability.

173. Within the framework of the Stability, Competitiveness and Employment Pact (PECE), a number of programmes have been implemented to improve the competitiveness of various industries and their degree of integration. Following the financial crisis of 1994, the creation of alternative employment has become a priority, and the Government has provided financial support for the creation and consolidation of so-called "social sector enterprises" engaged in activities such as agriculture, fishing

and forestry. Special programmes have also been established to provide assistance for drought-affected agricultural areas (Chapter IV(2)).

174. Micro, small and medium-sized enterprises as a group play an important role in Mexico's economy, accounting for about 78 per cent of formal employment and 99 per cent of registered establishments.⁵⁷ These enterprises have benefited from financial support to help them cope with the sharp increase in interest rates in 1995. The adopted measures aim to help with loan restructuring, to provide alternative payment mechanisms and to supply new lines of credit. In order to design and coordinate support measures for micro, small and medium-sized enterprises, the National Council for the Micro-, Small- and Medium-sized Enterprises (CNMPME), established in May 1995, has participation from several ministries; NAFIN, BANCOMEXT, and various private sector organizations; and SECOFI's Vice-Minister for foreign trade and investment acting as technical secretary. Assistance measures envisaged by the Council cover areas such as production, design, marketing, export promotion and technical standards.

(x) Assistance for research and development

175. No direct fiscal incentives for research and development (R&D) are granted in Mexico. The main mechanisms to support R&D are maintained by NAFIN and the National Council for Science and Technology (CONACYT). NAFIN administers a number of programmes to promote technological development, technical assistance and increased productivity. The programmes involve credit guarantees as well as financing for technical help or investment projects in micro, small and medium-sized enterprises. CONACYT is currently focusing on technology acquisition, and the strengthening of links between industry and research organizations. The Council has created various programmes to foster the establishment of firms capable of exploiting technological innovations and to promote information-dissemination among medium-sized enterprises. R&D activities in the agricultural sector are promoted through various government institutions (Chapter IV(2)).

176. Official estimates for 1996 show that federal expenditure in R&D amounted to about 8.8 billion pesos (some US\$1.1 billion). That figure represented about 2.3 per cent of all programmed expenditure by the Federal Public Sector, or about 0.4 per cent of GDP; both indicators increased slightly between 1993 and 1996. The largest shares of federal expenditure in R&D were for activities in academic institutions (38 per cent), the National System of Science and Technology (22 per cent), in energy (13 per cent) and in agriculture, fishing and forestry (7 per cent).

177. Despite growing public and private expenditure in R&D, the authorities acknowledge that by international standards Mexico's technological infrastructure is limited.⁵⁸ Mexico ranks among the lowest OECD countries in terms of R&D expenditure as a share of GDP, at less than 0.5 per cent, or in terms of the ratio of engineers and scientist in the workforce, about 1:1,000. Moreover, technological support lacks appropriate linkages with industry, resulting in the concentration of practically all R&D resources in the higher education and public sectors. Mexican industry's R&D capabilities are almost non-existent among all but the largest enterprises.

⁵⁷Micro, small and medium- size enterprises are defined as employing up to 15, 100 and 250 persons and with annual sales in million pesos of no more than 0.9, 9 and 20.

⁵⁸SECOFI (1996), p. 91.

(xi) Regional assistance

178. The authorities consider that no regional assistance programmes requiring notification to the WTO are maintained in Mexico.⁵⁹

179. In practice, elements of Mexico's trade policy have benefited certain regions more than others. In the past, import-substitution policies encouraged the concentration of economic activities around the largest demand centres, notably Mexico City. Free-trade zones and the *maquiladora* industry, both mainly oriented towards export activities, tended to promote the industrial development in Mexico's northern border strip. Although these special regimes are being phased out (see following sections), it is likely that Mexico's northern regions will derive greater benefits from the NAFTA than other regions, as Mexican firms become increasingly integrated into the North American production system. In order to reduce disparities in regional development, the Government is implementing a series of programmes, including various schemes to strengthen the land tenure system and thus encourage development in rural areas, an urban programme to develop some 100 cities considered strategic, a special programme for the Federal District (Mexico City), and several mechanisms to fight extreme poverty with a strong bias in favour of the most disadvantaged areas.⁶⁰

(xii) In-bond (*maquiladora*) industry

180. The *maquiladora* industry is based on duty-free temporary importation of machinery and equipment, parts, raw materials and other components utilized in export-manufacturing processing or assembly.⁶¹ In-bond firms *maquiladora* may currently sell goods of a value equivalent to up to 70 per cent of the previous year's exports on the domestic market; by 2001 they will be able to sell all of their output on the domestic market. *Maquiladoras* pay duties on the foreign content of the products sold on the national market according to the tariff rates applicable to the individual imported components. *Maquiladoras* benefit from streamlined customs procedures. Materials imported temporarily under the *maquiladora* programme are not required to meet certain non-tariff requirements on importation, such as mandatory official standards (NOMs - section (2) above), which would apply if they were considered definitive imports. *Maquiladoras* (like other large exporters) are not required to pay value-added tax on imported materials, thus avoiding the administrative costs associated with claiming a credit or refund of the value-added tax on exports.

181. The *maquiladora* programme, administered by SECOFI's General Directorate of International Trade Services (Chart II.1) through SECOFI's regional offices, is based on the 1989 decree for the promotion and operation of the export *maquiladora* industry, as amended. A decree of 24 December 1993 sought to adapt the existing regime to the requirements of the NAFTA; the decree introduced, *inter alia*, the *maquiladora* concept for services activities, allowed subcontracting between *maquiladoras* and firms outside the *maquiladora* programme, and eliminated the authorization

⁵⁹WTO document G/SCM/N/3/MEX, 21 November 1996.

⁶⁰*Poder Ejecutivo* (1996b), section 4.8.3. The authorities have identified Chiapas, Guerrero, Puebla, Oaxaca and Veracruz as the Federal States with the worst poverty indicators.

⁶¹For products destined for the U.S. market, additional benefits were provided under HS items 9802.0060 and 9802.0080, whereby no duty is applied by the United States to the value of U.S.-made components.

requirements for *maquiladoras* to engage in domestic sales.⁶² A decree of 23 October 1996 was aimed at strengthening the *maquiladora* industry, as envisaged in the Industrial Policy and Foreign Trade Programme (PPICE), and streamlining the administrative procedures related to the *maquiladora* regime. The decree defined time limits for the processing of documents, introduced the concept of indirect export, expanded to up to two years the period allowed for imported inputs to remain temporarily in Mexico, and made it possible to include in the *maquiladora* programme different plants or projects operated by a single firm under a PITEC programme.

182. As explained in section (3)(xi), the *maquiladora* and PITEC programmes are scheduled to be modified on 1 January 2001, as stipulated under the NAFTA. From that date, full or partial duty concessions on finished products exported to Canada or the United States will be available only on materials imported into Mexico from non-NAFTA countries if the finished product is subject to import duties in those two countries. Mexican exports to other countries will not be necessarily subject to restrictions on drawback. It has been pointed out that producers seeking to take advantage of the NAFTA must consider the source of their materials to determine whether their output will qualify for preferential duty on export to Canada or the United States; some manufacturers appear to have changed their supply sources to North American suppliers to meet NAFTA rules of origin.⁶³ The economic performance of the *maquiladora* industry is discussed in Chapter IV(4).

(xiii) Free-trade zones

183. Free-trade-zone status was granted to certain regions to encourage their economic development and promote increased foreign trade. Five zones had that status until the end of 1993; these and the northern border strip benefited until that date from import tax preferences in the form of tariffs at zero or 5 per cent. A decree of 24 December 1993, amended in 1994, eliminated the five free-trade zones, which were incorporated into a transitional border region scheme aimed at consolidating those areas into Mexico's general import regime by the end of 2000. The decree listed the specific tariff lines that may be imported duty free for use in industry, construction, fishing, repair or maintenance activities; duty-free status was to be eliminated in stages ending on 31 December 2000, with different schedules for North American and other imports. A decree of 29 December 1995, abrogating earlier legislation on the matter, added a concessional rate of 5 per cent to the duty-free status and introduced a few tariff quotas; the decree maintained different schedules by region, and provisions for a phase-out of concessions by the end of 2000.

184. There are no export-processing zones in Mexico.

(xiv) Trade-related investment measures (TRIMs)

185. Under Article 5.1 of the Agreement on Trade-Related Investment Measures (TRIMs), on 31 March 1995 Mexico notified various instruments relating to the automotive industry and commercial vehicles (trucks and buses). These measures are maintained under legislation adopted in 1989 and 1990, as a result of the entry into force of the NAFTA. The legislation provides, *inter alia*, for the

⁶²Prior to NAFTA, to avoid restrictions on direct sales from *maquiladoras* into the Mexican market, parts assembled in *maquiladoras*, such as wiring harnesses, were exported to the United States and then re-exported to Mexico; currently, a greater percentage of sales seem to be made directly from *maquiladoras* instead of from the United States (United States Department of Commerce, 1996).

⁶³Angulo-Parra and Elías-Fernández (1996).

use of local-content and trade-balancing requirements to promote the use of parts and components produced by the domestic automotive parts industry (Chapter IV(4)).

186. All requirements that might be inconsistent with the TRIMs Agreement must be eliminated by the year 2000, unless an extension is granted by the WTO Council for Trade in Goods; in this respect, the Mexican authorities have indicated that any modification to its existing motor vehicle legislation will depend on Mexico's future development, financial and trade needs as well as on its WTO rights and obligations. On the other hand, under the NAFTA, Mexico must complete by 1 January 2004 the process of phasing out any aspects of the motor vehicle legislation inconsistent with that Agreement.

187. According to press reports, reduced tariffs linked to investment commitments were accorded in late 1996 to a local vehicle manufacturer (Volkswagen) for imports of assembled luxury vehicles.⁶⁴ In this respect, the Mexican authorities noted that four tariff lines were created (87032301, 87032302, 87032401 and 87043103) to allow the importation, with a reduced tariff, of a particular type of vehicle by any manufacturer in order to complement their domestic supply.

188. Under the provisions of the NAFTA, local governments remain free to impose performance requirements relating to investment, e.g. in relation to exports, local content, preferences, and technology transfer, without any time-limits; this exemption applies to all performance requirements in existence on NAFTA's entry into force. Moreover, the exclusions and measures set out in Annexes I, II and III of NAFTA (on reservations for existing and future measures, and state activities) may include GATT-inconsistent TRIMs, although the NAFTA partners have indicated that the adoption of such measures is unlikely.⁶⁵

(xv) Trade-related aspects of intellectual property rights (TRIPS)

189. Mexico has provided the Council for TRIPS with the data required under Article 69 of the WTO TRIPS Agreement on contact points: the Mexican Institute of Industrial Property (IMPI) and the Copyrights General-Directorate (since replaced by the National Copyright Institute - INDA).⁶⁶ The IMPI is an independent organization created by SECOFI to assume responsibility for patent and trademark registration, as well as to hear disputes at an administrative level on areas covered by the Industrial Property Law (LPI). Mexico also submitted a notification under Article 4(d) of the TRIPS Agreement to the Council for TRIPS on 29 December 1995, where it indicated that the provisions of the NAFTA concerning TRIPS came into force on 1 January 1994.⁶⁷

190. Mexico is a party to, *inter alia*, the Berne Convention, the Inter-American Copyright Convention, the Paris Convention, the Patent Cooperation Treaty, the Universal Copyright Convention, and the Lisbon Convention for the Protection of Appellations of Origin, the Geneva Convention for the Protection of Producers of Phonograms, and the Brussels Convention relating to the Distribution of Programme-

⁶⁴El Economista (Internet edition), 25 November 1996 and 6 December 1996; Reforma (Internet edition), 15 February 1997.

⁶⁵WTO document WT/REG4/1, 23 June 1995.

⁶⁶WTO document IP/N/3/Rev.2, 22 July 1996.

⁶⁷WTO document IP/N/4/MEX/1, 12 February 1996.

Carrying Signals Transmitted by Satellite. In 1995, Mexico signed the International Convention for the Protection of New Varieties of Plants.

(a) Industrial property

191. As part of its broader economic liberalization programme, Mexico has progressively liberalized its intellectual property laws during the 1990s. The Industrial Property Law (LPI) of 1991, as amended, covers, *inter alia*, patents, trademarks and trade secrets; the LPI is administered by the IMPI (see above). The authorities noted that the LPI significantly simplified administrative procedures and reinforced protection levels by, *inter alia*:

- adding patentable areas such as chemical compounds, pharmaceuticals, agricultural chemicals, beverages, and food for human and animal consumption;
- extending the term of protection for patents to 20 years from the date of filing;
- introducing protection of utility models;
- protecting trade secrets; and
- extending the term of trademark registration to ten years from the filing date of the application.

192. To comply with Mexico's commitments under the NAFTA and the TRIPS Agreement, amendments to the LPI entered into force on 1 October 1994. Improvements highlighted by the authorities were the establishment of the IMPI; decreasing the number of non-patentable areas; and introducing the concept of a "well-known mark", defined with respect to knowledge in Mexico or abroad. Work is in progress to introduce statutes for the protection of layout designs of integrated circuits.

193. The LPI provides that patent rights may be licensed or transferred, subject to the conditions and formalities of ordinary legislation. Such contracts must be registered at the IMPI. Mexican law does not include any specific rules governing minimum or maximum royalties; registration is not a precondition for the payment of royalties abroad.

194. Patent rejections may be appealed by means of a petition for reconsideration filed in writing with the IMPI within 30 days following the date of notification. Administrative procedures are available to declare the nullification, expiration or cancellation of a patent or trademark. Administrative violations, such as wrongfully labelling a product protected by a patent or a trademark, may be sanctioned with a fine of up to 20,000 times the daily minimum wage prevailing in the Federal District, temporary or permanent closure of the infringer's premises or arrest for up to 36 hours. The infringement of a trademark or a trade secret is punishable by up to two years in prison or a fine equal to 100 to 10,000 times the daily minimum wage (up to US\$30,000).

Patents and trade secrets

195. The LPI offers patent protection for inventions that meet the requirements of novelty, inventive activity and industrial application, except for areas explicitly excluded. Exclusions cover, *inter alia*, biological processes for the reproduction of plants or animals, biological and genetic material as found in nature, animal species, the human body or parts, vegetable varieties (the latter are, however, protected under Mexico's new Federal Plant Variety Law and the International Convention for the Protection

of New Varieties of Plants). Under the provisions of the NAFTA, Mexico may not grant patents to inventions whose commercial exploitation may endanger the environment.

196. The person who first files the patent application is considered the inventor and owner of the patent. Patents are granted for a 20 year, non-renewable period, beginning from the date of the filing of an application. However, the net effective life of a patent would seem to be significantly shorter, as the patent application process reportedly takes from three to five years from the date of filing.⁶⁸ The application process may be shortened if a petition for accelerated publication is filed. The IMPI may also agree to expedite granting when a patent has been granted in a member country of the Patent Cooperation Treaty. The date of filing a patent application abroad is treated as the date of filing in Mexico.

197. There is no express obligation to work an invention, but the law allows interested parties to apply to the IMPI for a compulsory licence in cases where a patent has not been worked without a valid reason within (i) three years after issuance of the patent, or (ii) four years after the filing of the application whichever is longer. The authorities noted that in fact the IMPI has never granted compulsory licences. Importation of a patented item or of a product made with the patented process is sufficient to satisfy the working requirement.

198. Utility models and industrial designs may be registered if they are new and have potential for industrial application. Protection for utility models is granted for ten years from the date of filing; industrial designs are protected for 15 years. The legislation does not provide for renewal in either case. Protection covers only domestic novelty. Trade secrets are defined as industrial or commercial information kept by a corporation or an individual as confidential and which can be used to obtain or maintain an economic or competitive advantage over third parties. Owners of industrial secrets may transfer or license them to third parties; the licensee may not transfer the information without authorization. Individuals or entities unlawfully revealing or obtaining secrets may be liable for damages, and subject to criminal procedures and penalties.

199. The NAFTA required Mexico to comply with the substantive provisions of the International Convention for the Protection of New Varieties of Plants within two years of signature of the Agreement, as well as to begin accepting and granting, from 1 January 1994, applications for plant variety protection. Article 20 of the LPI provided that plant varieties could be protected as utility patents. Although this article was eliminated in October 1994, Article 5 of the LPI's transitory provisions authorized the IMPI to accept applications for the protection of plant varieties while new statutes on the matter were being prepared. A Plant Varieties Law was published on 25 October 1996, and work is in progress on new regulations. Between June 1991 and December 1994, 70 applications for plant varieties had been submitted to the IMPI, of which 26 were submitted as "plant patents". Under the 1996 Plant Varieties Law, the IMPI sent 29 applications for plant-breeder certificates to the Ministry of Agriculture, the competent authority under the new law.

Trademarks

200. The LPI recognizes trademarks and service marks, whose exclusive use in both cases may be obtained only through registration. Trade or service marks cover only specific goods or services within a single class of products. A trademark may not be registered if it is similar to another to the extent that it may cause confusion. The registration process takes approximately four to six months if no

⁶⁸Rowat (1993).

objection is raised. As a general rule, registration is granted to the first to file, but a first user in Mexico or abroad has a preferential right to register. First use abroad does not generate any rights in Mexico except for famous or well-known marks, the LPI initially required reciprocity on the use of trademarks abroad, but the 1994 amendments eliminated this requirement.

201. Trademarks may be, *inter alia*, any name or visible design which is sufficiently distinctive; tri-dimensional forms; trade names and corporate names; and personal names, unless there is a homonym previously registered. Some marks may not be registered, including the proper, technical or commonly used names of products or services, names designating the place of manufacture of products, and the translation to other languages of non-registrable marks.

202. Trademark registrations are valid for ten years from the date of filing. Renewals may be obtained indefinitely every ten years provided that the trademark is in actual use. The Mexican concept of intent to use requires the owner of the trademark to use the mark within the first three years following filing; this period may be extended for another three-year period. Registration of marks not used for three consecutive years may be subject to cancellation actions filed by an interested party. Third parties may be licensed or franchised to use a registered trademark.

203. Trade names of commercial, service or industrial establishments are protected without need for registration. Users may apply for publication of the trade name to establish a presumption of good faith in the use of the name. The publication is valid for ten years and may be renewed. Trade or service marks cover only specific goods or services within a single class of products. Collective trademarks may be registered by legally incorporated associations. A collective trademark may not be transferred to third parties, and its use is reserved for the members of the association.

204. Under the LPI, the name of a region from which a product originates may be protected by a declaration to the IMPI and publication in the Official Journal. Producers of the product may apply for such protection. In addition to "appellations of origin", the LPI provides protection against the unlawful use of geographical indications, including through administrative and criminal sanctions.

205. Any person may legally import into Mexico products covered by a registered trademark, for their use, distribution or sale. Legal licensees of a trademark registered in Mexico covering imported products do not have any legal recourse against a lawful importer.

(b) Copyrights

206. Copyrights are protected by the new Copyright Law (LFDA) of 24 December 1996, amended on 19 May 1997, and the Criminal Code. Copyright protection does not require registration, although the first to register has the legal presumption of ownership. Copyrights are registered by the National Copyright Institute (INDA) under the Ministry of Education. The term of protection is for the life of the author plus 75 years. The authorities noted that the law provides protection for the full range of copyrights and neighbouring rights such as literary (including software), scientific, computer programmes, musical, artistic, architectural works, cartoons, films, graphic and textile designs, databases, phonograms, periodicals, magazines, television and radio programmes. The doctrine of fair use is recognized, encompassing such areas as the translation or reproduction of small fragments for education or scientific investigation, or a back-up copy of a computer program. Authors hold both patrimonial rights and moral rights; the latter are not assignable and do not expire if action to enforce them is not exercised.

207. The 1996 LFDA states that computer programs are protected as literary works within the meaning of the Berne Convention. Such law protects both source and object codes; the holder of the copyright on a computer program controls the reproduction of the program and any form of distribution. Original databases are protected for 75 years, while non-original databases receive protection for five years.

208. The amendments of December 1996 call for enforcement to be coordinated between the IMPI, the INDA, the Attorney-General's Office (PGR) and customs authorities. The maximum allowable fines were increased to 3,000 times the total daily net income received by the transgressor from the illegal activity. Federal Courts have the authority to settle disputes on copyright violations, with the Attorney-General's Office in charge of criminal procedures and penalties as provided in the Federal Criminal Code.

(c) Enforcement

209. Given the important legislative changes in recent years, the enforcement of intellectual property rights in Mexico is still being developed.⁶⁹ Some U.S. reports have expressed concern about law enforcement, especially lack of criminal prosecution of violations.⁷⁰ However, it appears that existing problems are being resolved through a series of measures taken by the authorities. For example, the United States and Mexico have established a bilateral working group comprising members from each country's competent agencies, including trade, patent and trademark, copyright, agricultural (plant varieties) and customs authorities as well as representatives of the Attorney-General's Office, to discuss various intellectual property and related enforcement issues, including developing an effective border enforcement system in Mexico for intellectual property rights.

210. As required by the NAFTA, in December 1995 Mexico's Customs Law was amended to grant the customs service the authority to detain infringing products. The Ministry of Finance may suspend the free circulation of foreign goods if a resolution is issued by a competent administrative or judicial authority. The IMPI is the relevant competent administrative authority, while the District Courts are the competent judicial authorities.

211. The INDA conducts administrative proceedings regarding certain infringements of the law, including the transfer of rights without proper authorization; breach of the terms of mandatory licences; operation of collective societies contrary to the provisions of the law; and publication of work without reference to the author. The INDA may impose sanctions ranging from 1,000 to 15,000 times the minimum daily wage.

212. The IMPI is empowered to conduct administrative proceedings regarding infringements that involve commercial activities where direct or indirect profit is obtained, including making a protected work publicly available without explicit authorization from the rightholder; the use of a person's image without his/her authorization or that of his rightholders; the production, reproduction, storage, or distribution of copies of protected works, sound-recordings, videograms or books without the authorization of the rightholder; and the importation, sale, lease or any other act that would permit someone to obtain a device or system for the purpose of deactivating electronic means of protecting software. The IMPI may impose sanctions ranging from 500 to 10,000 times the minimum daily wage.

⁶⁹Christina Moeckel (1995).

⁷⁰USTR (1995).

213. The General Attorney's Office conducts judicial proceedings regarding violations of certain intellectual property rights, including profiting from free text books distributed by the Ministry of Education; the production of copies of protected works in excess of those authorized by the rightholder; the production, reproduction, import, storage, transport, distribution, sale, lease, or use of copies of protected works on a commercial scale without authorization of the rightholder; the production, import, sale or lease of a device or system to decode an encrypted programme-carrying satellite signal without authorization of the lawful distributor of such signal; decoding encrypted programmes carrying satellite signals, without authorization from the lawful distributor of such signal. The Penal Courts may impose prison sentences ranging from six months to six years and fines ranging from 300 to 3,000 "forfeit days". Economic sanctions may be applied without prejudice to the award of damages, whose amount must not be less than 40 per cent of the sale price of products or services involving rights protected by the Copyright Law.