

Trade Policy Review Body

TRADE POLICY REVIEW
Report by the Secretariat
MEXICO

This report, prepared for the fourth Trade Policy Review of Mexico, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Mexico on its trade policies and practices.

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CONTENTS

	Page
SUMMARY OBSERVATIONS	vii
(1) ECONOMIC ENVIRONMENT	vii
(2) TRADE POLICY AND INVESTMENT FRAMEWORK	vii
(3) MARKET ACCESS FOR GOODS	viii
(4) MEASURES AFFECTING EXPORTS	ix
(5) OTHER MEASURES AFFECTING TRADE	ix
(6) SECTORAL POLICIES	x
I. ECONOMIC ENVIRONMENT	1
(1) OVERVIEW	1
(2) MACROECONOMIC TRENDS	1
(i) Structure, growth and employment	1
(ii) Fiscal policy	4
(iii) Monetary and exchange-rate policy	7
(iv) Balance of payments	9
(3) DEVELOPMENTS IN TRADE AND INVESTMENT FLOWS	11
(i) Trade in goods	11
(ii) Trade in services	12
(iii) Foreign direct investment	12
(4) OUTLOOK	14
II. TRADE AND INVESTMENT REGIME	15
(1) OVERVIEW	15
(2) GENERAL LEGAL FRAMEWORK	15
(3) TRADE POLICY FORMULATION AND OBJECTIVES	17
(4) FOREIGN INVESTMENT REGIME	18
(i) Formulation and regulatory framework	18
(ii) Restrictions on foreign investment	19
(iii) International investment agreements	21
(5) INTERNATIONAL TRADE RELATIONS	22
(i) WTO	22
(ii) Free-trade agreements (FTAs)	23
(iii) Other agreements and arrangements	29
III. TRADE POLICIES BY MEASURE	30
(1) OVERVIEW	30
(2) MEASURES DIRECTLY AFFECTING IMPORTS	32
(i) Registration, documentation and customs procedures	32
(ii) Customs valuation	35
(iii) Rules of origin	36
(iv) Tariffs	38
(v) Other charges affecting imports	43
(vi) Prohibitions, restrictions and import licensing	45

	Page
(vii) Contingency measures	47
(viii) Technical regulations and standards	51
(ix) Sanitary and phytosanitary measures	57
(3) MEASURES DIRECTLY AFFECTING EXPORTS	63
(i) Registration and documentation	63
(ii) Export taxes and duties	63
(iii) Export prohibitions and restrictions and licensing regime	64
(iv) Tariff and tax concessions	66
(v) Export financing, insurance and guarantees	70
(vi) Export promotion	72
(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE	73
(i) Establishment and taxation of companies	73
(ii) Competition policy and price controls	76
(iii) Incentives	79
(iv) State-trading enterprises and privatization	85
(v) Government procurement	86
(vi) Protection of intellectual property	89
IV. TRADE POLICIES BY SECTOR	94
(1) OVERVIEW	94
(2) AGRICULTURE	95
(i) General features	95
(ii) Policy objectives	96
(iii) Agricultural support indicators	97
(iv) Policy instruments	98
(3) MANUFACTURING	106
(i) Main features	106
(4) ENERGY	109
(i) Main features	109
(ii) Hydrocarbons	110
(iii) Electricity	114
(5) SERVICES	116
(i) Multilateral commitments	116
(ii) Telecommunications	116
(iii) Financial services	121
(iv) Air transport and airports	126
(v) Maritime transport	129
(vi) Professional services	131
REFERENCES	135
APPENDIX TABLES	141

TABLES

	Page
I. ECONOMIC ENVIRONMENT	
I.1 Structure of GDP by expenditure, 2001-2007	2
I.2 Main economic indicators, 2001-2007	3
I.3 Balance of the Federal non-financial public sector (NFPS), 2001-2007	5
I.4 Main monetary indicators, 2001-2007	8
I.5 Balance of payments, 2001-2007	9
I.6 Trade in services, 2001-2007	12
I.7 Foreign direct investment (FDI) by sector, 2001-2007	13
I.8 Foreign direct investment (FDI) by country of origin, 2001-07	13
II. TRADE AND INVESTMENT REGIME	
II.1 Limits on foreign holdings in economic activities and companies subject to specific regulation, 2007	20
II.2 Free-trade agreements (FTAs) signed by Mexico, 1993-2006	23
III. TRADE POLICIES BY MEASURE	
III.1 MFN tariff structure, 2007	39
III.2 Summary of MFN tariffs, 2007	40
III.3 Products subject to the requirement of a prior import licence from the Ministry of the Economy, June 2007	46
III.4 Anti-dumping duties and countervailing measures, 1 January 2002 – 31 December 2006	49
III.5 Notifications of technical regulations and conformity assessment procedures to the TBT Committee, January 2002 – April 2007	53
III.6 Notification of sanitary and phytosanitary regulations to the SPS Committee, January 2002 – August 2007	59
III.7 Goods subject to export taxes	64
III.8 Goods subject to a prior export licence or notification to the Ministry of the Economy	65
III.9 Credits and financial services from the National Foreign Trade Bank (BANCOMEXT)	70
III.10 Principal taxes applicable to companies and natural persons engaged in business activities	75
III.11 Federal programmes in support of industrial activity by entity, October 2007	79
III.12 Tax incentives for the promotion of economic activities	81
III.13 Fiscal costs budget, 2006	82
III.14 Credits and financial services of the National Finance Company, S.N.C. (NAFIN)	83
III.15 Mexican participation in international agreements on intellectual property rights	89
III.16 Summary of the protection of intellectual property rights in Mexico, 2006	91
IV. TRADE POLICIES BY SECTOR	
IV.1 Agricultural support estimates, 2001-06	97
IV.2 Multilateral tariff quotas and import volume, 2006	98
IV.3 Productivity in the manufacturing sector in real terms (per cent), 2001-06	107
IV.4 Manufacturing industry's share of GDP, 2001-06	107
IV.5 Structural indicators, maquiladora industry, 2001-2006	108
IV.6 Private participation in the hydrocarbon sector	112

APPENDIX TABLES

	Page
I. ECONOMIC ENVIRONMENT	
AI.1 Merchandise exports by product, 2001-2006	143
AI.2 Merchandise imports by product, 2001-2006	145
AI.3 Merchandise exports by trading partner, 2001-2006	147
AI.4 Merchandise imports by trading partner, 2001-2006	148
II. TRADE AND INVESTMENT REGIME	
AII.1 Selected notifications to the WTO, October 2007	149
AII.2 Issues involving Mexico subject to WTO dispute settlement, 2002-2007	153
III. TRADE POLICIES BY MEASURE	
AIII.1 Summary of preferential tariffs, 2007	155
AIII.2 Initiation of anti-dumping investigations, 1 January 2002 to 31 December 2006	159
IV. TRADE POLICIES BY SECTOR	
AIV.1 Summary of Mexico's specific commitments under the GATS	161

SUMMARY OBSERVATIONS

1. Since its previous Review in 2002, Mexico has continued with the gradual and unilateral liberalization of its trade regime. It has also concluded new free-trade agreements, now conducting 85 per cent of its trade with preferential partners. While preferential agreements have played an important role in Mexico's liberalization efforts, they have also altered economic incentives. At the same time, some barriers to MFN trade and foreign investment limit the access of Mexican consumers and producers to certain goods and services on more competitive terms.

2. In recent years Mexico's economic performance has been solid, and several sectors of its economy have achieved high levels of development. Nevertheless, per capita income has risen only modestly and alleviating poverty remains a challenge. Thus, steps to speed up productivity growth would seem necessary, such as increasing competition in the domestic market and establishing a more uniform incentive structure; the latter could include the rationalization of the MFN tariff and of special fiscal regimes. Further structural reform would contribute to reducing bottlenecks in areas such as energy, telecommunications and transport. Resolving these long-standing issues would help Mexico to take advantage of the significant progress already attained in order to accelerate growth and achieve higher living standards.

(1) ECONOMIC ENVIRONMENT

3. In 2006, Mexico's per capita income was around US\$8,000, having increased at an average annual real rate of 1.7 per cent between 2001 and 2006. Over the same period, the average annual real increase in GDP was 2.3 per cent. After stagnating in 2001-02, partly because of the economic downturn in the United States, Mexico's economic growth resumed, boosted by internal demand and a favourable external environment.

4. Prudent fiscal management has allowed for the gradual consolidation of the federal budget and the reduction of the public debt to GDP ratio; measures are also being taken to lessen the dependence of public finances on petroleum revenue. Mexico has successfully implemented an inflation-targeting regime, maintaining inflationary expectations at around the objective of 3 per cent.

5. Despite the persistent and large deficit in the services balance, the current account deficit of the balance of payments has virtually disappeared, mainly because of increased family remittances. In 2006, trade in goods accounted for some 60 per cent of GDP. Growth in trade has been accompanied by changes in its composition and direction. For example, in value terms, petroleum exports have increased even though manufactures are still the predominant export. Imports from Asia, notably China, have risen significantly, although the United States remains by far Mexico's leading trade partner.

(2) TRADE POLICY AND INVESTMENT FRAMEWORK

6. Mexico is an original member of the WTO and considers that the multilateral system is the principal instrument for liberalizing global trade. It believes that the multilateral trading system and preferential agreements should be complementary, while acknowledging that there are certain issues on the trade agenda that can only be resolved in the multilateral sphere. In September 2003, Mexico hosted the WTO's Fifth Ministerial Conference in Cancún.

7. During the period under review, Mexico has made no fundamental changes to its internal legal framework or its trade policy. The latter is aimed at expanding and diversifying markets abroad, continuing to negotiate preferential agreements, and reinforcing the legal framework in order to attract foreign investment. Mexico recognizes that trade liberalization must be accompanied by other measures to boost competitiveness.

8. Mexico has submitted a large number of notifications to the WTO, but there have been delays in submitting others. Since 2002, under the WTO dispute settlement mechanism, Mexico has been involved in six cases as a complainant, seven as a defendant, and 27 as a third party.

9. Mexico has 12 preferential agreements with 44 countries; the agreements with Japan and Uruguay were signed during the period under review. Preferential agreements have led to the substantial liberalization of Mexico's trade regime. Nevertheless, their large number has altered economic incentives and the allocation of resources, and has made the administration of trade policy instruments more complicated.

10. Mexico sees the promotion of foreign investment as an essential complement to trade liberalization. No limits are set for foreign investment in activities not reserved or subject to specific regulations. However, some sectors are still reserved for the State, while others are reserved for Mexican capital, require a majority of Mexican capital, or prior approval before foreign participation may exceed 49 per cent of the total equity. Exceeding the limits set on foreign investment is permitted through the use of neutral investment (shares with no voting rights).

(3) MARKET ACCESS FOR GOODS

11. Mexico has lowered its simple average MFN tariff, from 16.5 per cent in 2001 to 11.2 per cent in 2007. Agricultural goods still receive higher tariff protection (23.0 per cent) than other products (9.9 per cent). The applied tariff is complex and tariff dispersion has increased. There is negative tariff escalation between raw materials and semi-processed products, which has led to inconsistencies in the tariff structure. These could be addressed by further reducing MFN tariffs and simplifying their structure.

12. Mexico has bound all its tariffs, at an average rate of 36.0 per cent, thus enhancing predictability; this could be further increased

by reducing bound tariffs so as to narrow the gap of almost 25 percentage points between average applied and bound rates.

13. In the Uruguay Round, Mexico committed to allocate tariff quotas for a number of agricultural products, but reserved most of these for particular countries. Mexico also administers tariff quotas under preferential agreements and on an autonomous basis. Tariff quota administration is complex and lacks transparency; for most products, no procedures were established to allocate WTO-related tariff quotas in 2007. Mexico's most recent notification to the WTO on tariff quotas covered the period 1996-99. Domestic consumption requirements are applied in the allocation of tariff quotas for powdered milk and maize.

14. Mexico has adopted several measures to streamline foreign trade procedures but some procedures remain complex. This suggests the need to continue the process of customs reform and the simplification of foreign trade regulations. Customs valuation still involves the application of an estimated price mechanism to certain products, which involves the deposit of a guarantee when the declared value is lower than the estimated price.

15. Mexico uses both preferential and non-preferential rules of origin; the latter are aimed at preventing circumvention of contingency measures.

16. A customs processing fee is payable on imports, generally at a rate of 0.8 per cent of the customs value; preferential imports are not subject to this fee. Products such as used vehicles and clothing are subject to prior import permits with the aim, inter alia, of protecting the environment and public health. The prior notice mechanism for imports has been abolished.

17. Through anti-dumping measures, Mexican producers have actively sought protection against imports they deem to be unfair. Between January 2002 and

December 2006, the authorities initiated 42 anti-dumping investigations that resulted in the adoption of 24 definitive duties. In June 2007, 70 anti-dumping duties were in effect, concerning mostly products from China and the United States.

18. In general, the procedures for adopting technical regulations (Mexican official standards, NOMs) are clearly defined. In some cases, importers of products from countries with which Mexico has a preferential agreement may utilize the certification obtained by other importers of the same product. Goods subject to sanitary and phytosanitary measures must comply with NOMs, phytosanitary or animal health information sheets, and/or inspection requirements.

(4) MEASURES AFFECTING EXPORTS

19. Mexico promotes exports by granting tariff and fiscal concessions as well as administrative facilities. The major promotion instruments, the Maquila and the PITEX, were amalgamated into the IMMEX programme at the end of 2006. This programme grants fiscal benefits subject to compliance with minimum export requirements, unless preferential agreements provide otherwise. In addition to this scheme and the duty drawback, other programmes provide administrative facilities and/or financial support to companies meeting export requirements. Mexico has not made any notifications on new or updated (non-agricultural) subsidies since 2001.

20. Mexico also provides several export financing and guarantee schemes through development banks. After having incurred large losses, the leading export bank was reorganized in 2007.

(5) OTHER MEASURES AFFECTING TRADE

21. Since 2002, Mexico has implemented several sectoral promotion programmes

(PROSECs) under which the beneficiary companies may import inputs at reduced tariffs in order to produce particular goods. As indicated in an official study, the PROSECs are not the best solution for offsetting the impact of MFN tariffs on the costs of companies importing inputs from non-preferential sources, inasmuch as their scope is limited and they involve administrative costs.

22. In addition to the PROSECs, there are many other government support programmes in specific areas. It would be helpful to analyse the extent to which the benefits derived from the various support programmes, including those oriented towards exports, offset their fiscal cost and the distortions they may cause among various activities.

23. Since its last Review, Mexico has strengthened its competition legislation and competition authority. Nevertheless, there are still monopolies and/or insufficient levels of competition in industries such as electricity, hydrocarbons, and telephony. Enhancing competition in these and other key sectors of the economy is one of Mexico's most pressing economic policy challenges.

24. Mexico is neither a signatory to nor an observer in the WTO Agreement on Government Procurement. Most government procurement takes place through tenders only open to Mexican persons and goods, or to Mexicans and foreigners from countries with which Mexico has signed relevant agreements. Although this could assist the domestic industry, it could also raise the cost of government procurement to the detriment of taxpayers.

25. In 2000, the TRIPS Council examined Mexico's intellectual property legislation and Mexico has notified subsequent amendments. In several areas, Mexico grants protection that exceeds the minimum periods laid down in the TRIPS Agreement. For example, copyrights were extended to 100 years in 2003. It would be useful to analyse how such an extension

achieves a balance between the economic interests of right holders and those of users.

(6) SECTORAL POLICIES

26. Mexico has continued the reform of the agriculture sector to improve its market orientation. There has been a reduction in the most distorting interventions and the efficiency of transfers to producers has been improved, but market price support and output-based payments still account for over half the support given to producers. It would seem necessary to introduce further reforms in order to facilitate the reallocation of resources among activities and achieve a sustainable increase in the sector's productivity.

27. The manufacturing sector has played a key role in Mexico's development and integration into the global economy. Nevertheless, in recent years the sector has lost part of its previous dynamism, owing both to cyclical factors and to a loss of competitiveness in international markets. The authorities are aware of these challenges and are considering implementing reforms to enhance competitiveness. Because of the large size and diversification of the sector, horizontal reforms that minimize the distortion of incentives would be particularly appropriate.

28. The Constitution provides that the State must be responsible for exploiting hydrocarbons and for generating and distributing electric power to the public. A heavy tax burden and consumption subsidies have meant that both the state-owned oil company, PEMEX, as well as the state-owned companies in the electricity sector, are facing significant difficulties in financing the investment required. It would therefore appear essential to carry out structural reforms that ensure their financial viability, increase their efficiency, and allow a better use of Mexico's energy resources.

29. In the services sector, Mexico made specific commitments in ten of the 12 sectors of the GATS. It adopted the Fifth Protocol on Financial Services and the Fourth Protocol on

Basic Telecommunications, accepting also the Reference Paper on regulatory principles in telecommunications. In the context of the DDA negotiations, Mexico submitted an initial offer in 2003 and a revised offer in 2005.

30. In many cases, the market access provisions in Mexico's legislation and preferential agreements are more liberal than the commitments it undertook under the GATS. Mexico could enhance the predictability of its investment regime by closing this gap. This could help to attract foreign investment, boost economic growth, and lead to more uniform treatment between preferential partners and other WTO Members.

31. In the telecommunications sector, the traditional operator, TELMEX, still has a dominant position in key markets. Moreover, interconnection problems remain among operators, and the price of service is high. Foreign capital participation is limited to 49 per cent, except in the case of mobile telephony, where it may exceed this limit subject to authorization. Relaxing these restrictions could complement other efforts being made to improve the competitive environment.

32. In recent years, several reforms have transformed Mexico's financial sector, improving its regulation and supervision. Concurrently, commercial banking has seen significant internationalization. There are no restrictions on foreign capital participation in banks or insurance companies from countries with which Mexico has a free-trade agreement that includes a chapter on financial services. Foreign capital from other countries may have effective control of a bank but not of an insurance company. In general, insurance may be taken out with foreign insurance companies only if a firm established in Mexico cannot cover the risk.

33. Mexico's aviation market was dominated by a state-owned duopoly, but recent privatizations and the entry into the market of low-cost airlines have led to a considerable increase in competition. Foreign

investment is limited to no more than 25 per cent of the capital of companies providing scheduled domestic air transport services, and up to 49 per cent of companies managing airports.

34. There has been large-scale investment in modernizing the port infrastructure, but the authorities are aware that further progress is needed. Cabotage is restricted to shipping lines with a majority of capital held by Mexicans. International maritime transport is provided almost entirely by foreign shipping

lines, nevertheless they may only participate if the ship's country of origin offers Mexico reciprocal treatment.

35. A professional licence is required in order to engage in a profession in Mexico. The licence is valid nationally and requires, *inter alia*, possession of a recognized professional qualification and completion of a social service. Some professional and technical services are reserved for Mexican nationals. The exercise of professions by foreigners is subject to the principle of reciprocity.

I. ECONOMIC ENVIRONMENT

(1) OVERVIEW

1. Following a period of relative stagnation in 2001 and 2002, Mexico's economy has once again grown. While GDP rose at an annual rate of just 0.7 per cent during the period 2001-2003, partly reflecting the economic slowdown in the United States during this period, the momentum of domestic demand since then and a favourable external setting boosted growth to an annual average of 3.9 per cent from 2004 to 2006.

2. Per capita income reached a level of around US\$8,000 in 2006, but only rose at an average real rate of 1.7 per cent from 2001 onwards. To raise the growth rate on a sustainable basis, additional reforms are needed to overcome problems such as inadequate infrastructure, lack of competitiveness in the domestic market and the low educational level of the workforce. Current economic conditions provide a good opportunity to address these challenges.

3. During the period under review, prudent fiscal management has resulted in progressive consolidation of the Federal public sector budget, which was in balance in 2005 and 2006; and the public debt has shrunk as a percentage of GDP. Measures are also being taken to reverse public finance's increasing reliance on oil revenues. Mexico has been successfully implementing an inflation-targeting regime, maintaining inflationary expectations around the target of 3 per cent, while lending to the private sector has increased.

4. The deficit in the balance-of-payments current account has narrowed, thanks mainly to burgeoning family remittances, despite a large deficit in the balance of trade in services. The share of merchandise trade in GDP amounted to around 60 per cent in 2006, accompanied by changes in its composition and direction. For example, oil exports have increased, reflecting the rise in international prices, although manufactures continue clearly to dominate Mexico's export basket. The United States remains Mexico's main trading partner by a wide margin; but imports from Asia, particularly from China, have also been growing rapidly.

(2) MACROECONOMIC TRENDS

(i) Structure, growth and employment

5. Mexico's GDP grew by an average of 2.3 per cent annually in real terms between 2001 and 2006, which is less than in the previous six years (4.1 per cent). The economy practically stagnated in 2001 and 2002, but growth resumed in 2003 and gathered pace to 3.9 per cent per year during the period 2004-2006. Between 2001 and 2003, the economy was hurt by a slump in external demand following consecutive contractions in industrial output in the United States and by very sluggish private investment, partly caused by a lack of progress in the regulatory reforms needed to modernize the Mexican economy.¹ The economic recovery recorded since 2004 was based on increases in private consumption and investment (domestic demand), supported by a more favourable external climate, in particular stronger demand in the United States (Table I.1).

¹ Bank of Mexico (2003 and 2004b).

Table I.1
Structure of GDP by expenditure, 2001-2007

	2001	2002	2003	2004	2005	2006	2007 ^a
As a percentage of real GDP							
Total consumption	81.3	80.9	82.1	81.7	82.4	82.6	81.6
Private	71.6	71.4	72.4	72.7	73.5	73.6	73.1
Public	9.7	9.5	9.7	9.0	8.8	8.9	8.5
Total investment	19.7	19.3	19.0	19.8	20.7	21.8	22.1
Private	16.7	16.2	14.6	15.8	16.9	18.1	..
Public	3.0	3.1	4.4	4.0	3.8	3.7	..
Changes in inventory	2.2	3.1	1.4	0.8	0.5	-0.3	0.1
Exports of goods and services	33.5	34.2	34.1	36.9	38.4	40.9	40.9
Imports of goods and services	36.7	37.5	36.6	39.2	42.0	45.0	46.5
Real percentage change							
Total GDP	-0.2	0.8	1.4	4.2	2.8	4.8	2.7
Total consumption	1.9	1.4	2.1	3.6	4.6	5.1	3.4
Private	2.5	1.6	2.2	4.1	5.1	5.0	4.1
Public	-2.0	-0.3	0.8	-0.4	0.4	6.0	-2.8
Total investment	-5.6	-0.6	0.4	7.5	7.6	10.0	5.9
Private	-5.9	-4.1	-1.6	8.8	9.7	11.5	..
Public	-4.2	17.0	8.5	2.5	-0.6	2.9	..
Changes in inventory	..	..	..	..	..	..	..
Exports of goods and services	-3.6	1.4	2.7	11.6	7.1	11.1	4.0
Imports of goods and services	-1.6	1.5	0.7	11.6	8.6	12.2	6.6

.. Not available.

a Preliminary annualized figures at June 2007.

Source: Bank of Mexico and Instituto Nacional de Estadística, Geografía e Informática – INEGI (National Institute of Statistics, Geography and Information).

6. The faster growth of private consumption during the review period has been driven among other things by more widely available financing, an increase in the number of persons employed, and robust growth in family remittances. The expansion of gross capital formation, amounting to 22 per cent of GDP in 2006, stemmed mainly from an increase in private investment (machinery and construction), which outpaced GDP growth during the period 2004-2006.² Despite this, the National Infrastructure Programme for 2007-2012 recognizes that additional investments will be needed to increase productivity in the economy at large (see Chapter IV(4) and (5)).³

7. The manufacturing industry is a key contributor to the Mexican economy, accounting for 18 per cent of GDP. Most of its output (which includes maquila plants) is for export, with roughly 86 per cent of exported manufactures going to the United States market.⁴ The scale of intra-sectoral trade in intermediate and finished goods between Mexico and its northern neighbour makes the performance of the manufacturing industry, and of the Mexican economy as a whole, particularly sensitive to business cycles in the United States.⁵

8. The industrial sector in general grew at an average real rate of 1.1 per cent annually during the period 2001-2006, accounting for one quarter of GDP in the latter year (Table I.2). The services sector expanded at an average of 3.0 per cent per year in real terms between 2001 and 2006, slightly increasing its share of GDP. This reflects above-average performance by the transport,

² Gross capital formation consists of "total investment" plus the change in inventory.

³ National Infrastructure Programme 2007-2012. Consulted at: www.infraestructura.gob.mx.

⁴ WTO Secretariat, on the basis of data from the Bank of Mexico and the United Nations Comtrade database.

⁵ Robertson (2007), Bank of Mexico (2004a and 2003).

communications and financial services sectors. The agricultural sector expanded at an average real rate of 2.1 per cent over the same period, and as a result its GDP share fell back slightly.

Table I.2
Main economic indicators, 2001-2007

	2001	2002	2003	2004	2005	2006	2007 ^a
I. Gross domestic product (GDP)							
GDP at current prices (Mex\$ billions)	5,809.7	6,263.1	6,892.0	7,709.1	8,366.2	9,155.5	9,650.6
GDP at current prices (US\$ billions)	621.8	648.6	638.8	683.1	767.7	839.9	888.1
Per capita GDP (current US\$)	6,268.4	6,428.4	6,262.7	6,631.7	7,388.7	8,006.4	..
GDP share (%)							
Breakdown by sector							
Agriculture	5.2	5.1	5.3	5.2	5.0	5.0	5.0
Industry	25.6	25.3	24.8	24.9	24.7	24.8	24.5
Services	64.0	64.4	65.0	65.1	65.7	65.6	66.8
Taxes less imputed bank service charges	5.2	5.2	4.9	4.8	4.6	4.6	3.8
Real growth rates (%)							
Total GDP	-0.2	0.8	1.4	4.2	2.8	4.8	2.7
Breakdown by sector							
Agriculture, forestry and fisheries	3.5	0.1	3.1	3.5	-2.1	4.8	2.0
Industrial sector	-3.5	-0.1	-0.2	4.2	1.7	5.0	0.7
Mining	1.5	0.4	3.7	3.4	2.1	2.2	1.0
Manufacturing	-3.8	-0.7	-1.3	4.0	1.4	4.7	0.2
Construction	-5.7	2.1	3.3	6.1	3.3	6.9	1.6
Electricity, gas and water	2.3	1.0	1.5	2.8	1.7	5.0	4.1
Services	1.2	1.6	2.1	4.4	4.0	4.9	3.7
Commerce, restaurants and hotels	-1.2	0.0	1.5	5.5	2.7	3.7	1.9
Transport, storage and communication	3.8	1.8	5.0	9.2	7.1	9.1	7.3
Financial, insurance and real estate services	4.5	4.2	3.9	3.9	5.8	5.4	4.8
Community, social and personal services	-0.3	0.9	-0.6	0.6	1.8	2.8	2.0
Imputed bank service charges	6.5	7.6	7.1	7.5	10.9	8.5	..
Product taxes net of subsidies	0.0	0.8	1.4	4.2	2.8	4.8	..
II. Employment							
Open unemployment rate ^b (%)	2.4	3.0	3.4	3.9	3.6	3.6	3.9 ^c
Population (millions)	99.2	100.9	102.0	103.0	103.9	104.9	..

.. Not available.

a Preliminary annualized figures at June 2007.

b Unemployed population as a percentage of the economically active population (EAP) at year end; i.e. the percentage of the EAP that was unemployed in the reference period, but which had searched for work in the final month.

c At September 2007.

Source: Bank of Mexico and INEGI.

9. The stronger pace of economic activity since 2003 has been accompanied by an increase in employment (about 10 per cent mainly in the formal sector of the economy). Nonetheless, this has not been fully reflected in a lower rate of open unemployment because a larger number of individuals, mostly women, entered the economically active population.⁶ It is estimated that about 27 per cent of the employed population is working in the informal sector.⁷ A report by the Organisation for Economic Co-operation and Development (OECD) suggests that the decision by entrepreneurs not to set up formal businesses is a result of excessive regulation and the high costs imposed by mandatory social welfare contributions.⁸

⁶ Bank of Mexico (2004b and 2006a).

⁷ First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/pdf_excel/M100-105.pdf.

⁸ OECD (2005).

10. Per capita GDP (in United States dollars) grew at an average real rate of 1.0 per cent over the period 2001-2006, to reach a level of US\$8,007 in the latter year.⁹ Nonetheless, roughly half the population was still living in poverty, and 17 per cent in conditions of food poverty in 2004 (the latest year for which figures are available).¹⁰

11. In its most recent study of the Mexican economy, the OECD notes that while the country has made significant progress towards macroeconomic stability, potential GDP growth has been too low either to close the living-standards gap with respect to the more advanced OECD countries, or to address the persistent problem of extensive poverty.¹¹ The study therefore considers that additional reforms are needed over a wide range of areas in order to move the economy towards a higher and sustainable growth path (Box I.1). Another study by the International Monetary Fund (IMF) proposes a number of changes needed to secure the transition to faster growth, including reforms to improve access to credit, promote a more efficient and dynamically functioning market, and strengthen the business climate.¹²

Box I.1: Reforms recommended by the OECD

The OECD notes that the reform process, which has lost momentum in recent years, should gather pace as a result of a number of measures, including greater economic openness to make the most of international integration. The OECD suggests prioritizing the following reforms:

- Further liberalize international trade by lowering the most-favoured-nation (MFN) tariff so as to give firms better access to competitive inputs and restrict possibilities for corruption and fraud at the country's borders. Also, further reduce non-tariff barriers, e.g. complex customs procedures and complicated technical requirements.
- Further encourage investment, by reducing restrictions on foreign direct investment (FDI) in sectors such as telecommunications, land transport, coastal shipping and airports; and support that openness with improvements in the business climate and additional strengthening of the rule of law.
- Strengthen public finances by taking steps to increase the efficiency of public spending; facilitate the fight against tax evasion; replace oil revenues with more stable income sources; reduce the subsidies that still prevail in areas such as water, electricity and gasoline; restrict the numerous exemptions or special regimes; and analyse fiscal relations between the various levels of government.
- Increase competitiveness and enforce competition policy so as to promote productivity and growth in services such as natural gas, electricity, airports, railways and telecommunications.
- Raise the low level of human capital and labour market adaptation capacity by taking steps to reduce inefficiency in the education sector, strengthen incentives for teachers to perform more effectively, and make renewed efforts to develop skills among adults.

Source: WTO Secretariat, information based on OECD (2007).

(ii) Fiscal policy

12. The non-financial public sector (NFPS) saw a gradual improvement in its financial indicators over the period 2001-2006 and achieved a balanced budget in 2005 and 2006 (Table I.3). During this period, spending rose in nominal terms and in relation to the GDP, but at a lower rate than income. Some of the spending that increased the most were other current expenditures (mainly outsourced services), public investment in infrastructure and contributions to stabilization funds (such as the Fondo de Estabilización de Ingresos de las Entidades Federativas (Federative Entity Income

⁹ The growth of real GDP per capita was calculated by the WTO Secretariat on the basis of 1993 prices and population data published by the INEGI.

¹⁰ Conditions of food poverty means living with less than what is needed to acquire minimally acceptable nourishment. Consulted at: http://www.sedesol.gob.mx/archivos/70/File/2as_Docu24.pdf.

¹¹ OECD (2007c).

¹² IMF (2006c).

Stabilization Fund), the PEMEX Fondo de Estabilización para la Inversión en Infraestructura (Infrastructure Investment Stabilization Fund), and the Fondo de Estabilización de los Ingresos Petroleros (Oil Revenue Stabilization Fund). In addition, the fastest-growing income categories were those linked to petroleum, mainly reflecting the rising price of oil on world markets; and value-added tax (VAT) as a result of more vigorous growth in private consumption. Oil revenues accounted for 34 per cent of total Federal public sector income on average between 2001 and 2006, reaching a maximum share of 38 per cent in the latter year.

Table I.3
Balance of the Federal non-financial public sector (NFPS), 2001-2007
(% of GDP)

	2001	2002	2003	2004	2005	2006	2007 ^a
A. Budgetary income	21.9	22.1	23.2	23.0	23.3	24.7	24.8
Oil revenues	6.7	6.5	7.7	8.3	8.7	9.4	8.2
PEMEX ^b	1.8	2.4	2.5	2.5	2.2	3.5	3.3
Federal Government (taxes and duties)	4.9	4.1	5.2	5.8	6.5	5.9	5.0
Non-oil income	15.2	15.6	15.5	14.7	14.6	15.3	16.6
Federal Government	11.3	11.6	11.2	10.7	10.4	11.1	12.6
Tax income	9.8	9.8	9.8	9.3	9.5	10.1	11.5
Income tax (ISR)	4.9	5.1	4.9	4.5	4.6	4.9	5.9
Value-added tax (VAT)	3.6	3.5	3.7	3.7	3.8	4.1	4.3
Import duties	0.5	0.4	0.4	0.4	0.3	0.3	0.3
IEPS ^c	0.4	0.4	0.4	0.4	0.4	0.4	0.5
Other	0.4	0.4	0.4	0.3	0.4	0.4	0.5
Non-tax income	1.5	1.8	1.4	1.4	0.9	0.9	0.6
State-owned enterprises and entities ^d	3.9	4.0	4.2	4.0	4.2	4.2	..
B. Budgetary expenditure	22.6	23.3	23.9	23.2	23.4	24.6	22.4
Programmable expenditure	15.9	16.9	17.6	17.1	17.4	18.1	15.8
Current expenditure	13.3	13.8	14.6	13.5	14.0	14.4	13.5
Personal services	7.3	7.6	7.3	6.7	6.7	6.7	..
Materials and supplies	1.5	1.3	1.7	1.6	1.7	1.7	..
Subsidies and transfers ^e	2.1	2.2	2.3	2.3	2.4	2.4	..
Other current expenditure	2.4	2.6	3.2	2.9	3.3	3.6	..
Capital expenditure	2.6	3.2	3.0	3.5	3.4	3.7	2.3
Physical investment	2.4	2.4	2.7	3.0	2.8	3.0	..
Financial investment and other expenditure	0.2	0.8	0.3	0.6	0.6	0.7	..
Non-programmable expenditure	6.6	6.4	6.3	6.2	6.0	6.5	6.6
Financial expenditure	3.2	2.8	2.8	2.7	2.5	2.7	..
Interest payments	2.9	2.5	2.3	2.3	2.0	2.1	..
Federal Government	2.2	1.8	1.9	1.7	1.7	1.7	..
State-owned enterprises and entities	0.7	0.7	0.4	0.6	0.3	0.4	..
Subsidies and assistance to debtors	0.4	0.3	0.5	0.4	0.5	0.6	..
Revenue sharing with states and municipalities	3.4	3.4	3.3	3.1	3.3	3.6	..
Arrears and other expenditure	0.0	0.1	0.2	0.4	0.1	0.2	..

Table I.3 (cont'd)

	2001	2002	2003	2004	2005	2006	2007 ^a
C. Budget surplus/deficit (A - B)	-0.7	-1.2	-0.7	-0.3	-0.1	0.1	2.4
Memorandum item:							
Total public sector funding requirements ^f	-3.8	-3.2	-3.2	-2.5	-1.9	-1.3	..
Total net debt of the public sector ^g /GDP	36.6	40.2	37.9	34.9	32.4	33.4	..
Net external public debt (US\$ millions)	74,743	73,423	74,723	76,304	69,501	48,592	..

.. Not available.

a Preliminary figures at June 2007 (calculated on the basis of half of annualized GDP at June 2007).

b Petróleos Mexicanos.

c Special Tax on Production and Services.

d Excludes contributions to the Instituto de Seguridad y Servicios Sociales para los Trabajadores del Estado – ISSSTE (Institute of Social Welfare and Services for State Employees).

e Includes subsidies and transfers apart from those recorded under other headings.

f Excludes exceptional or non-recurrent income.

g Includes net liabilities of the Federal Government, the parastatal sector, official financial intermediaries (development banks and official trust funds), IPAB, PIDIREGAS projects and debtor support programmes; but excludes the financial balance of the Bank of Mexico.

Source: WTO Secretariat, on the basis of data from the Ministry of Finance and Public Credit (SHCP) and the Bank of Mexico.

13. The Bank of Mexico has commented that the increasing reliance of public finances on oil revenues reflects both the additional revenues obtained from higher oil prices and weak tax collection in the non-oil sector.¹³ It has also pointed out that this reliance reveals the vulnerability of public finances, highlighting the following risk factors: (i) while public expenditure has grown, non-oil tax revenue has not shown any significant increase; (ii) additional oil revenues have mostly been used to finance higher levels of expenditure, particularly current spending; (iii) the PEMEX crude oil production platform has started to shrink as a result of a lack of investment in exploration (see Chapter IV(4)); and (iv) the volatility of oil prices means that public finances could be facing uncertain scenarios in years to come.

14. The total public sector funding requirement gradually decreased during the review period (Table I.3). This broad indicator mainly includes the NFPS budget balance, liabilities of the Instituto para la Protección al Ahorro Bancario – IPAB (Institute for the Protection of Bank Savings), and liabilities generated by PIDIREGAS-funded investment projects (see Chapter IV(4)).

15. The net total debt of the public sector decreased by almost seven percentage points in relation to GDP between 2002 and 2006, to reach a level of 33.4 per cent by the end of that period. According to the IMF, while this level is not high by international standards, it would be prudent to lower it further given the instability of oil revenues.¹⁴ Since 2002, when international risk rating agencies accorded investment grade to Mexico's sovereign debt profile, the authorities have consolidated the process of replacing external borrowing with domestic debt, while also lengthening the average maturity on its debt securities.

16. Fiscal policy in Mexico is formulated by the SHCP. In 2006, the country's tax legislation was reformed through the Federal Budget and Treasury Accountability Law (LFPRH)¹⁵, which requires the SHCP to submit the Revenue and Expenditure Budget Law for approval by Congress each year. While this should generally aim to maintain a balanced NFPS budget, exceptionally and depending on the circumstances, the SHCP may propose a deficit (or surplus) budget, provided it explains to

¹³ Bank of Mexico, Inflation Report, October-December 2006, and Monetary Programme for 2007. Consulted at: <http://www.banxico.org.mx/documents/{4B1E8447-E248-5DCF-7E81-966E58D178E7}.pdf>.

¹⁴ IMF (2006c).

¹⁵ The most recent reform was published in the Official Journal of the Federation of 1 October 2007.

Congress the exceptional reasons justifying this and indicates the number of fiscal years and actions required to restore fiscal balance.

17. The LFPRH requires each Revenue and Expenditure Budget Law to specify the value of oil revenues for the fiscal year in question. It establishes that surplus revenues, e.g. those resulting from higher-than-projected oil prices, should be used to cover non-programmable expenditure, shared among the different stabilization funds and infrastructure projects. Should petroleum revenues prove less than expected owing to a fall in oil prices during the fiscal year, the appropriate stabilization funds may be drawn down; but when these run out, expenditure cuts become necessary. The LFPRH also provides for adjustment mechanisms should non-oil income drop below the programmed level.

18. To reduce the reliance of public finances on oil revenues, a fiscal reform was approved in 2007 that seeks, inter alia, to reduce current expenditure by the Federal Government and increase tax revenues that are more stable than oil income. It is hoped that such incomes will grow by roughly 2.1 per cent of GDP until 2012, as a result of: collection of the new flat rate business tax (IETU); application of the Special Tax on Production and Services (IEPS) on gasoline and diesel sales; and more efficient collection of income-tax (ISR) and VAT.¹⁶ The authorities also intend to reduce ISR and VAT tax evasion, which was estimated at 3 per cent of GDP in 2003, by strengthening auditing processes and introducing a new tax on cash deposits - the latter with the aim of detecting and discouraging informal activity. The reform also made further alterations to the PEMEX fiscal regime, reducing the tax burden on this company and consequently its tax contributions.¹⁷

(iii) Monetary and exchange-rate policy

19. The Bank of Mexico is the authority responsible for formulating monetary and exchange-rate policies in Mexico. The Constitution gives the Bank autonomy to exercise its functions and establishes that its prime objective is to maintain the purchasing power of the local currency.

20. Up to 2004, the Bank of Mexico used the "corto" mechanism as the main instrument for altering its monetary stance, under which it would define the amount of credit to be auctioned to banks each day, so as to attain the target balance pre-established in the "corto". This represented the cumulative daily balance of accounts held by other banks with the Bank of Mexico. In the second quarter of 2004, the latter introduced amendments to complement the announcement of the level of the "corto" in its monetary policy communiqués, and thus provide more precise signals to markets on domestic monetary conditions and the desired monetary position.

21. The Bank of Mexico has announced that the "corto" will be replaced in January 2008 by a target rate for overnight bank funding operations. The move to an operational interest rate target will be implemented without altering the inflation targeting regime or the way the Bank of Mexico carries out its operations. The change seeks to make monetary policy actions easier to understand, and bring their implementation into line with that of various central banks around the world.¹⁸

22. The Bank of Mexico conducts monetary policy so as to attain an annual inflation rate of 3 per cent as measured by the national consumer price index (INPC), and to keep it within a range of plus

¹⁶ SHCP Press Communiqué No. 081 of 16 September 2007. Consulted at: <http://www.shcp.gob.mx/>.

¹⁷ SHCP (2007a).

¹⁸ Bank of Mexico, Monetary Policy Regime and Inflation Report, July-September 2007. Consulted, respectively, at: <http://www.banxico.org.mx/polmoneinflacion/didactico/regimenPM/RegimenPoliticaMonetaria.pdf> and http://www.banxico.org.mx/publicaciones/JSP/b_informeInflacion.jsp.

or minus one percentage point of that level.¹⁹ The IMF considers that the inflation targeting regime has been successfully implemented²⁰; although the inflation target was surpassed in 2002, 2004 and 2006 (Table I.4), the Fund argues that the monetary authority's credibility has increased, and since 2003 inflationary expectations have remained around the 3 per cent target.²¹

Table I.4
Main monetary indicators, 2001-2007

	2001	2002	2003	2004	2005	2006	2007 ^a
Monetary aggregates							
Monetary base (Mex\$ millions)	225,580	263,937	303,614	340,178	380,034	449,821	412,441
Monetary base (% real annual variation) ^b	5.4	11.4	10.7	8.8	7.9	12.4	-8.3
M1 (% real annual variation) ^b	8.2	12.9	7.0	8.8	6.9	11.6	..
M4 (% real annual variation) ^b	7.0	6.1	6.6	7.5	10.4	10.6	..
Interest rates (annual average %)							
Cetes at 28 days ^c	11.31	7.09	6.23	6.82	9.20	7.19	7.13
TIIE at 28 days ^d	12.89	8.17	6.83	7.15	9.61	7.51	7.93
20-year Treasury bond rate (fixed rate)	n.a.	n.a.	8.39	10.45	9.81	8.55	7.77
Inflation (12 month % rate of change, end of period)							
Inflation target ^e	6.50	4.50	3.00	3.00	3.00	3.00	3.00
National consumer price index (INPC)	4.40	5.70	3.98	5.19	3.33	4.05	3.79
National producer price index (INPP) ^f	2.61	6.29	6.24	7.97	2.46	7.12	3.22
Exchange rates							
End of period exchange rate (Mex\$/US\$)	9.14	10.31	11.24	11.27	10.77	10.88	10.87
Real effective exchange rate (1990=100) ^g	62.8	61.1	71.8	77.3	73.9	73.0	..

n.a. Not applicable.

.. Not available.

a Preliminary figures at September 2007.

b Calculated on the basis of average balances at the end of each month.

c Annual average of rates on 28-day Federation Treasury Certificates.

d Annual average of 28-day Equilibrium Interbank Interest Rates.

e Plus or minus one percentage point of variability.

f Excludes oil.

g Estimated on the basis of consumer prices and with respect to a basket of 111 countries weighted by their respective GDPs.

Source: Bank of Mexico.

23. The authorities pointed out that the rise in prices recorded in 2004 was the result of external shocks, particularly the surge in energy prices, whereas the increase in 2006 was caused by supply disturbances affecting a small group of goods and services, including tortillas and sugar.²²

24. The monetary base expanded at an annual average rate of 14.8 per cent over the period 2001-2006, largely reflecting the acceleration of economic growth (Table I.4).

25. Between 2001 and 2006, interest rates tended to fall, albeit with fluctuations (Table I.4); and since 2004 the spread between short and long-term rates has narrowed. Since 2003, there has been a sharp increase in lending to the private sector, which grew by roughly 162 per cent in real terms between 2003 and 2006, expanding its GDP share from 2.1 per cent to 4.6 per cent in that period.

¹⁹ Bank of Mexico, Monetary Policy Regime. Consulted at: <http://www.banxico.org.mx/polmoneinflacion/didactico/regimenPM/RegimenPoliticaMonetaria.pdf>.

²⁰ IMF (2006c).

²¹ Ibid.

²² Bank of Mexico (2004b and 2006a).

Nonetheless, access to private sector credit for private individuals remains relatively weak, amounting to no more than about 14 per cent of GDP in 2006.²³

26. Exchange-rate policy is the responsibility of the Foreign Exchange Committee, which consists of officials from the SHCP and the Bank of Mexico. In late 1994, the Committee decided to allow the exchange rate to be determined freely by market forces; and under this regime, between late 2001 and mid-2004, the exchange rate depreciated by up to 26 per cent. Since late 2004, however, it has appreciated slightly, reaching a level of around Mex\$10.9 per United States dollar in late 2006 (Table I.4). The real effective exchange rate behaved in a similar way during the period under review.

27. In March 2003, the authorities defined a mechanism for managing international reserves for the purpose of stabilizing and reducing the rate at which these are accumulated by the Bank of Mexico, without affecting the free flotation of the exchange rate.

(iv) Balance of payments

28. As in previous periods, the balance-of-payments current account was in deficit throughout the period 2001-2006, although it was clearly decreasing (Table I.5). The current account deficit shrank from 2.8 per cent of GDP in 2001 to 0.2 per cent in 2006, reflecting a narrowing of the trade deficit and, particularly, a substantial increase in family remittances. Growth in oil exports is the main factor driving the two balance-of-payments improvement cycles. Nonetheless, the first cycle (2001-2003) was also assisted by flat domestic aggregate demand; and the second (2004-2006) was supported by an increase in external demand for Mexican non-oil products.

29. The deficit in the services balance is considerably larger than the overall trade deficit (Table I.5), having remained broadly stable during the review period, albeit with a fall in 2004 and a rise in 2006. The former was mainly due to growth of "Other factor income". The 2006 increase in particular reflected slower growth of domestic tourism and a continuous increase in imports of freight and insurance services (see section (3)(ii) below).

30. The value of family remittances registered exceptionally strong growth, averaging 21 per cent per year between 2001 and 2006. Preliminary data for 2007 indicate a slowdown, however. Growth in the amount of family remittances recorded by the Bank of Mexico is mainly explained by an increase in the number of Mexican immigrants in the United States; but additional contributory factors were lower costs and government measures encouraging the use of formal fund transmission channels (e.g. electronic transfers). Although remittances only represented 2.8 per cent of GDP in 2006, they are important for the current account balance and for the growth of Mexico's economy. The IMF has noted that various studies show that remittances have helped to reduce poverty in Mexico as resources of this type seem to be channelled towards consumption and, to a much smaller extent, to investment in microenterprises.²⁴

Table I.5
Balance of payments, 2001-2007
(US\$ millions)

	2001	2002	2003	2004	2005	2006	2007 ^a
I. Current account	-17,683	-14,109	-8,851	-6,690	-4,897	-1,771	-3,395
I.1 Trade balance	-9,617	-7,633	-5,779	-8,811	-7,587	-6,133	-5,007
Exports of goods ^b	158,780	161,046	164,766	187,999	214,233	249,997	127,945
Imports of goods ^b	168,396	168,679	170,546	196,810	221,820	256,130	132,952

Table I.5 (cont'd)

²³ Bank of Mexico (2004b, 2005 and 2006a).

²⁴ IMF (2006b).

	2001	2002	2003	2004	2005	2006	2007 ^a
I.2 Balance of trade in services	-17,404	-16,744	-16,930	-14,922	-17,795	-19,090	-10,457
Factor services, net	-13,846	-12,696	-12,329	-10,315	-13,082	-12,990	-7,985
Income	5,366	4,099	3,942	5,708	5,938	6,691	3,590
Interest	4,075	2,835	2,343	2,211	3,011	4,444	2,658
Factor services, other	1,292	1,263	1,599	3,497	2,927	2,247	932
Outflows	19,213	16,795	16,271	16,024	19,020	19,682	11,575
Interest	12,693	11,966	11,670	11,222	12,260	13,700	7,247
Profits remitted and reinvested	5,544	3,909	3,593	3,584	6,100	5,006	3,774
Other	976	920	1,008	1,217	661	976	554
Non-factor services, net	-3,558	-4,048	-4,601	-4,607	-4,713	-6,099	-2,472
Income	12,660	12,692	12,533	13,955	16,066	16,265	8,873
Outflows	16,218	16,740	17,134	18,562	20,779	22,364	11,345
I.3 Transfers	9,338	10,268	13,858	17,044	20,484	23,452	12,068
Family remittances	8,895	9,814	13,396	16,613	20,035	23,054	11,859
Other, net	443	454	462	431	449	398	209
II. Capital account	26,000	27,018	22,254	11,835	12,692	1,834	
Liabilities	29,835	15,175	14,790	23,600	26,884	14,928	22,563
Loans and deposits	1,256	-4,213	-1,334	-1,372	543	-10,488	3,334
Public sector	-1,294	-4,464	-4,332	-4,440	-10,093	-22,027	313
Private sector	-870	-5,021	-3,205	-2,881	1,887	4,514	2,324
PIDIREGAS	3,420	5,272	6,203	5,949	8,749	7,026	697
Foreign direct investment	27,487	19,342	15,345	22,301	19,643	18,938	13,244
Portfolio investment	1,092	46	779	2,671	6,699	6,477	5,985
Assets	-3,835	11,844	7,464	-11,765	-14,193	-13,094	-15,444
In banks abroad	-1,512	10,773	7,457	-5,579	-4,403	-7,889	..
Direct investment by Mexican nationals	-4,404	-891	-1,253	-4,432	-6,474	-3,897	..
Other assets	2,081	1,961	1,261	-1,754	-3,316	-1,308	..
III. Errors and omissions	-993	-5,820	-3,965	-1,087	-630	-1,067	-1,467
IV. Variation in net reserves	7,325	7,104	9,451	4,061	7,173	-989	2,260
Memorandum item:							
International reserves	40,880	47,984	57,435	61,496	68,669	67,680	69,939
International reserves (months of merchandise imports)	2.9	3.4	4.0	3.7	3.7	3.2	3.2
Current account as a percentage of GDP	-2.8	-2.2	-1.4	-1.0	-0.6	-0.2	-0.4
Total gross external debt of the public and private sectors (as a percentage of GDP)	25.3	23.9	24.7	23.7	21.5	19.0	14.0

.. Not available.

a Preliminary figures at June 2007.

b F.o.b. values, including maquila enterprises.

Source: WTO Secretariat, on the basis of data from the Bank of Mexico.

31. Capital account items that have made a net positive contribution to the balance of payments include FDI flows and funding through the PIDIREGAS schemes (see Chapter IV(iv)). Net negative contributions include flows generated by external public debt amortization.

32. Capital account surpluses were more than sufficient to finance the current account deficit during the period 2001-2005, so there were consecutive increases in the international reserves held by the Bank of Mexico. The IMF considers the level of international reserves to be reasonably adequate for the Mexican economy;²⁵ and in 2006 these were broadly unchanged as other items in the balance of payments were practically in balance.

33. Mexico's total gross external debt averaged around US\$160 billion over the period 2001-2006, but fell steadily in relation to GDP to reach a level of 19 per cent at the end of that period (Table I.5).

²⁵ IMF (2005).

The main reason for this decrease was a reduction in the gross external debt of the public sector, while gross private external debt remained at around 12 per cent of GDP.²⁶

(3) DEVELOPMENTS IN TRADE AND INVESTMENT FLOWS

(i) Trade in goods²⁷

34. Mexico's total trade in goods (imports plus exports) expanded from 52.6 per cent of GDP in 2001 to 60.3 per cent in 2006 – a relatively high proportion compared to other economies of similar size. In 2006, imports accounted for 30.5 per cent of GDP while exports represented 29.8 per cent.

(a) Composition of trade in goods

35. Exports of goods were valued at US\$250,256 million in 2006 (Table AI.1), having grown at an annual average rate of just 2 per cent between 2001 and 2003, but accelerating to 15 per cent between 2004 and 2006. Although oil exports saw their value and share of total merchandise exports double between 2001 and 2006, to reach a level of 15 per cent in the latter year, exports of manufactures continued to be the most important category, representing on average 80.5 per cent of the total. Although the value of exports of manufactures grew from 2004 onwards, their percentage share of the total declined from 2001 to 2006. These include categories encompassing television sets and motor vehicles for passenger transport.

36. Data from the Bank of Mexico show that maquila enterprises accounted for 55 per cent of all exports of manufactures, while the automotive sector was responsible for most non-maquila exports.²⁸

37. Imports of goods amounted to US\$256,086 million in 2006 (Table AI.2), having grown at an annual average rate of 0.6 per cent between 2001 and 2003, but at 14.5 per cent between 2004 and 2006. Imports of products from the extractive industries, mainly non-ferrous metals and fuels, grew faster than the average for imports generally, to gain an 8.8 per cent share in 2006. The manufactures category includes imports of aluminium parts and articles, and other motor vehicle spares and parts.

38. The Bank of Mexico reports that intermediate goods accounted for an average of 75 per cent of all imports during the period 2001-2006, of which 45 per cent were imported by maquila enterprises.²⁹

(b) Direction of trade in goods

39. Mexico's exports of goods are mainly to the United States market, which absorbed 87.5 per cent of the total on average between 2001 and 2006. During that period, the nominal value of Mexico's exports to the United States increased by 51 per cent, although their share of the country's total exports fell from 88.7 per cent to 84.8 per cent. Between 2002 and 2006, the share of Mexican exports in the United States' total imports also fell, from 11.6 per cent to 10.7 per cent, owing to the rapid expansion of United States purchases from countries such as China.³⁰ In addition, the relative importance of Mexican exports to Europe, particularly the European Communities, and Asia, has increased, although as a whole they accounted for just 7 per cent of total exports in 2006.

²⁶ Bank of Mexico (2006a).

²⁷ The data reported in this section come from the United Nations Comtrade database and are classified according to the SITC (Rev 3).

²⁸ Bank of Mexico (2006a).

²⁹ Ibid.

³⁰ Ibid.

40. The available statistics may not fully reflect the real importance of certain partners in Mexico's trade, mainly because of the large proportion that is transported through the United States. For example, using data on imports from Mexico recorded by third countries, instead of those registered as exports by Mexico, suggests that the value of Mexican sales to Canada, China, the European Communities, the Republic of Korea and Japan could each be underestimated by between 30 and 180 per cent.

41. The origin of the goods imported by Mexico has diversified considerably, with the leading source, the United States, dropping from 67.7 per cent in 2001 to 51.1 per cent in 2006 (Table AI.4). Although the share of other countries on the American continent and in the European Communities grew from 2001 to 2006, the share accounted for by Asian countries expanded faster. Imports from China and the Republic of Korea, in particular, grew at an average nominal rate of 43 per cent and 25 per cent, respectively, during that period. Imports from China are mainly concentrated in product groups corresponding to telecommunications and office parts and equipment, and other electrical machinery. The authorities have pointed out that most of these represent intermediate inputs that enhance the competitiveness of the Mexican production sector.

(ii) Trade in services

42. The services balance maintained its traditional deficit between 2001 and 2006. Despite natural phenomena that affected some of Mexico's tourist regions, the tourism balance remained positive in that period, growing cumulatively by about 50 per cent (Table I.6). Imports of freight and insurance services expanded at an average annual rate of 10 per cent between 2001 and 2006, reflecting the total predominance of the foreign merchant fleet in providing international transport services in Mexico, together with the growth of Mexico's external trade (see Chapter IV(5)(v)).

Table I.6
Trade in services, 2001-2007
(US\$ millions)

	2001	2002	2003	2004	2005	2006 ^a	2007 ^b
Balance of non-factor services	-3,558	-4,048	-4,601	-4,607	-4,713	-6,099	-2,472
Non-factor income	12,660	12,692	12,533	13,955	16,066	16,265	8,873
Transport services, various	1,282	1,143	1,113	1,362	1,753	1,947	..
Tourism	8,401	8,858	9,362	10,796	11,803	12,177	6,861
Other non-factor services	2,978	2,691	2,059	1,798	2,510	2,142	2,012 ^c
Outlays on non-factor services	16,218	16,740	17,134	18,562	20,779	22,364	11,345
Freight and insurance	4,643	4,408	4,493	5,450	6,494	7,418	3,917
Transport services, various	2,105	1,990	1,930	2,127	2,716	2,744	..
Tourism	5,702	6,060	6,253	6,959	7,600	8,108	3,936
Other non-factor services	3,767	4,283	4,457	4,025	3,969	4,094	3,491 ^c

.. Not available.

a Preliminary figures.

b Preliminary figures at June 2007.

c Includes the category "Transport services, various".

Source: Bank of Mexico.

(iii) Foreign direct investment

43. Foreign direct investment (FDI) flows behaved irregularly throughout the period 2001-2006, in which FDI flows to Mexico totalled just over US\$124 billion (equivalent to an annual average of US\$20.667 billion, or 3 per cent of GDP). Of that amount, roughly 45 per cent went to the

manufacturing sector, with 29 per cent and 9 per cent channelled to the financial sector and the social, professional and tourism services sector, respectively (Table I.7).

Table I.7
Foreign direct investment (FDI) by sector, 2001-2007
(US\$ millions)

Sector	2001	2002	2003	2004	2005	2006	2007 ^a
Total	29,431	21,097	15,007	22,470	19,881	16,119	9,444
Agriculture and fisheries	64	93	11	17	4	19	-9.6
Mining and oil extraction	22	248	80	146	69	323	676
Manufacturing industries ^b	5,789	8,651	6,821	12,756	11,565	9,270	4,170
Electricity and water	333	398	322	202	192	-97	-28
Construction	108	349	81	390	282	351	159
Commerce	2,250	1,778	1,398	1,211	2,680	344	838
Transport and communications	2,782	1,593	1,631	1,254	1,427	385	364
Financial services ^c	16,424	6,740	2,830	5,575	1,148	2,725	2,736
Social, professional and tourism services ^d	1,659	1,247	1,833	918	2,513	2,799	539

a Preliminary figures at June 2007.

b Includes maquila enterprises.

c Financial services, administration and rental of movable and immovable property.

d Community and social services; professional, technical and personal services; hotels and restaurants.

Note: As from 1999, includes items of new investment other than equity, reinvestment of profits and inter-company accounts that have been notified to the Registro Nacional de Inversiones Extranjeras – RNIE (National Register of Foreign Investment). Excludes estimated FDI undertaken but not yet notified to the RNIE.

Source: Directorate General of Foreign Investment of the Ministry of the Economy.

44. The main FDI sources during this period were the United States, which accounted for around 59 per cent of total FDI flows, and the European Communities (33 per cent), led by Spain and the Netherlands (Table I.8).

Table I.8
Foreign direct investment (FDI) by country of origin, 2001-07
(US\$ millions)

Country	2001	2002	2003	2004	2005	2006	2007 ^a
Total	29,431	21,097	15,007	22,470	19,881	16,119	9,444
United States	21,385	12,919	9,615	8,291	10,240	10,280	5,730
EC (25)	6,171	6,722	4,303	11,870	6,008	5,915	2,352
Spain	2,716	2,545	1,296	7,434	1,454	614	1,311
Netherlands	2,598	1,475	692	3,325	2,325	2,991	357
United Kingdom	132	1,249	1,074	138	968	775	42
Germany	-109	596	463	399	347	82	36
France	393	350	535	157	452	693	279
Canada	992	221	258	475	301	516	78
Switzerland	(176)	462	286	1,124	160	356	22
Japan	188	166	122	363	88	(1,496)	58
Other	1,420	1,115	699	472	3,479	1,290	1,204

a Preliminary figures at June 2007.

Note: As from 1999, includes items of new investment other than equity, reinvestment of profits and inter-company accounts that have been notified to the RNIE. Excludes estimated FDI undertaken but not yet notified to the RNIE.

Source: Directorate General of Foreign Investment of the Ministry of the Economy.

(4) OUTLOOK

45. The SHCP is forecasting real GDP growth of 3.0 per cent in 2007 and 3.5 per cent in 2008, with fiscal accounts remaining in balance in 2007 and in 2008, leading to a strengthening of Federal Government debt indicators. The SHCP also predicts a balance-of-payments current account deficit equivalent to 0.8 per cent of GDP in 2007, partly as a result of annual growth in the value of exports and imports of goods and services of 5.1 per cent and 6.2 per cent, respectively.³¹

46. The SHCP expects inflation to be 3.0 per cent in 2007 and 3.7 per cent in 2008, as measured by the INCP, thus remaining within the range of variability stipulated by the Bank of Mexico. Interest rates (28-day Cetes) are forecast to be 7.2 per cent by the end of 2007, and 7.0 per cent at the end of 2008. The SHCP also expects the average oil price to drop to around US\$54.6 a barrel in 2007 and US\$46.6 a barrel in 2008; and it foresees a slight depreciation of the Mexican peso against the United States dollar, with the exchange rate around 11.0 pesos per dollar at the end of 2007 and 11.2 by the end of 2008.³²

II. TRADE AND INVESTMENT REGIME

(i) OVERVIEW

36. There have been no fundamental changes in the domestic legal framework since Mexico's previous Review in 2002, although statutes affecting trade and investment have been revised and published. Trade policy has also remained broadly stable. In the context of this Review, the authorities indicated that the emphasis continues to be placed on expanding and diversifying external markets, persevering with the negotiation of preferential agreements and deepening their benefits, and strengthening the legal framework to attract foreign investment. At the same time, they recognize that open trading arrangements need to be supported by other policies that promote competitiveness, such as certain unilateral tariff reductions.

37. Mexico is an original member of the WTO, and is an active participant in both the multilateral trading system and the Doha Development Round negotiations, in which it has submitted several proposals either individually or in conjunction with other countries. Mexico recognizes that there are a number of issues on the trade agenda that can only be resolved on a multilateral basis, such as agricultural subsidies and trade remedies; and it demonstrated its support for the multilateral trading system by hosting the WTO's Fifth Ministerial Conference in Cancún in September 2003.

38. During the review period Mexico has submitted a large number of notifications, but in October 2007 some of them had been delayed. It has also participated actively in the WTO dispute settlement mechanism, being involved as a complainant in six cases since 2002, as defendant in seven, and as a third party in 27. Four of the seven cases in which Mexico has participated as defendant concern anti-dumping and countervailing measures.

39. Since 2002, Mexico has signed new preferential agreements with Japan and Uruguay. As of October 2007, it had 12 agreements in force with 44 countries with which most of its trade takes place. These agreements have substantially liberalized Mexico's trade regime. Nonetheless, given the

³¹ Draft Federal Revenues Law for the Fiscal Year 2008 (SHCP). Consulted at: http://www.apartados.hacienda.gob.mx/presupuesto/temas/ppef/2008/temas/expo_motivos/ingresos/ilif_2008.pdf.

³² Draft Federal Revenues Law and Expenditure Budget for 2008, published by the SHCP on 3 October 2007. Consulted at: http://www.apartados.hacienda.gob.mx/novedades/espanol/docs/2007/Presentaciones/presentacion_secretario_paqueteconomico_03102007.pdf.

selective nature of the liberalization in question, as happens with other Member countries that have adopted similar strategies, the proliferation of preferential regimes has altered economic incentives and resource allocation.

40. Foreign investment can hold up to 100 per cent of the equity of Mexican enterprises in all activities that are not reserved or subject to specific regulation. Some sectors remain the preserve of the State (e.g. hydrocarbons and electricity, with some exceptions); others are reserved for Mexican ownership (e.g. domestic land transport), or require majority Mexican ownership (e.g. certain telecommunications services, air transport, port administration), or else prior approval to own more than 49 per cent of the total capital (e.g. airports and cellular telephony). In sectors where foreign investment participation is restricted, a larger share of the ownership is allowed through the neutral investment mechanism.

(2) GENERAL LEGAL FRAMEWORK

41. Mexico is a Federal Republic governed by three powers of State: the Executive, the Legislature and the Judiciary.³³ The Republic consists of 31 states and a Federal District. The President of the United Mexican States serves as both Head of Government and Head of State, and is elected by universal suffrage every six years for a single non-renewable term. The most recent presidential election took place in July 2006. The President's powers include directing foreign policy; signing, denouncing, suspending and amending international treaties; lifting reservations and issuing interpretative statements thereon, and submitting these for Senate approval.³⁴

42. The Legislature consists of a two-chamber Congress. The Chamber of Deputies contains 500 members elected every three years, of whom 300 are elected by relative majority voting and the remainder by proportional representation. The Senate consists of 128 members: three senators are elected for each of the states and the Federal District (96 in all), while the remaining 32 seats are allocated via proportional representation. The entire Senate is renewed every six years. The most recent congressional elections took place in July 2006.

43. The Judiciary consists of the National Supreme Court of Justice, the Electoral Tribunal of the Federal Judiciary, collegiate and unitary circuit courts, and district courts.³⁵ The National Supreme Court of Justice consists of 11 judges who are elected by a two-thirds majority of the Senate, from a shortlist submitted by the President of the Republic.

44. There have been no fundamental changes in Mexico's basic legal regime since its last Review. Pursuant to the Political Constitution of the United Mexican States (hereinafter referred to as the Constitution), international treaties signed by the President and ratified by the Senate form part of the country's domestic laws and, therefore, do not require any additional legislative measure for them to be enforced or invoked before the country's courts.³⁶ The authorities stated that they have invoked WTO Agreements in the national courts, particularly against anti-dumping resolutions. The Constitution is the highest ranking instrument in the legal hierarchy; followed by international treaties which, as ruled by the National Supreme Court of Justice, are ranked above Federal and local laws.³⁷

³³ Article 49 of the Political Constitution of the United Mexican States (1917), current text with the latest reforms published in the Official Journal of the Federation (D.O.F.), on 12 February 2007.

³⁴ Article 89 of the Political Constitution of the United Mexican States.

³⁵ *Idem*, Article 94.

³⁶ *Idem*, Article 133.

³⁷ Judicial Seminar of the Federation, National Supreme Court of Justice, Ninth Period, Thesis P.IX/2007, April 2007.

45. The Senate has the constitutional power to approve international treaties signed by the Government, as well as any decision to denounce or amend them.³⁸ Nonetheless, the Senate does not have power to amend an international treaty signed by the Government that is awaiting ratification. The Law on the Approval of International Economic Treaties of 2004³⁹ grants the Senate powers to request information from agencies of the Federal public administration on the negotiation and conclusion of international treaties relating to trade and other economic issues. Under this Law, to obtain approval of a treaty, government agencies must furnish the Senate with information on the administrative and legislative actions needed to enforce it. They must also explain how the treaty is consistent with Mexico's interests and the objectives set out in that Law, such as promoting access for Mexican products to international markets and helping to diversify markets, among others.

46. Since 2002, Mexico has persevered with and consolidated its regulatory reform programme, with the aim of enhancing competitiveness and reducing business transaction costs.⁴⁰ Pursuant to the Federal Law on Administrative Procedures (LFPA), the Comisión Federal de Mejora Regulatoria – COFEMER (Federal Regulatory Improvement Commission) reviews and certifies regulations drafted by Federal agencies and decentralized bodies, as well as regulatory impact assessments (MIRs), in which public administration entities have to justify the regulations proposed and demonstrate how the expected benefits outweigh their costs. In addition, COFEMER keeps the Registro Federal de Trámites y Servicios – RFTS (Federal Register of Formalities and Services), which is an inventory of all formalities applied by the offices and agencies of the Federal public administration.⁴¹ In late May 2007, the RFTS contained 3,327 formalities and services, compared to 1,172 at the end of 2001. The authorities have recognized that it is important to expand the coverage of the RFTS as it encompasses all Federal Government formalities in a self-contained way.

47. With the aim of guaranteeing access to public information and promoting the accountability of Federal Government bodies, in June 2002 the Federal Law on Transparency and Access to Government Public Information was issued.⁴² This legislation requires the Executive, the Legislature and the Judiciary, along with Federal Government agencies, to make available to the public information concerning their activities, including their draft laws and administrative provisions.

(3) TRADE POLICY FORMULATION AND OBJECTIVES

48. The Foreign Trade and Investment Promotion Programme (PCEPI)⁴³ established the following fundamental objectives for trade and investment policy in the period 2001-2006: to expand and diversify foreign markets; to deepen the benefits of free-trade agreements; and to strengthen the legal framework for attracting foreign investment. The Government that took office in December 2006 has pursued similar foreign trade objectives: the National Development Plan (2006-2012) published on 31 May 2007, reaffirms the need to persevere with the process of liberalizing trade and attracting investment. The strategy to be pursued in terms of international trade relations is to continue with the negotiation of bilateral, regional and multilateral agreements, and to manage, exploit and deepen currently existing trade agreements. At the same time, it is acknowledged that

³⁸ Article 76 of the Political Constitution of the United Mexican States.

³⁹ Published in the D.O.F. on 2 September 2004.

⁴⁰ Section 6.2.3, subparagraph g) of the National Development Plan 2001-2006, published in the D.O.F. on 30 May 2001. See also the Regulatory Improvement Programme 2001-2006, published in the D.O.F. on 17 January 2003.

⁴¹ The RFTS can be accessed from the COFEMER web site: <http://www.cofemer.gob.mx>.

⁴² Published in the D.O.F. on 11 June 2002.

⁴³ D.O.F. of 14 April 2004.

open trade practices need to be supported by other policies that promote competitiveness, such as unilateral tariff reductions (Chapter III(2)(iv)).⁴⁴

49. No fundamental changes have been made to the formulation of Mexico's trade policy since its last Review. Pursuant to Article 131 of the Constitution and Article 4 of the Foreign Trade Law⁴⁵, the Federal Government is authorized to control flows of imports and exports, and to conduct international trade negotiations. Trade policy remains the responsibility of the Ministry of the Economy, which is empowered, among other things, under the Foreign Trade Law to coordinate international trade negotiations and issue rules for enforcing trade agreements.

50. The Comisión de Comercio Exterior - COCEX (Foreign Trade Commission) serves as a mandatory consultative agency for all entities of Federal public administration on matters relating to measures applicable to imports and exports.⁴⁶ The COCEX has powers to issue non-binding opinions on such issues, both with respect to current measures and in relation to draft provisions prepared by Federal entities and agencies. In fulfilling its functions, the COCEX holds public hearings with business chambers, industrial, commercial and agricultural associations and other stakeholders, giving them a 30-day period to comment on the proposed measures.

51. The Government holds regular consultations with civil society on issues relating to international trade negotiations, basically using two mechanisms for this purpose. One is the Consejo Asesor para las Negociaciones Comerciales Internacionales (Advisory Council for International Trade Negotiations), which represents the production, labour and academic sectors, together with recognized experts on foreign trade, and formulates and evaluates international trade negotiations policy. The other is the country's Comisión de Organismos Empresariales de Comercio Exterior COECE (Commission of Foreign Trade Business Associations), which consists of a technical expert team specializing in foreign trade issues, representing all business associations involved in the external sector of the Mexican economy. The COECE accompanies and assists the negotiating team in trade negotiation rounds.

(4) FOREIGN INVESTMENT REGIME

(i) Formulation and regulatory framework

52. Mexico considers foreign investment promotion as a key force for economic development and more active participation by the country in the international economy, as well as a necessary complement to trade liberalization. As noted above, one of the objectives of the PCEPI is to strengthen the legal framework to help attract larger foreign investment flows, particularly by administering free-trade agreements and expanding the network of Acuerdos para la Promoción y la Protección Recíproca de las Inversiones – APPRIs (Agreements on Reciprocal Promotion and Protection of Investments).

⁴⁴ Ministry of the Economy (2007).

⁴⁵ Foreign Trade Law, published in the D.O.F. on 27 July 1993; most recent reform published in the D.O.F. on 21 December 2006.

⁴⁶ The COCEX comprises representatives of the Bank of Mexico, the Federal Competition Commission and the following Ministries: Foreign Affairs; Finance and Public Credit; Social Development; the Economy; Agriculture, Rural Development, Fisheries and Food; the Environment and Natural Resources; and Health. Other Federal or state agencies may be invited to participate in its meetings when the COCEX is considering specific issues within their areas of responsibility.

53. The main instruments in the domestic legal framework for foreign investment are Article 73 of the Constitution, and the Foreign Investment Law (LIE)⁴⁷ together with its Implementing Regulations.⁴⁸

54. Under the LIE, foreign investment may hold up to 100 per cent of the equity of Mexican companies, open and operate establishments in all economic activities that are not expressly reserved or regulated specifically in the Law itself (exceptions are described in subsection (ii) below).

55. Although investment does not require prior authorization, all foreign investors and Mexican firms with foreign participation in their ownership must register with the Registro Nacional de Inversión Extranjera – RNIE (National Register of Foreign Investment) kept by the Ministry of the Economy. Failure to do so on time results in a fine or sanction.

56. The Comisión Nacional de Inversiones Extranjeras – CNIE (National Foreign Investment Commission), consisting of ten Ministers and chaired by the Minister of the Economy⁴⁹, has powers that include issuing foreign investment policy guidelines and designing mechanisms to promote investment in Mexico. Another of its responsibilities is to approve the terms and conditions under which foreign investment participates in activities and acquisitions that are specifically regulated in the LIE, based on the following criteria: impact on employment and worker training; technological contribution; compliance with environmental standards; and contribution in terms of enhancing the competitiveness of the national production base. In deciding whether to grant a request for approval, the CNIE may only impose requirements that do not distort international trade; it may also block acquisitions by foreign investment for reasons of national security.⁵⁰ All requests submitted to the CNIE but not resolved within 45 working days must be considered approved under the terms presented.

57. Mexico does not restrict remittances abroad of profits, royalties, dividends, and interest paid on loans, or repatriation of foreign investment-related funds. Nonetheless, the free-trade agreements and APPRIIs signed by Mexico foresee the possibility of temporarily restricting transfers in the event of balance-of-payments difficulties.

(ii) Restrictions on foreign investment

58. Article 5 of the LIE identifies the following activities as the preserve of the State; petroleum and other hydrocarbons; basic petrochemicals; electricity; generation of nuclear energy; radioactive minerals; telegraph; radio telegraph services; postal services; issuing of banknotes and minting of coins; control, supervision and surveillance of ports, airports and heliports; and any other areas that may be expressly reserved by specific legislation. The authorities have confirmed that there are no other sectors reserved for the Mexican State, apart from those listed in the Constitution and Article 5 of the LIE. The Implementing Regulations for the LIE are more precise in defining the scope of some

⁴⁷ The Foreign Investment Law was published in the D.O.F. on 27 December 1993, and was amended in 1995, 1996, 1998, 1999, 2001 and 2006. The most recent reform was published in the D.O.F. on 18 July 2006.

⁴⁸ Implementing Regulations for the Foreign Investment Law and the National Foreign Investment Register were published in the D.O.F. on 8 September 1998.

⁴⁹ The CNIE consists of the Ministers of: the Interior; Foreign Affairs, Finance and Public Credit; Social Development; the Environment and Natural Resources; Energy; the Economy; Communications and Transport; Labour and Social Welfare; and Tourism.

⁵⁰ Articles 29 and 30 of the LIE. Although the LIE does not define the term "national security", Article 3 of the National Security Law identifies this concept with actions intended to maintain the integrity, stability and permanency of the Mexican State.

of the reserved activities; for instance, the reserve on activities in the electricity sector does not apply to private generation of electricity under certain conditions.⁵¹

59. The LIE reserves certain activities for Mexican nationals or firms, with a "foreigners exclusion clause". This clause relates to the express agreement contained in the company's articles of association establishing that it will not admit as partners or shareholders, either directly or indirectly, foreign investors or firms that have a foreigners admission clause.⁵² The reserved activities are: domestic land transportation of passengers, tourism and freight (excluding messenger and parcel services); retail sale of gasoline and distribution of liquefied petroleum gas; broadcasting and other radio and television services (with the exception of cable television); credit unions; development banking institutions; and professional and technical services expressly reserved by sector-specific legislation (see Chapter IV(5)(vi)). In these activities, foreign investors may not participate either directly or through trust funds, agreements or other mechanisms that give them control.

60. Other economic activities maintain limits of 10, 25 or 49 per cent on foreign investment participation (Table II.1). Successive reforms to the LIE between 2001 and 2006 eliminated the 49 per cent limit for various types of financial activity (see Chapter IV(5)(iii)).

Table II.1
Limits on foreign holdings in economic activities and companies subject to specific regulation, 2007

Limit/specific regulation	Activities and companies
Foreign investment allowed in up to 10 per cent of the enterprise's equity	Production cooperatives
Foreign investment allowed in up to 25 per cent of the enterprise's equity	Domestic air transport, air taxi services, and specialized air transport.
Foreign investment allowed in up to 49 per cent of the enterprise's equity	Insurance institutions; bond institutions; currency exchange houses; general deposit warehouses; companies mentioned in Article 12bis of the Stock Market Law (see Chapter IV(5)(iii) below). retirement fund management companies; the manufacture or commercialization of explosives, firearms, cartridges, munitions and fireworks (excluding the acquisition or use of explosives for industrial and extractive activities); printing and publication of newspapers for circulation only in Mexico; series-T shares in companies that own agricultural, ranching or forestry lands; fresh water, coastal, and exclusive economic zone fishing (excluding aquaculture); integrated port administration; port pilot services for vessels carrying out inland navigation; under the terms of the respective law; companies involved in the commercial exploitation of ships engaged in inland and coastal navigation (excluding tourist cruises, marine dredging activities, and implements for port construction, conservation and operation); supply of fuel and lubricants for ships, aeroplanes, and railway equipment; and concessionaire companies under the terms of Articles 11 and 12 of the Federal Telecommunications Law (Chapter IV(5)(ii) below).
CNIE approval is required to allow foreign investment to exceed 49 per cent of the enterprise's equity.	Port services for ships engaged in inland navigation operations, such as towing, mooring and lighterage; shipping companies engaged in the operation of ships solely for high-seas traffic; concessionaires or permit-holders for aerodromes for public service; private education services, from pre-school to high school levels; legal services; credit information companies; securities rating institutions; insurance agents; cellular telephone services; the construction of pipelines for petroleum and refined oil products; the drilling of petroleum and gas wells; the construction, operation and exploitation of railroads considered as a means of general communication; and the supply of public railway services.

Source: WTO Secretariat, based on Articles 7 and 8 of the Foreign Investment Law (D.O.F. of 27 December 1993; latest revision, 18 July 2006).

61. In certain activities, CNIE approval is required for foreign investment to exceed 49 per cent of the firm's equity (Table II.1). In the case of already established companies with activities that are

⁵¹ Article 2 of the Implementing Regulations for the LIE.

⁵² Article 2 of the LIE.

not specifically regulated, CNIE approval is nonetheless required for foreign investment to have more than a 49 per cent stake when the total value of the company's assets exceeds the amounts determined annually by the Commission.⁵³ In 2007, this amount was Mex\$2.392 billion (about US\$218 million).⁵⁴

62. For sectors reserved to Mexican nationals or those that impose limits on foreign investment stakes, a larger foreign share may be held through the "neutral investment" mechanism, which is not included in the calculation to determine the percentage of foreign investment in a Mexican company. This capitalization mechanism, which is provided for in the LIE, allows Mexican companies to issue shares that only give pecuniary rights to their holders, with either limited or no corporate rights. The mechanism also allows authorized trust funds to issue neutral instruments. Undertaking a neutral investment operation requires authorization from the Ministry of the Economy and, where applicable, the National Banking and Securities Commission.⁵⁵

63. Under the Constitution, foreigners may not acquire direct ownership of land or water in a restricted 100 km. strip or zone along the country's borders and 50 km. wide along beaches.⁵⁶ Nonetheless, the LIE authorizes foreign participation in Mexican companies that acquire real estate in the restricted zone for the purpose of engaging in non-residential activities. In the case of residential activities, rights over real estate must be acquired by a Mexican bank that acts as a trust fund and the purchase must be approved by the Ministry of Foreign Affairs. Foreigners may also invest in a Mexican company that owns immovable property in the restricted zone, for non-residential purposes, provided the articles of association of the company in question contain a clause whereby foreigners agree to be considered as nationals and not seek protection from their governments with respect to such assets, and the Ministry of Foreign Affairs is notified of this.

(iii) International investment agreements

64. Mexico has adopted disciplines on investment in the framework of free-trade agreements (FTAs) and APPRI. In general, the investment chapters incorporated in FTAs establish disciplines on sector liberalization, national treatment, most-favoured-nation (MFN) treatment, minimum level of treatment, performance requirements, capital movements, expropriation and dispute settlement mechanisms (including between the investor and the State). With the exception of the Mexico-Israel agreement, all of Mexico's FTAs contain a chapter on investment, or a commitment to promote investment between the parties. Such is the case with the agreements concluded with the European Union and the European Free Trade Association (EFTA).

65. Mexico has persevered with its strategy to expand its network of APPRI. The aim, according to the Ministry of the Economy, is to conclude agreements with countries that are potential investors in Mexico; with those that currently have investments in the country; and countries in which Mexicans themselves are increasingly investing. As of the second half of 2007, Mexico had 23 APPRI in force, and two others signed.⁵⁷ Ten of these agreements have been signed since 2002.⁵⁸

⁵³ Article 9 of the LIE.

⁵⁴ CNIE General Resolution No. 8, published in the D.O.F. on 29 May 2007. Average exchange rate for the first half of 2007.

⁵⁵ Articles 18, 19 and 20 of the LIE.

⁵⁶ Article 27, fraction I.

⁵⁷ As of the second half of 2007, Mexico had agreements in force with Argentina, Australia, Austria, the Benelux Union, Cuba, the Czech Republic, Denmark, Germany, Finland, France, Greece, Iceland, Italy, the Netherlands, Panama, Portugal, the Republic of Korea, Spain, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom and Uruguay. It also had agreements signed but not yet in force with India and Slovakia.

The country was also in negotiations with Russia, Ukraine, Belarus, Saudi Arabia and China. In general, the APPRIs cover the following disciplines: definition of investment; scope; promotion and admission; treatment of investment; expropriation; transfers; dispute settlement (both investor-State and State-State).

66. In June 2004, the Investment Promotion Agreement signed between Mexico and the United States entered into force.⁵⁹ Under this Agreement, the Overseas Private Investment Corporation (OPIC) may provide investment support in Mexico in the form of insurance, co-insurance and reinsurance, participation in the equity of enterprises and issuance of debt, as well as investment guarantees. Support is granted for projects and activities on Mexican territory permitted by the North American Free Trade Agreement (NAFTA) or by current Mexican laws.

67. Mexico has signed agreements to avoid double taxation with 34 countries, including its main trading partners (see Chapter III(4)(i)).

68. On 22 October 2007, Mexico signed the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), which provides a multilateral system of guarantees against non-commercial risks; the Mexican Senate still has to ratify this agreement.

69. As a member of the Organisation for Economic Co-operation and Development (OECD), Mexico has signed the Codes of Liberalization of Capital Movements and of Current Invisible Operations, and the National Treatment Instrument.

70. According to an OECD study⁶⁰, Mexico is among the five OECD member countries with the highest FDI restrictiveness index. Most of these consist of limits on foreign equity holdings in enterprises, the most affected sectors being electricity, the financial sector, transport and telecommunications. These are also the most restricted sectors among OECD countries generally. The same study indicates that Mexico is among the five OECD member countries whose indices decreased somewhat in 2000-2006.

(5) INTERNATIONAL TRADE RELATIONS

(i) WTO

71. Mexico is an original member of the World Trade Organization, in which it is represented by the Ministry of the Economy. It took part in the negotiations on telecommunications and financial services after the Uruguay Round, and accepted the Fourth and Fifth Protocols of the General Agreement on Trade in Services (GATS), respectively.⁶¹ Mexico is not a party to the Information Technology Agreement (ITA). It grants MFN treatment or better to all countries, whether or not they are WTO Members.

72. Mexico takes an active part in the WTO's work and supports the successful conclusion of the Doha Agenda, endeavouring to ensure that its results are favourable to developing countries. In Mexico's opinion, a successful multilateral round would open up the world's markets to developing countries' exports and would give a stronger boost to economic growth. Mexico recognizes that there

⁵⁸ With Australia, the Czech Republic, Cuba, Iceland, India, Panama, the Republic of Korea, Slovakia, the United Kingdom and Trinidad and Tobago.

⁵⁹ Decree Promulgating the Investment Promotion Agreement between the Government of the United Mexican States and the Government of the United States of America, D.O.F. 14 June 2004.

⁶⁰ OECD (2006b).

⁶¹ WTO documents WT/LET/213 of 30 January 1998 and WT/LET/288 of 18 February 1999.

are several issues that can only be addressed in a multilateral framework, such as agricultural subsidies and trade standards; and that the WTO's importance also stems from its dispute settlement mechanism and its contribution to transparency in Members' trade policies.⁶² Mexico demonstrated its support for the multilateral trading system by hosting the Fifth WTO Ministerial Conference in Cancún in September 2003.

73. In the context of this Review, the authorities stated that the multilateral trading system and preferential agreements form complementary agendas for moving towards liberalization of the economy, so they need to be kept mutually consistent. In systemic terms, the authorities believe the multilateral trading system remains the key instrument for liberalizing world trade and that completion of the Doha Round would bring economic gains for Mexico, e.g. through the streamlining of customs procedures, which would result in lower trading costs.

74. In the framework of the Doha Agenda, Mexico has submitted a number of proposals individually or jointly with other WTO Members in various areas of the negotiation, including agriculture (as a member of the G-20)⁶³, market access for non-agricultural products, trade facilitation, trade rules, services and intellectual property (geographical indications).

75. Mexico has submitted many notifications to the WTO, particularly on sanitary and phytosanitary measures, technical barriers to trade and anti-dumping measures. Nonetheless, as of October 2007, several notifications were pending, e.g. on non-agricultural subsidies and tariff quotas, and on domestic support and agricultural export subsidies (Table AII.1).

76. Mexico has participated actively in the WTO dispute settlement mechanism. Since 2002, it has been involved as a complainant in seven cases (five of which resulted in the establishment of a panel); as a defendant in seven cases (in four of which a panel was established); and as a third party in 27 other cases⁶⁴ (Table AII.2). Of the seven cases in which Mexico participated as defendant, four of them related to anti-dumping and countervailing measures; the remaining cases concerned sanitary and phytosanitary measures, customs valuation, and domestic taxes.

(ii) Free-trade agreements (FTAs)

77. With the aim of diversifying and expanding its markets, Mexico has persevered with its strategy focusing on FTAs and other preferential agreements. Since the last Review, it has signed agreements with Uruguay (in force since 15 July 2004) and with Japan (1 April 2005). It also has bilateral and regional FTAs currently in force with: Bolivia, Canada and the United States, Costa Rica, Colombia, Chile, El Salvador, Guatemala, Honduras, Nicaragua, Israel, the European Union and the European Free Trade Association, making a total of 12 FTAs with 44 countries (Table II.2). In addition, in the framework of the Latin American Integration Association (LAIA), Mexico has Economic Complementarity Agreements (ECAs) in force with Argentina, Brazil, Cuba and Peru, and with the MERCOSUR trade bloc.

Table II.2
Free-trade agreements (FTAs) signed by Mexico, 1993-2006

⁶² WTO document TN/C/W/39 of 24 April 2006. See also Ministry of the Economy (2007).

⁶³ The G-20 consists of Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, the United Republic of Tanzania, Uruguay, Venezuela and Zimbabwe.

⁶⁴ This report only considers dispute settlement cases initiated since 2002 (inclusive), i.e. disputes for which the request for consultations was presented in that year or later.

Agreement	Entry into force (publication in the D.O.F.)	Notification to the WTO	Areas covered
North American Free Trade Agreement (NAFTA) (with the United States of America and Canada)	1 January 1994 (20 December 1993)	L/7176 (01.02.1993) S/C/N/4 (01.03.1995) The WTO Committee on Regional Trade Agreements completed its factual examination in September 2001, without finalizing its report (WTO document WT/REG/W/43 of 21 September 2001).	National treatment and market access for goods; rules of origin; customs procedures; energy and basic petrochemicals; agricultural sector and sanitary and phytosanitary measures; emergency measures; standardization measures; government procurement; investment; cross-border trade in services; telecommunications; financial services; competition policy; temporary entry of business personnel; intellectual property; dispute settlement on anti-dumping and countervailing duties; institutional arrangements and dispute settlement.
G-3 FTA (with Columbia and Venezuela) ^a	1 January 1995 (9 January 1995)	Pending	Rules of origin; customs procedures; contingency measures; sanitary and phytosanitary measures; technical standards; services; telecommunications; financial services; temporary entry of business personnel; investment; government procurement; intellectual property and dispute settlement.

Table II.2 (cont'd)

Mexico-Costa Rica FTA	1 January 1995 (10 January 1995)	WT/REG218/N/1 (20.09.2006) S/C/N/374 (15.09.2006)	Market access for goods; rules of origin and customs procedures; industrial sector and technical standards; agricultural sector and sanitary and phytosanitary measures; services; temporary entry of business personnel; investment; dispute settlement; institutional arrangements; government procurement and intellectual property.
Mexico-Bolivia FTA	1 January 1995 (11 January 1995)	Pending	Market access for goods; rules of origin and customs procedures; industrial sector and technical standards; agricultural sector and sanitary and phytosanitary measures; services; telecommunications; temporary entry of business personnel; financial services; investment; dispute settlement; government procurement; and intellectual property.
Mexico-Nicaragua FTA	1 July 1998 (1 July 1998)	WT/REG206/N/1 (02.11.2005) S/C/N/359 (01.11.2005)	Market access for goods; rules of origin; customs procedures; industrial sector and technical standards; agricultural sector and sanitary and phytosanitary measures; services; telecommunications; temporary entry of business personnel; financial services; investment, dispute settlement; institutions; government procurement; and intellectual property.
Mexico-Chile FTA	1 August 1999 (28 July 1999)	WT/REG125/N/1 (08.03.2001) S/C/N/142 (14.03.2001)	Market access for goods; rules of origin; technical regulations, sanitary and phytosanitary measures, safeguard measures; investments; cross-border trade in services; air transport; temporary entry of business personnel; telecommunications; competition policy; intellectual property and dispute settlement. In 2007, negotiations were completed on government procurement and negotiations began on financial services.
Mexico-European Union FTA	1 July 2000 (26 June 2000)	WT/REG109/N/1 (01.08.2000) S/C/N/192 (21.06.2002)	Market access for goods; rules of origin; technical regulations; sanitary and phytosanitary measures; safeguards; investments; trade in services; maritime transport; financial services; government procurement; competition policy; intellectual property; and dispute settlement.
Mexico-Israel FTA	1 July 2000 (28 June 2000)	WT/REG124/N/1 (08.03.2001)	Market access for goods; rules of origin; customs procedures; standards; safeguards; competition policy; government procurement and dispute settlement.
Mexico-Northern Triangle FTA (with El Salvador, Guatemala and Honduras)	15 March 2001 with El Salvador and Guatemala, and 1 June 2001 with Honduras (14 March 2001)	WT/REG212/N/1 S/C/N/367 (30.05.2006) WT/REG213/N/1 S/C/N/368/Rev.1 (12.07.2006) WT/REG214/N/1 S/C/N/369 (12.07.2006)	Market access for goods; customs procedures; rules of origin; technical standards, sanitary and phytosanitary measures, safeguards, trade in services; financial services; temporary entry of business personnel; telecommunications; investments; intellectual property and dispute settlement.
Mexico-European Free Trade	1 July 2001 (29 June 2001)	WT/REG126/N/1 (22.08.2001)	Market access for goods; rules of origin; services and investment; competition; anti-dumping and subsidies;

Agreement	Entry into force (publication in the D.O.F.)	Notification to the WTO	Areas covered
Association FTA (with Iceland, Liechtenstein, Norway and Switzerland)		S/C/N/166 (22.08.2001)	government procurement; intellectual property; institutional arrangements and dispute settlement.
Mexico-Uruguay FTA	15 July 2004 (14 July 2004)	Pending	Safeguards; unfair trade practices; competition policies; rules of origin; sanitary and phytosanitary measures, technical standards; intellectual property; investment; trade in services; cross-border trade in services; telecommunications; temporary entry of business personnel and dispute settlement. In 2006, negotiations began on financial services and government procurement.
Table II.2 (cont'd)			
Mexico-Japan Economic Association Agreement	1 April 2005 (31 March 2005)	WT/REG198/N/1 (22.04.2005) S/C/N/328 (22.04.2005)	Market access for goods; rules of origin; customs procedures; sanitary and phytosanitary standards; technical standards; safeguards; investment; services; financial services; temporary entry of business personnel; government procurement; competition; and dispute settlement. In addition, cooperation in areas such as trade and investment promotion, SMEs, support industry, science and technology, agriculture and tourism.

a Since 19 November 2006, only Mexico and Colombia have been participating in the G-3 FTA.

Source: WTO, with data provided by the Mexican Ministry of the Economy. Consulted at: http://www.economia.gob.mx/work/snci/negociaciones/ficha_publica_tlcs.htm.

78. Consequently, most of Mexico's trade is with its preferential trading partners (Chapter I(3)). The North American Free Trade Agreement (with the United States and Canada) remains of fundamental economic importance: 70 per cent of Mexico's total trade was with Canada or the United States in 2006 (80 per cent in 2001). In 2006, roughly 7.9 per cent of Mexico's total trade was with the European Union, 3.3 per cent with Japan, and 2.1 per cent with other Latin American countries with which it has preferential agreements. Trade with the other preferential partners as a whole accounted for 1 per cent of the total. In 2006, imports from countries with which Mexico has FTAs amounted to some US\$189.8 billion, of which 60 per cent received preferential treatment.

79. The large number of trade agreements signed by Mexico gives rise to some concern regarding the complexity and cost of their administration by the authorities and economic agents. For instance, each of these agreements has its own certificates of origin and requires an independent administration, which can raise transaction costs for trade operators.

80. According to Zabludovsky (2005), apart from making customs administration more difficult, the proliferation of trade regimes and instruments maintained by Mexico generates incentives for circumvention, tax evasion and smuggling.⁶⁵ The high MFN tariffs maintained by Mexico (Chapter III(2)(iv)) also penalize users of inputs obtained from third countries and have made it necessary to introduce liberalization programmes in specific sectors in order to counteract the negative impact of protection on the competitiveness of Mexican enterprises. According to the aforementioned study, this situation, compounded by the complexity of the customs regime, begs the question of whether it would not be in Mexico's interests to unilaterally eliminate MFN tariffs (which

⁶⁵ Zabludovsky (2005), pp. 68-69. Among many other positions, the author held the post of Negotiations Chief for the Mexico-European Union FTA, and served as Under-Secretary for International Trade Negotiations within the Ministry of Trade and Industrial Promotion (now the Ministry of the Economy). See also Ministry of the Economy (2007), p. 22.

cover just 15 per cent of its foreign trade) and thus facilitate customs administration, reduce incentives for smuggling and circumvention and make the national economy more competitive generally.

81. In this regard, the authorities have pointed out that Mexico constantly monitors the different trade regimes and instruments with a view to simplifying their administration; and it has taken steps such as reducing tariff lines requiring prior permits and automatic import notices, unilateral lowering of MFN tariffs, simplification of other instruments (maquila and PITEX), together with various measures to make customs operations more transparent and efficient (see Chapter III(2)).

North American Free Trade Agreement (NAFTA)

82. In accordance with the corresponding tariff reduction schedule, most trade between Mexico and its NAFTA partners, including imports of new motor vehicles, was liberalized on 1 January 2003. Consequently, practically all imports from the United States and Canada entered Mexico duty-free in 2007, except for a few agricultural products (beans, maize, powdered milk and sugar), for which full liberalization is scheduled for 2008.⁶⁶ Imports of used vehicles can remain protected until 2009, after which restrictions will gradually be lifted to achieve full liberalization by 2019. During the review period, Mexico and its NAFTA partners introduced a number of changes to the rules of origin set out in NAFTA Annex 401 (Chapter III(2)(iii)).

83. On several occasions Mexico has made use of the dispute settlement mechanism contained in Chapter XIX of the NAFTA, which provides for judicial review by binational panels of any anti-dumping or countervailing measures adopted by the parties. Between 2002 and March 2007, Mexico participated as a defendant in an investigation initiated by a United States producer in relation to bovine meat and edible offal. In March 2007, two decisions of the Mexican authorities were under review.⁶⁷ Under NAFTA Chapter XI, investment disputes are resolved through investor-State arbitration procedures. Since 2002, five new cases have been brought against the Mexican Government under this Chapter.⁶⁸ As of March 2007, an arbitral award had been made in just two of them, both of which were favourable to Mexico.⁶⁹

84. In March 2005, NAFTA member countries created the Security and Prosperity Partnership of North America (SPP). This seeks to promote greater integration in North America and, despite not having any legal link with the NAFTA, many of the points in its "prosperity agenda" address NAFTA issues. On trade matters, the aim is to reduce regulatory barriers, make standards mutually compatible, liberalize rules of origin, introduce mechanisms to enhance the competitiveness of specific sectors (textiles, steel, automotive), and combat smuggling and piracy.⁷⁰

⁶⁶ In the case of Mexico-Canada trade, dairy and poultry products were excluded from the agreement.

⁶⁷ MEX-USA-2005-1904-01 and MEX-USA-2006-1904-02. NAFTA Secretariat, "Reviews by NAFTA panels". Consulted at: http://www.nafta-sec-alena.org/defaultSite/index_s.aspx?DeatilID=757.

⁶⁸ International Thunderbird Gaming Corporation vs. United Mexican States, 1 August 2002; GAMI Investments, Inc. vs. United Mexican States, 9 April 2002; Archer Daniels Midland Co. and Tate & Lyle Ingredients Americas, Inc. vs. United Mexican States, 14 October 2003; Corn Products International, Inc. (CPI) vs. United Mexican States, 21 October 2003; and consolidation of the following cases: Corn Products International, Inc. (CPI) vs. United Mexican States, (ICSID Case No. ARB(AF)/04/01) and Archer Daniels Midland Co. and Tate & Lyle Ingredients Americas, Inc. (ICSID Case No. ARB(AF)/04/05), 8 September 2004.

⁶⁹ The cases in question were: GAMI Investments, Inc. vs. United Mexican States, Final Award, 15 November 2004; and International Thunderbird Gaming Corporation vs. United Mexican States, Final Award, 26 January 2006. Both cases can be consulted at: www.economia.gob.mx/work/sneci/negociaciones/Controversias/Casos_Mexico/.

⁷⁰ Ministry of the Economy (2006a).

FTAs with Latin American countries

85. The FTA with Guatemala, Honduras and El Salvador (Mexico-Northern Triangle FTA) establishes an asymmetric tariff reduction programme governed by different schedules between Mexico and each of the Central American countries. When it entered into force, over 65 per cent of exports from Honduras, Guatemala and El Salvador benefited from duty-free entry into the Mexican market. Full tariff reduction for trade in industrial products among the four countries should be achieved in 2010. The agreement includes a special safeguard for sensitive agricultural products.

86. During the review period, Mexico participated as a defendant in a dispute initiated by El Salvador under Chapter XIX of the Mexico-Northern Triangle FTA concerning procedures applied by Mexico for granting health registration to medicines from El Salvador. The arbitral panel that heard the dispute concluded that the requirement for a factory or laboratory to be located on Mexican soil ("plant requirement") in order to obtain this registration was not consistent with the principle of national treatment contained in the agreement.⁷¹ In November 2006, the "plant requirement" for granting health registration to medicines from El Salvador was eliminated.

87. Since its last Review, Mexico has continued and completed the liberalization of trade under FTAs signed with Bolivia, Costa Rica and Nicaragua. As a result, trade in industrial products between Mexico and these countries was fully liberalized in 2004 in the case of Bolivia and Costa Rica (except for a small list of products); and in 2007 with respect to Nicaragua (except automobiles, for which full liberalization is scheduled for 2012). Food and fisheries products, mostly subject to tariff reduction programmes, became duty-free in January 2005 with Bolivia and Costa Rica, and in July 2007 in the case of Nicaragua.

88. The FTA among Mexico, Colombia and Venezuela (G-3) was renounced by Venezuela and rendered void in that country in November 2006; but it remains in force between Mexico and Colombia.⁷² Under the 10-year linear tariff reduction programme stipulated in the agreement, most trade between Mexico and Colombia has been duty-free since January 2005. A number of mainly agricultural products have not been included in the tariff reduction programme. In June 2004, new conditions were negotiated for bringing the automotive sector within the trade liberalization programme and these entered into force in January 2005; full liberalization of the sector is scheduled for January 2011. In addition, negotiations to incorporate new products into the tariff reduction process and amend certain rules of origin began in January 2007.

89. As established in the Mexico-Chile FTA, tariffs on the majority of originating merchandise in trade between these two countries were eliminated as soon as the agreement entered into force. Goods excluded from duty-free treatment by both parties include certain dairy products, shrimp and lobster, wheat and wheat flour, edible vegetable oils, sugar, tobacco products and various petroleum products. Mexico eliminated the tariff and quotas on imports of apples from Chile as from 2006.

90. As a LAIA member country⁷³, Mexico has partial scope and economic complementarity agreements (ECAs) in force with various member countries of that Association.⁷⁴ During the review

⁷¹ El Salvador vs. Mexico - Current measures for granting health registration and access to medicines. Final Report of the Arbitral Panel, 14 August 2006.

⁷² Under a decree published in the D.O.F on 17 November 2006, the G-3 agreement ceased to have effect between Venezuela and Mexico as from 19 November 2006.

⁷³ LAIA member countries are Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

period, Mexico concluded an ECA with the MERCOSUR countries (ECA No. 54, signed on 5 July 2002), and a partial scope agreement on the automotive sector with the same group of countries (ECA No. 55 of 5 July 2002).⁷⁵

91. The Mexico-MERCOSUR ECA establishes a commitment to achieve a free-trade zone between the two parties through periodic negotiations. It encompasses the agreements signed or to be signed between Mexico and that trade bloc, as well as bilateral agreements between Mexico and each of countries concerned. The agreement thus lays the foundations for future negotiations aimed at deepening both the bilateral agreements and the agreement between Mexico and MERCOSUR as a bloc. In mid-2007, negotiations were ongoing to expand the agreement with Brazil (ECA No. 53); and coverage of the agreement with Argentina (ECA No. 6) was expanded to encompass roughly 3,100 tariff lines.

92. Under the automotive sector ECA between Mexico and MERCOSUR, bilateral annual quotas were established for duty-free imports of automobiles between Mexico and each MERCOSUR member country. The agreement envisages free trade for light vehicles among all parties in 2011.

93. In November 2003, under the Mexico-MERCOSUR ECA, Mexico signed a free-trade agreement with Uruguay (ECA No. 60). Once this entered into force, roughly 93 per cent of tariff lines became duty-free, exceptions being oil and petroleum products, automotive products⁷⁶, and the items contained in each country's schedule of exceptions. In the case of Mexico, these include products that remain subject to a reduction rate of 28 per cent or 30 per cent, and in some cases 90 per cent, as well as sensitive products for which there is no reduction. The latter include chicken, tuna fish, certain seafood products, beans, wheat, maize, apples, coffee, sugar, tobacco, edible oils and made-up articles of various fibres. Other products remain subject to quotas (woollen fabrics and cheese). Mexico applies a maximum tariff of 7 per cent on bovine meat products; the footwear sector will be fully liberalized by both parties after 10 years.

94. Also within the LAIA, Mexico maintains ECAs with Peru (ECA No. 8) and Cuba (ECA No. 51), as well as partial scope agreements with Ecuador, Panama and Paraguay.

FTAs with European countries

95. Pursuant to the tariff reduction schedules established in the European Union-Mexico free-trade agreement (EUMFTA), the EU eliminated all tariffs on Mexican imports of industrial products in 2003, and Mexico reciprocated in January 2007. The EU will eliminate import duties on agricultural and fisheries products as from 2008, and Mexico will do so in 2010, except for a small list of sensitive items that include meat, cereals and dairy products. The agreement also establishes tariff quotas for certain agricultural and fisheries products. Mexico and the EU are implementing a Co-operation Programme 2007-2013, which contains projects in the areas of trade facilitation, support for SMEs, and promotion of competitiveness, inter alia.⁷⁷

⁷⁴ The agreements reached within the LAIA framework have been notified by this organization to the WTO Committee on Trade and Development. The most recent notification is contained in WTO document WT/COMTD/59 of 25 January 2007 (LAIA Communication, Biennial Report to the World Trade Organization).

⁷⁵ Amendments were made to the ECA on the automotive sector in relation to trade between Uruguay and Mexico in June 2004 (ECA No. 55 IV.1), and between Brazil and Mexico in May 2005 (ECA No. 55 II.1).

⁷⁶ Trade in automotive goods is governed by Partial Scope Agreement No. 55 and its protocols, signed between Mexico and the MERCOSUR member countries within the LAIA framework.

⁷⁷ Ministry of the Economy (2007).

96. The FTA with the European Free Trade Association (EFTA) establishes the same tariff reduction schedules as the EUMFTA. Consequently, Mexico eliminated all tariffs on imports of industrial products from its EFTA partners as from 1 January 2007. In return, these countries granted duty-free access to all Mexican industrial and fisheries products when the agreement entered into force. Trade in agricultural products is subject to the bilateral agreements signed between Mexico and each EFTA member State.

Other FTAs

97. Following the entry into force of the agreement to strengthen the Mexico-Japan Economic Partnership Agreement (EPA), in April 2005 Japan eliminated import duties on 91 per cent of tariff lines and, within five years (2010), will do the same for a further 4 per cent of the tariff. The remaining 5 per cent will be liberalized over a 10-year period, although the products in question may be given duty-free access on a quota basis. For its part, Mexico granted immediate duty-free access for 44 per cent of tariff lines, including high-technology inputs and products. It will liberalize an additional 9 per cent of the tariff within five years; and the remaining 47 per cent, which includes both industrial products (minerals, chemicals, rubber, glass, and others) and agricultural products (e.g. bananas, maize flour and fruit products), will become duty-free in 2015. Special tariff reduction schemes are set out for the automotive and steel sectors.

98. Under the Mexico-Israel FTA, trade in industrial products became fully liberalized as from 2005; the agreement covers roughly 96 per cent of trade in agricultural products.

99. As of mid-2007 Mexico was in negotiations to conclude trade agreements with Peru and the Republic of Korea; and it had announced its intention to start negotiations with the Dominican Republic. In the near future, it is expected that agreement will be reached on expanding and deepening the ECA with Peru, with a view to concluding an FTA with that country.

(iii) Other agreements and arrangements

100. Since 1993, Mexico has been a member of Asia-Pacific Economic Cooperation (APEC), and in 2002 served as headquarters of that forum. It has also participated in negotiations to establish the Free-Trade Area of the Americas (FTAA), an initiative embarked upon in 1994 with a view to progressively eliminating barriers to trade in goods and services between 34 western-hemisphere nations. Although the FTAA negotiations should have ended in January 2005, in mid-2007 the process was suspended and no dates had been set for resumption. Mexico hosts the FTAA Administrative Secretariat in the city of Puebla.

101. Under the Generalized System of Preferences (GSP), Mexico benefits from preferential access schemes offered by Bulgaria, Canada, the Russian Federation, Japan, New Zealand, Turkey and the European Union. In 2006, a total of 3,876 certificates of origin were issued for Mexican exports under GSP schemes.

102. Mexico also forms part of the Global System of Trade Preferences among Developing Countries (GSTP), and is currently participating in the third round of negotiations among the members of this agreement, which began in June 2004 in Brazil. Nonetheless, in 2007, Mexico was not granting any concessions under this scheme nor was it issuing certificates for Mexican products exported under its auspices.

III. TRADE POLICIES BY MEASURE

(1) OVERVIEW

1. Since the previous Review of its trade policy in 2002, Mexico has adopted important measures to facilitate foreign trade transactions, even though some customs procedures and formalities remain complex. Customs reform should therefore move ahead and, in general, foreign trade regulations need to be streamlined. As far as customs valuation is concerned, Mexico has a scheme for certain products whereby security is required if the value declared is lower than the price estimated by the authorities.
2. Mexico has substantially lowered the simple average MFN tariff, which fell from 16.5 per cent in 2001 to 11.2 per cent in June 2007. Agricultural products still receive much higher average tariff protection (23.0 per cent) than other products (9.9 per cent). The tariff is complex, comprising close to 12,000 tariff lines with 88 different ad valorem levels; some lines are subject to specific, compound or seasonal duties. Tariff dispersion has increased since 2001 and there is negative escalation between raw materials and semi-processed goods. The authorities recognize that this situation has led to inconsistencies in the tariff structure. To overcome these, MFN tariffs should be lowered further and efforts made to simplify their structure.
3. Mexico bound all its tariffs at an average rate of 36.0 per cent. This measure has led to greater predictability as far as conditions for access to Mexico's market are concerned, although this is attenuated somewhat by the marked difference between the average levels of the rates applied and those bound.
4. The important role of tariff preferences became even more evident during the period under review, when new preferential agreements were signed with Uruguay and Japan. As is the case for other Members of the WTO, Mexico's participation in preferential trade agreements raises concerns regarding their impact on the allocation of resources. Mexico has preferential and non-preferential rules of origin; the purpose of the latter is to prevent circumvention of anti-dumping duties and they vary according to the product and country of origin.
5. A derecho de trámite aduanero – DTA (customs processing fee) is payable on imports and is calculated on an ad valorem basis; preferential imports are exempt from this fee. Mexico requires prior import licensing in order to administer tariff concessions and protect the environment in respect of products such as used vehicles and clothing.
6. Mexican producers have actively sought protection against imports they deem unfair by means of anti-dumping measures. In this way, between January 2002 and December 2006, the authorities initiated 42 anti-dumping investigations that led to the adoption of 24 definitive duties. In June 2007, 70 anti-dumping duties were in effect, mostly on products from China and the United States.
7. Mexico has regularly submitted notifications to the WTO on the Normas Oficiales Mexicanas – NOMs (Mexican Official Standards) and sanitary and phytosanitary (SPS) measures. In general, the procedures for the adoption of NOMs are clearly defined. A new NOM on the labelling of textiles and clothing was adopted in 2006. In some instances, producers from countries with which Mexico has a free-trade agreement, but not others, are allowed to utilize the certification obtained by other importers. Products subject to SPS measures must comply with the NOMs, the phytosanitary or animal health requirement sheets and/or certain inspection requirements.

8. Some products, including petroleum products, require prior export licensing. In addition, Mexico promotes exports through fiscal concessions and administrative facilities as well as a number of financing schemes. After incurring large losses, the leading State-owned bank providing export support was reorganized in 2007.

9. The two major export promotion instruments, the Maquila and the PITEEX, were amalgamated into the IMMEX Programme at the end of 2006. This programme grants fiscal and administrative benefits contingent, inter alia, on compliance with minimum export requirements. In addition to this scheme and drawback, Mexico has two programmes (ALTEX and ECEX) which grant administrative facilities and/or financial support to companies that meet export requirements. Since 2001, Mexico has not made any notifications on new or updated subsidies. The only export programme notified to the WTO by Mexico was the PITEEX.

10. In 2002, Mexico introduced several sectoral promotion programmes (PROSECs) under which the eligible companies may import inputs used to produce specified goods at a reduced tariff. The PROSECs are not an optimal solution to offset the impact of MFN tariffs on the costs of companies which import inputs from non-preferential sources because their scope is limited and they involve administrative costs. There are also a large number of other government support programmes for specific areas.

11. There are no cost/benefit estimates for the export promotion programmes or the other support programmes in effect. It would, however, be desirable to study to what extent the benefits given by such programmes offset their fiscal costs and the distortions caused in the allocation of resources between export activities and the rest of the economy.

12. Mexico has reformed its competition legislation and, despite the modest budget and staffing resources, the competent authority is starting to gain a solid reputation. Nevertheless, monopolies and/or insufficient levels of competition are still to be found in sectors such as electricity, hydrocarbons and telephony (see Chapter IV). More competition in these and other key sectors of the economy is one of the most important challenges currently facing Mexico's economic policy.

13. Mexico did not sign the WTO Agreement on Government Procurement and is not an observer. The law provides for tenders open to any person or product, even though a preferential margin is given to Mexicans. In practice, government procurement is mainly through tenders open only to Mexican persons or goods or Mexicans together with foreigners from countries with which Mexico has signed a relevant agreement; while this could boost the domestic industry, it could also increase the cost of government procurement to the detriment of taxpayers.

14. In 2000, the TRIPS Council examined Mexico's intellectual property legislation and Mexico has notified subsequent amendments. In several areas, particularly copyright, Mexico's protection exceeds the minimum periods laid down in the TRIPS Agreement. There should be an economic assessment of how the extension of exclusive rights maintains the balance between the interests of rightholders and of users.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Registration, documentation and customs procedures

15. Mexico's customs regime is based on the 1995 Customs Law⁷⁸ and its Implementing Regulations⁷⁹, as well as on the General Foreign Trade Regulations⁸⁰ and the annexes thereto, and the decisions taken annually by the Secretaría de Hacienda y Crédito Público – SHCP (Ministry of Finance and Public Credit). The customs legal framework also includes other legislative instruments such as the Tax Code of the Federation and its Implementing Regulations; the Foreign Trade Law (LCE) and its Implementing Regulations; and the Law on General Import and Export Taxes (TIGIE), the agreement under which the Ministry of the Economy (SE) issues general regulations and criteria for foreign trade, as well as the provisions on customs matters in the free-trade agreements (FTAs) signed by Mexico. Since 1998, Mexico has been a member of the World Customs Organization.

16. The Administración General de Aduanas – AGA (General Customs Administration), which is part of the Servicio de Administración Tributaria – SAT (Tax Administration Service) (a decentralized body of the SHCP), is responsible for inspecting, monitoring and controlling the entry of goods into Mexico and their exit.

17. The majority of persons or companies wishing to import goods into Mexico must be registered in the Importers' Register kept by the SAT.⁸¹ This requirement does not apply to persons or companies importing for their own use or in the case of goods that are not to be marketed.⁸² In addition, importers of specified products such as foodstuffs, beverages, chemicals, textiles, footwear, electronic goods and iron and steel products must be listed in the Register of Importers in Specific Sectors.⁸³ Importers of wines and spirits must be listed in the Register of Alcoholic Beverage Taxpayers in order to seek registration in the sectoral register. The list of specific products is determined by the SHCP and is periodically amended. According to the customs authorities, the purpose of the registers is to keep a comprehensive and reliable list of importers and to prevent and detect different types of customs fraud.

18. As a general rule, the import of goods requires the involvement of a customs agent or customs broker.⁸⁴ For imports of goods by passengers of a value not exceeding US\$3,000, it is not necessary to use the services of a customs agent or broker.⁸⁵ Customs agents are jointly responsible for the payment of import taxes and for the exactitude of the information declared. The requirements for

⁷⁸ Published in the Official Journal of the Federation of 15 December 1995 and entered into effect on 1 April 1996. The updated text of this Law containing the latest revision (Official Journal of the Federation of 2 February 2006) may be consulted at: http://www.aduanas.sat.gob.mx/aduana_mexico/2007/A_Leyes_y-programas.htm.

⁷⁹ Published in the Official Journal of the Federation of 6 June 1996.

⁸⁰ 2007 General Foreign Trade Regulations for 2007, Official Journal of the Federation of 27 April 2007.

⁸¹ Article 59, Section IV, of the Customs Law.

⁸² Exceptions to the requirement to be listed in the Register include the import of goods by passengers; diplomatic missions; courier and mailing companies not exceeding US\$1,000; and temporary imports. General Foreign Trade Regulations for 2007, Official Journal of the Federation of 27 April 2007.

⁸³ The specific sectors are listed in Annex 10 to the General Foreign Trade Regulations (the latest update was published in the Official Journal of the Federation of 12 September 2007).

⁸⁴ Article 40 of the Customs Law.

⁸⁵ Article 50 of the Customs Law and Regulation 2.7.3 of the General Foreign Trade Regulations for 2007, published in the Official Journal of the Federation of 27 April 2007. The involvement of a customs agent is not required either for imports by diplomatic missions, imports for activities by broadcasting media and those by courier and mailing companies under certain circumstances.

obtaining a licence to act as a customs agent are, inter alia, Mexican citizenship by birth; this requirement does not apply to customs brokers who are, however, only authorized to clear goods at a specific customs post on behalf of a single person.⁸⁶

19. Importers must submit an import declaration or request to the customs through a customs agent or broker, together with the following documents: the invoice; the bill of lading or airway bill; documentation showing compliance with the non-tariff regulations and restrictions, where applicable; certificates of origin, where applicable; a document proving that security has been deposited in the customs security account when it is considered that the goods have been undervalued; a certificate showing the weight or volume for bulk goods imported by sea; and information to enable the identification, analysis and control of imported goods (the brand, model, serial number and technical specifications).⁸⁷

20. Mexico has a computerized customs management system called the Sistema Automatizado Aduanero Integral – SAAI (Integrated Customs Computerized System), which allows import (and export) declarations to be drawn up and validated electronically, as well as the electronic exchange of information between the AGA, the 49 customs posts in Mexico, customs agents, warehouses and banks. Importers (and exporters), through their customs agents, must send to the SAAI in advance details of all the shipments imported or exported. Cargo manifests for goods transported by sea, rail or land must be sent electronically in advance. The SAT may authorize associations of customs agents and business associations using the services of customs brokers to offer advance electronic validation of the data contained in import declarations.⁸⁸

21. After the import declaration and the other documents required have been submitted and the corresponding fees paid, the goods must go through a computerized selection mechanism in order to determine whether there should be a customs inspection consisting of verification of the documents and the goods themselves. Goods that have been inspected must go through the computerized selection mechanism once again in order to determine whether they should be inspected for a second time.⁸⁹ In some customs posts, designated by the SHCP, all shipments systematically undergo a second inspection irrespective of the outcome of the first selection process.

22. According to data provided by the authorities, in 2006 85.3 per cent of import transactions were not inspected, while 12.9 per cent underwent a first inspection by the customs authorities and 1.8 per cent a second inspection by a company holding a concession from the Government. The authorities have indicated that the average time taken for customs clearance is four hours. If no physical inspection is required, the goods are cleared immediately.⁹⁰

23. The selection mechanism is governed by an intelligent risk assessment system based on criteria such as the type of importer, exporter, the category of product, its value and country of origin. The system also assesses the risk factors according to the nature of the operation in terms of tax revenue, sanitary and phytosanitary measures, national security, combating smuggling and other fraudulent practices. The information provided by the risk assessment is integrated into the SAAI electronically. Independently of the results of the computerized selection process, the customs authority has the power to order verification of goods transported or to undertake an inspection a posteriori at the domicile of the importer (visit to the premises).

⁸⁶ Articles 159 and 168 of the Customs Law.

⁸⁷ Article 36 of the Customs Law.

⁸⁸ Article 16-A of the Customs Law (additional article, published in the Official Journal of the Federation of 1 January 2002).

⁸⁹ Articles 43 and 44 of the Customs Law.

⁹⁰ Article 43 of the Customs Law.

24. In addition to computerizing the procedures and flows of information, since 2002 Mexico has adopted a series of measures to modernize the customs system, including investment in infrastructure, technology and streamlining of procedures. A "certified enterprise" scheme has been set up under which companies that import goods for a specified value and prove compliance with their customs and tax obligations benefit from streamlined customs procedures, exemption from certain obligations (such as listing in the sectoral registers) and other customs facilities (for example, exclusive import channels).⁹¹

25. Despite the foregoing, the customs authorities acknowledge that the progress made in modernizing the customs service needs to be intensified, mainly as regards computerization, upgrading the risk assessment system and using new customs clearance technology. In March 2007, a plan to modernize the customs was announced not only with a view to enhancing competitiveness but also with the objective, *inter alia*, of updating the customs infrastructure, giving customs officials further training, strengthening cooperation with the private sector and other Mexican and foreign authorities, helping to improve national security and combating smuggling, as well as reforming and streamlining the legal framework in order to adapt it to the new processes.⁹²

26. Improving security at the customs is one of Mexico's priorities in this sector. It has thus adopted measures which include, in addition to advance electronic transmission of data on passengers and cargo, the exchange of information with other customs services, certification schemes for security of the logistic chain of foreign trade agents, and the use of X-ray equipment to inspect containers without having to open them.

27. In June 2007, Mexico signed a declaration of principles for customs cooperation with the United States, with the objective, *inter alia*, of reinforcing security in North America by cooperating in the prevention and dissuasion of terrorism and the coordination of security mechanisms and programmes. Other objectives are to expand the reserved channels in both directions for companies participating in the Free and Secure Trade (FAST) and *Exprés* programmes, the coordination of border infrastructure projects and programmes for the resumption of activities in cases of emergency.⁹³ In August 2007, the two countries signed a bilateral strategic customs plan to implement these measures.

28. The fight against smuggling and piracy is also continuing. According to unofficial estimates, smuggled and pirated goods supply a large part of the domestic market in certain branches of industry, including products such as clothing, music recordings, software programs, sports footwear and beans.⁹⁴ The authorities have questioned these estimates because the illegal nature of smuggling makes it difficult to provide a reliable estimate of the extent of the problem and there are no official figures on the amount and frequency with which it occurs in particular branches of industry. In addition to goods entering Mexico without going through the customs, there are also cases of "documented smuggling", in other words, the entry of goods under a false declaration of origin in order to benefit from preferential tariffs, under-invoicing or incorrect tariff classification so as to evade payment of tariffs or anti-dumping or countervailing duties.

⁹¹ Companies which may be given "certified enterprise" status include companies engaged in manufacturing, in-bond assembly activities and export services (IMMEX) authorized by the SE and mailing and courier companies. In July 2006, 712 certified enterprises had been authorized, accounting for over 60 per cent of Mexico's foreign trade. See: Aduana México (2006).

⁹² See: <http://www.comfin.com.mx/comunicados/otros/07/mar/planmodernizaciónaduanera.htm>.

⁹³ The declaration may be consulted at: <http://www.milenio.com/index.php/2007/06/08/78323>.

⁹⁴ IPS (2007), Centro de Estudios Sociales y de Opinión Pública (Centre for Social Studies and Public Opinion) (2005), Fortuna (2005).

29. Action taken by the General Customs Administration to combat smuggling includes a number of high-impact operations in coordination with other competent authorities in order to seize goods entering Mexico unlawfully. In March 2006, an Interministerial Commission to Prevent and Combat the Illegal Economy was also set up and is responsible for proposing policies, strategies and action to allow effective prevention and to combat unlawful acts affecting the import, distribution and marketing of foreign goods. It is also hoped that the Bilateral Strategic Customs Plan signed with the United States will help in taking more effective action to combat smuggling.

30. Pursuant to the Customs Law, an appeal for revocation may be made to the same administrative authority against all definitive decisions taken by the customs authorities. Such an appeal is optional for the interested party before bringing administrative proceedings before the Federal Tribunal of Fiscal and Administrative Justice.⁹⁵ According to the information provided by the authorities, in 2006 12 appeals for revocation of decisions by the customs authorities were lodged with the International Central Legal Administration, none of which had been resolved by mid-2007. The decisions most frequently contested by importers concern tariff classification, the origin of the goods, preferential tariff treatment and tax credit decisions.

(ii) Customs valuation

31. Mexico has applied the WTO Customs Valuation Agreement (Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994) since 1995. It has utilized several provisions available to developing countries to defer application of the Agreement and has made reservations in relation to it, but the authorities have stated that in practice Mexico applies the Agreement without reservations. Mexico's most recent communication in reply to the list of questions on customs valuation was distributed to Members of the WTO in July 2004.⁹⁶

32. The Customs Law states that the customs value of goods is the transaction value and defines this as the price paid or payable for goods, provided that, inter alia, these goods are sold to the importer.⁹⁷ The importer is deemed to be the buyer of the imported goods, thus excluding intermediaries. The transaction value is applied on a c.i.f. basis except when preferential treatment is requested under the FTAs to which Mexico is party, in which case the basis is the f.o.b. value.

33. When the customs value cannot be determined on the basis of the transaction value, the following methods are used in sequence and by elimination: the transaction value of identical goods; the transaction value of similar goods; the unit selling price; the computed value or the previous methods with added flexibility. The order of application of the third and fourth methods may be reversed at the importer's choice.⁹⁸ According to the Mexican authorities, in over 90 per cent of import transactions the value is determined according to the transaction value.⁹⁹

34. When irregularities are detected or there are reasons to doubt the accuracy or exactitude of the value declared by the importer, the customs authorities review the value of the goods a posteriori, in other words, after the goods have cleared the customs, and for this purpose they use the services of private companies. Based on this information, the customs authorities decide whether or not to pursue the investigation into the importers. The authorities have indicated that in 2006 11 investigations for irregularities relating to under-invoicing were carried out, representing an amount of Mex\$6 million (some US\$552,000).

⁹⁵ Article 203 of the Customs Law.

⁹⁶ WTO document G/VAL/N/2/MEX/1 of 2 July 2004.

⁹⁷ Article 64 of the Customs Law.

⁹⁸ Articles 77 and 71 of the Customs Law.

⁹⁹ WTO document G/VAL/N/2/MEX/1 of 2 July 2004.

35. Mexico has an estimated price mechanism created in 1994 to counteract the undervaluation of certain goods.¹⁰⁰ Under this mechanism, the importer is required to deposit security when the declared value is lower than the price estimated by the SHCP. The security must cover the difference between the duty paid and the duty payable if the value of the imported goods corresponded to the estimated price (including anti-dumping or countervailing duties, when applicable) and may be deposited in cash or by a backup credit facility, collateral, securities or letter of credit. The SHCP regularly publishes the list of tariff headings subject to the estimated price mechanism. At mid-2007, over 300 tariff headings were subject to the mechanism, including products such as foodstuffs, beverages, clothing, textiles, footwear, chemicals, wood and paper products, tools, electronic appliances and vehicles.¹⁰¹

36. During the period under review, some Members expressed concern in the WTO Customs Valuation Committee regarding Mexico's practices in respect of the estimated price mechanism and a posteriori verification. As far as estimated prices are concerned, doubts were expressed regarding its consistency with the provisions in the Customs Valuation Agreement (including those on minimum values) and clarification was sought as to how the prices were calculated, their role in the definitive determination of customs value and deposit of security, including the way in which it was refunded and the time this took. Moreover, in July 2003, the estimated price mechanism was the subject of a request by Guatemala for consultations under the WTO dispute settlement mechanism.¹⁰² This case did not result in the establishment of a panel and, in August 2005, Guatemala informed the Dispute Settlement Body that both countries had reached a satisfactory solution.

37. Regarding the practice of a posteriori verification, the concerns mainly related to the role of private bodies in verification, the type of information requested from exporters and the measures taken to protect the confidentiality of the information given to these bodies and presented to the customs authorities. Mexico responded to the questions raised on these issues in a number of communications that were circulated to Members of the Customs Valuation Committee.¹⁰³ At its meeting on 25 April 2006, the Committee concluded its examination of Mexico's relevant rules and legislation.¹⁰⁴

38. In November 2005, Mexico abolished the prior inspection mechanism called "automatic notification of import", which had been established in 1998 as part of the import licensing regime (section (vi) below).

(iii) Rules of origin

39. Mexico applies preferential and non-preferential rules. The former are those provided under the FTAs to which Mexico is party (see Chapter II, section (5)(ii)). Non-preferential origin criteria

¹⁰⁰ Decision establishing the mechanism to guarantee the payment of taxes on goods subject to prices estimated by the SHCP, published in the Official Journal of the Federation of 28 February 1994.

¹⁰¹ The Resolution containing the Annex to the Resolution establishing the mechanism to guarantee the payment of taxes on goods subject to prices estimated by the SHCP, published in the Official Journal of the Federation of 29 March 2002; and the Resolution amending Annex 2 to the Resolution establishing the mechanism to guarantee the payment of taxes on goods subject to prices estimated by the SHCP, published in the Official Journal of the Federation of 6 July 2006.

¹⁰² Mexico – Certain Pricing Measures for Customs Valuation and Other Purposes (WT/DS298).

¹⁰³ WTO documents G/VAL/W/121 of 10 June 2003; G/VAL/W/132 of 10 March 2004; and G/VAL/W/153 of 27 October 2005.

¹⁰⁴ WTO document G/VAL/W/156 of 27 September 2006.

apply to goods that are the subject of anti-dumping or countervailing duties. The latter, like the rules of origin in five of the preferential agreements signed by Mexico, have been notified to the WTO.¹⁰⁵

40. The rules of origin in the North American Free Trade Agreement (NAFTA) and in the majority of Mexico's preferential agreements classify goods as "originating" if they meet one of the following criteria: they have been wholly obtained or produced in countries in the region; they have been entirely produced in one of these countries using only originating materials; they have been produced in the region using non-originating materials that have been the subject of a change in tariff classification and meet other requirements, or comply with a regional content requirement. "De minimis" provisions also apply under which the goods are considered to be originating if the total value of the non-originating inputs does not exceed a specified percentage of the total value. For those products in Chapters 50 to 63 of the Harmonized System (textiles and clothing), the majority of the FTAs signed by Mexico include "de minimis" provisions based on the product's weight.

41. Under the agreements concluded with the European Union and the European Free Trade Association, rules of origin are based on the principle of "sufficient processing or transformation". The criteria used to determine whether a product has been sufficiently transformed or processed vary from one product to another and may include a change in tariff classification; a requirement on the regional content value; and rules on the production process.

42. Mexico's preferential agreements contain provisions on "cumulation" which allow producers to decide to accumulate their production with that of suppliers in countries members of the agreement in question in order to comply with the rules of origin. Nevertheless, the aggregate values laid down in the rules of origin in various agreements cannot be accumulated for the purposes of determining origin.

43. During the period under review, Mexico worked with its trade partners to facilitate compliance with the rules of origin laid down in the agreements, including use of cumulation of origin schemes. For example, in January 2007, Mexico and the United States signed a customs cooperation agreement that will allow the textile industries in both countries to take advantage of the cumulation of origin provisions in the FTA among the United States, the Dominican Republic and Central America.¹⁰⁶

44. Goods imported under a preferential regime must be accompanied by a certificate of origin. The certification procedure differs according to the agreement. The NAFTA and the agreements with Bolivia, Chile, Costa Rica, Israel, Nicaragua and the Northern Triangle (El Salvador, Guatemala and Honduras) provide for auto-certification under which the exporter completes the certificate of origin without the involvement of the authorities. Other agreements require the certificate of origin to be issued by the competent authority in the exporting country and this is the case for the agreements with the European Free Trade Association, the European Union and Japan. In the case of the agreements with Colombia and Uruguay, the certificate of origin is completed and signed by the exporter, but must be validated by the competent authority in the exporting country.

¹⁰⁵ WTO document G/RO/N/12 of 1 October 1996. The preferential agreements whose rules of origin have been notified by Mexico are: the NAFTA; the FTA with Bolivia; the FTA with Costa Rica; the FTA with Colombia and Venezuela; and the Economic Complementarity Agreement with Chile.

¹⁰⁶ Decree approving the Agreement between the Government of the United Mexican States and the Government of the United States of America on customs cooperation regarding declarations of origin made under the provisions on cumulation in certain free trade agreements, published in the Official Journal of the Federation of 6 June 2007. See also USTR (2007).

45. The large number of systems for rules of origin in the FTAs signed by Mexico, each with its own criteria, certificates and verification mechanisms, adds to the complexity of Mexico's import regime. At the same time, the difference between the preferential rates and the MFN tariffs could encourage fraud regarding rules of origin. Concerns have also been raised regarding the possible increase in transaction costs for Mexican companies¹⁰⁷, including those caused by the need to adapt their production structure in order to comply with various rules of origin.

46. As regards non-preferential rules of origin, Mexico applies the 1994 agreement, which contains special provisions on certification of origin for products identical or similar to those subject to anti-dumping or countervailing duties.¹⁰⁸ These provisions, which are applied by means of certificates and declarations by the country of origin, are intended to prevent the circumvention of duty that might occur if the goods are reshipped through third countries. Consequently, certificates and declarations from the country of origin must be obtained so that the imports which they cover may enter Mexico without payment of anti-dumping or countervailing duties.

47. Although non-preferential rules of origin are generally applied, certification requirements differ according to the product and the source. In the case of imports of textiles, clothing and footwear, special certificates from the country of origin are required whose form, content and procedures are specifically laid down in the agreement.¹⁰⁹ If such imports come from specified countries¹¹⁰, the country of origin certificate must be endorsed by the competent authority of the country in which the last production process occurred. Imports of other products must be accompanied by a declaration from the country of origin pursuant to the relevant agreement.

48. Goods benefiting from a preferential regime are not subject to these special certification requirements and may be imported without payment of countervailing duties provided that they comply with the preferential rules of origin and have the corresponding certificate of origin. During the previous Review of Mexico's trade policy, concern was expressed at the burdensome and potentially discriminatory nature of the special requirements on certificates of origin.¹¹¹

(iv) Tariffs

49. Pursuant to the 1993 LCE, the President of the Republic is empowered to modify the general taxes on imports and exports. The Law also provides that the SE may propose tariff modifications to the President and it is the responsibility of the Foreign Trade Commission to give an opinion on such modifications.¹¹² Mexico grants MFN treatment as a minimum to all countries, whether or not they are Members of the WTO.

¹⁰⁷ Ministry of the Economy (2004), pages 106 and 107; IDB (2006), page 5; and CIDE (2005), pages 10-12 and 17.

¹⁰⁸ Agreement establishing rules for determining the country of origin of imported goods and provisions on their certification with regard to countervailing duties, published in the Official Journal of the Federation of 30 August 1994 and amended 13 times. The most recent amendment was published on 12 October 2007.

¹⁰⁹ These special certificates are known as "hard" certificates of country of origin.

¹¹⁰ Namely: Bangladesh; Cyprus; Hong Kong, China; India; Indonesia; Macau, China; Malaysia; Pakistan; People's Republic of China and Chinese Taipei; Philippines; Republic of Korea; Singapore; Sri Lanka; Thailand; and countries that are not members of the WTO.

¹¹¹ See the minutes of the Meeting of the Trade Policy Review Body for the previous Review of Mexico, WTO document WT/TPR/M/97 of 11 June 2002.

¹¹² Articles 4, 5 and 6 of the Foreign Trade Law.

(a) Tariff structure

50. This analysis is based on Mexico's tariff to be found in the TIGIE, which was in effect up to 30 June 2007 and corresponded to the Harmonized Commodity Description and Coding System (HS) version 2002 (HS 2002). On 1 July 2007, a new tariff came into effect based on the HS 2007. The authorities have indicated that this does not change tariff policy although some goods have been reclassified and others given new codes.

51. Until June 2007, the tariff comprised 11,948 eight-digit tariff lines (compared with 11,387 in 2001).¹¹³ Imports were subject to ad valorem duties, with the exception of 0.7 per cent of tariff lines subject to specific duties (15 lines) or compound duties (45 lines) (Table III.1).¹¹⁴ Non-ad valorem duties were concentrated in the agricultural sector and mainly applied to products containing sugar, powdered milk, chocolate and malt extracts and some prepared foodstuffs and fruit, as well as used tyres and certain vehicles.

52. Since 1993, Mexico has had seasonal tariffs on sorghum, soya beans and sunflower seeds. These products may be imported duty free during a certain period of the year when there is less domestic production; outside this period, the rates specified in the tariff in the TIGIE apply.

53. In 2007, the simple average MFN tariff was 11.2 per cent, lower than the 16.5 per cent in effect in May 2001. This average does not include tariffs applied under quotas but does include headings subject to specific or compound duties, whose ad valorem equivalents range from 9 to 208 per cent (Table III.2).¹¹⁵ In general, the largest reductions apply to non-agricultural products, whose simple average fell from 15.6 per cent in 2001 to 9.9 per cent in 2007. In HS terms, there were significant reductions in almost all sections, particularly in respect of minerals, chemicals, base metals and manufactures thereof, machinery and equipment. The reductions for agricultural products were less important, involving a drop in the tariff average from 24.9 per cent in 2001 to 23.0 per cent in 2007.

Table III.1
MFN tariff structure, 2007
(Percentage)

	2007
1. Total number of lines	11,948
2. Tariffs other than ad valorem (as a percentage of all tariff lines) ^a	0.7
3. Tariffs other than ad valorem without any ad valorem equivalents (as a percentage of all tariff lines)	0.2
4. Tariff quotas (as a percentage of all tariff lines)	0.8
5. Duty-free tariff lines (as a percentage of all tariff lines)	18.6
6. Average of lines exceeding zero (%)	13.7
7. National tariff "peaks" (as a percentage of all tariff lines) ^b	5.4
8. International tariff "peaks" (as a percentage of all tariff lines) ^c	20.5
9. Tariff lines bound (as a percentage of all tariff lines)	100.0

a Includes 22 banned lines.

b National tariff peaks are duties that are higher than three times the simple overall average of the rates applied.

c International tariff peaks are duties that exceed 15 per cent.

Source: WTO Secretariat estimates, based on data provided by the Mexican authorities.

¹¹³ This figure does not include headings in Chapter 98 of the HS corresponding to products imported under special programmes as well as lines indicating the rates applied under tariff quotas.

¹¹⁴ This figure includes banned headings (22 lines).

¹¹⁵ Ad valorem equivalents were calculated for all specific and compound rates taking into account the unit values of imports for 2006, provided by the Mexican authorities.

Table III.2
Summary of MFN tariffs, 2007

Description of the product (HS)	MFN				
	Number of lines	Average (%)	Range (%)	Coefficient of variation (CV)	Average bound tariff (%)
Total	11,948	11.2	0 - 254	1.4	36.0
HS 01-24	1,198	24.1	0 - 254	1.6	45.9
HS 25-97	10,750	9.7	0 - 50	0.9	34.9
By WTO category					
Agricultural products	1,192	23.0	0 - 254	1.7	45.0
- Animals and animal products	152	47.7	0 - 254	1.7	67.2
- Dairy products	37	43.3	0 - 125.1	1.0	63.8
- Coffee and tea, cocoa, sugar, etc.	186	31.1	0 - 210	1.3	64.6
- Cut flowers and plants	118	9.8	0 - 20	0.6	27.4
- Fruit, vegetables and garden produce	228	19.9	0 - 245	1.0	39.6
- Cereals	26	48.9	0 - 194	1.3	65.5
- Oilseeds, fats and oils and their products	116	15.2	0 - 254	2.2	42.2
- Alcoholic beverages and liquids	74	21.7	10 - 92.6	0.6	40.3
- Tobacco	14	47.9	20 - 67	0.3	49.8
- Other agricultural products n.e.s.	241	7.0	0 - 36	0.8	27.3
Non-agricultural products (including petroleum)	10,756	9.9	0 - 50	0.9	35.0
- Non-agricultural products (excluding petroleum)	10,735	9.9	0 - 50	0.9	35.0
- Fish and fish products	144	16.7	0 - 20	0.4	35.0
- Minerals, precious stones and metals	526	9.7	0 - 20	0.7	34.6
- Metals	1,267	9.2	0 - 20	0.5	34.6
- Chemicals and photographic products	3,064	6.3	0 - 43.9	0.8	35.3
- Leather, rubber, footwear and travel articles	351	15.0	0 - 35	0.8	34.9
- Wood, wood pulp, paper and furniture	470	10.4	0 - 28.5	0.6	34.0
- Textiles and clothing	1,275	18.1	0 - 35	0.7	35.0
- Transport equipment	366	14.7	0 - 50	0.9	37.0
- Non-electrical machinery	1,458	7.9	0 - 20	0.9	35.2
- Electrical machinery	967	8.5	0 - 20	0.7	34.3
- Non-agricultural products n.e.s.	847	10.7	0 - 20	0.7	34.6
- Petroleum	21	5.3	0 - 10	0.6	36.4
By ISIC sector^a					
Agriculture and fishing	521	13.9	0 - 245	1.5	33.1
Mining	125	6.1	0 - 20	0.5	35.0
Manufacturing	11,301	11.1	0 - 254	1.4	36.1
By HS Chapter					
01 Live animals and animal products	323	33.8	0 - 254	1.7	52.5
02 Plant products	468	16.4	0 - 245	1.6	35.7
03 Fats and oils	69	20.6	0 - 254	2.0	47.6
04 Food preparations, etc.	338	26.2	0 - 210	1.2	53.3
05 Mineral products	210	6.0	0 - 20	0.5	34.5
06 Products of the chemical and related industries	2,832	5.9	0 - 43.9	0.8	35.2
07 Plastics and rubber	566	9.9	0 - 20	0.5	34.8
08 Hides and skins	122	13.1	0 - 35	1.0	29.7
09 Wood and articles of wood	137	14.0	0 - 28.5	0.5	34.8
10 Wood pulp, paper, etc.	299	8.1	0 - 20	0.6	33.5
11 Textiles and textile articles	1,245	17.6	0 - 35	0.7	34.8
12 Footwear, hats and other headgear	103	28.4	7 - 35	0.3	35.0
13 Articles of stone	292	12.6	0 - 20	0.5	35.2
14 Precious stones, etc.	65	8.3	0 - 20	0.9	35.0
15 Base metals and articles of base metal	1,256	9.5	0 - 20	0.5	34.6
16 Machinery and mechanical appliances	2,479	8.1	0 - 20	0.9	34.8
17 Transport material	383	14.5	0 - 50	0.9	37.0
18 Precision instruments	464	9.1	0 - 20	0.7	34.3
19 Arms and ammunition	34	15.7	0 - 20	0.4	35.0

Table III.2 (cont'd)

Description of the product (HS)	MFN				
	Number of lines	Average (%)	Range (%)	Coefficient of variation (CV)	Average bound tariff (%)
20 Miscellaneous manufactured articles	249	14.3	0 – 20	0.4	35.0
21 Works of art, etc.	14	0.0	0 – 0	..	35.0
By stage of processing					
First stage of processing	988	11.9	0 – 245	1.5	33.5
Semi-processed products	4,198	7.4	0 – 210	1.2	35.6
Fully processed products	6,762	13.4	0 – 254	1.3	36.6

.. Not available.

a ISIC (Rev.2), excluding electricity (one line).

Source: WTO Secretariat estimates, based on data provided by the Mexican authorities.

54. The tariff had 88 levels ranging from 0 to 254 per cent. The most common rate was 7 per cent, which applied to 29 per cent of tariff lines, followed by 10 per cent (27 per cent of tariff lines), 0 per cent (18 per cent of tariff lines) and 20 per cent (15 per cent of tariff lines). Around 75 per cent of tariffs were below 10 per cent and some 95 per cent were less than 25 per cent. There were, however, MFN tariffs exceeding 15 per cent (international tariff peaks) for 2,447 tariff lines (20.5 per cent of the total) and in the case of 56 agricultural products the tariffs applied exceeded 100 per cent.

55. The simple average of MFN tariffs for agricultural products (according to the WTO definition) was still considerably higher than that for non-agricultural products: 23 per cent and 9.9 per cent, respectively. The highest levels corresponded to certain agricultural products, including: animal or vegetable fats and oils (254 per cent); potatoes (245 per cent); meat and edible offal of poultry (234 per cent); several types of sugar-fructose (210 per cent); and maize (194 per cent). In the non-agricultural sector, the highest tariff applied to textiles and clothing (an average of 18 per cent).

56. Tariff dispersion, measured by the coefficient of variation, rose from 0.9 in 2001 to 1.4 in 2007, increasing the standard deviation and decreasing the average tariff during the period under review.

57. There is still tariff escalation to the extent that the average tariff applicable to fully processed goods (13.4 per cent) was higher than that for semi-processed goods (7.4 per cent). At the same time, however, there was negative escalation between semi-processed goods and raw materials inasmuch as the average tariff for the latter (11.9 per cent) exceeded that for semi-processed goods. This situation seems to have led to certain inconsistencies in Mexico's tariff structure.

58. A study by the SE highlights the inconsistencies existing in Mexico's tariff structure and their impact on the competitiveness of Mexican companies. According to this document, these inconsistencies arise because higher tariffs are applied to imports than to final products (negative effective protection), particularly when producers in countries with which Mexico has preferential agreements may import these inputs at lower rates and use them to produce goods that are subsequently exported to Mexico. This situation does not only hinder the competitiveness of Mexican industry on the domestic market but also on the markets of its trade partners. The study adds that tariff reductions for the import of inputs and machinery allowed under the PROSECs are not an optimal solution because of their administrative costs and their limited scope. Consideration should

therefore be given to lowering MFN tariffs, particularly on raw materials, as they represent a cost disadvantage for Mexican companies.¹¹⁶

59. In the context of the present Review, the authorities have pointed out that two paths have been followed in order to overcome the tariff inconsistencies: the PROSECs and unilateral reductions in MFN tariffs; one example of the latter is the reduction of tariffs for over 6,000 headings, mostly inputs, which occurred in November 2006.

(b) Tariff bindings

60. When it acceded to the GATT in 1986, Mexico bound all its tariffs at a maximum ad valorem rate of 50 per cent.¹¹⁷ In the Uruguay Round, Mexico agreed to lower the bound rate to 35 per cent ad valorem for non-agricultural products, with a few exceptions. These concern a relatively broad group of manufactures, whose bound rates generally remain at 50 per cent.

61. In the Uruguay Round, Mexico bound the tariff on newsprint at 15 per cent, but only for a minimum volume of 40,000 tonnes, without determining any bound rate for imports above this figure. For the present Review, the authorities confirmed that it could be assumed that, when there was no special bound rate the general bound rate would apply to industrial products.

62. As a result of the tariffication process, agricultural products are subject to much higher bound rates than other products, with ad valorem tariffs that can be up to 254 per cent for certain products. In some cases, the bindings are in the form of compound rates, which may be either ad valorem or specific. In general, the average final bound tariff is 36.0 per cent (45.0 per cent for agricultural products and 35 per cent for non-agricultural products). The average bound rate continues to be much higher than the rate applied with a difference of 14.8 percentage points between the two.

63. Following the changes to the 2002 Harmonized System, Mexico submitted information to the WTO on the modified lines in its Schedule LXXVII. It also utilized the collective exemption approved by the WTO Members for implementing these changes, which was extended until 31 December 2006.¹¹⁸ The consolidated schedule used for this report is based on the HS 1996 nomenclature¹¹⁹, together with the 2002 changes submitted by Mexico.

64. For certain products with a high sugar content bound at ad valorem rates, Mexico applies compound tariffs, whose specific element applies according to the sugar content of the product. The authorities have indicated that, in order to avoid the possibility of compound tariffs exceeding bound rates, a decree has determined that the compound rate must not exceed the maximum tariff rate authorized in international agreements signed by Mexico.¹²⁰

(c) Tariff quotas

65. In its Uruguay Round Schedule of Concessions, Mexico included tariff quotas for several agricultural products (see section (2)(ii), Chapter IV(2)(ii)).

¹¹⁶ Ministry of the Economy (2004), pages 108-115 and 200. See also CIDE (2005), pages 7-12 and IDB (2006), pages 5 and 13.

¹¹⁷ Mexico's Schedule of Commitments (LXXVII).

¹¹⁸ WTO document WT/L/638 of 6 December 2005.

¹¹⁹ Available in the WTO Consolidated Tariff Schedules Database.

¹²⁰ Article 19 of the Decree published in the Official Journal of the Federation of 30 June 2007.

(d) Tariff concessions

66. Pursuant to the Customs Law, temporary imports are exempt from import duty and from anti-dumping or countervailing duty provided that they comply with other obligations concerning regulations and non-tariff restrictions.¹²¹ There are two main categories of temporary imports: those which enter Mexico for a limited time and for a special purpose, subsequently returning abroad without any transformation; and goods imported for the purpose of processing, transformation or repair by companies with export programmes authorized by the SE. The export-oriented programmes are described in section (3)(iv) below.

67. Mexico also has PROSECs under which authorized companies may import certain inputs and machinery at lower tariffs (see section (4)(iii) below).

(e) Preferential tariffs

68. The importance of tariff preferences in Mexico's foreign trade became even more marked during the period under review. After Mexico had signed new preferential agreements with Japan and Uruguay, by July 2007 it was giving tariff preferences to imports from over 40 countries (see Chapter II(5)(ii)). In addition, Mexico grants tariff preferences to several countries within the LAIA framework.

69. Preferential tariffs vary according to the agreements and sectors, but the differences have significantly shrunk in comparison with the situation in 2001 as the tariff reductions covered by the agreements came into effect. In 2007, the average preferential tariff ranged from 0 to 1 per cent in the majority of agreements, with the exception of those with Israel and Japan, under which the average tariff was 1.9 and 7.6 per cent, respectively (Table AIII.1). In general, the rates applicable to agricultural products are much higher than those on other products.

70. The gradual lowering of tariffs on sensitive products, which are mostly agricultural products, was completed in 2006 for products from Israel and in 2007 for those from Colombia, and should be completed in 2008 for products from the United States and Canada; in 2009 for those from Bolivia and Costa Rica; and in 2012 for products from Nicaragua and 2010 for those from the EFTA and the European Union.

71. The gradual lowering of tariffs under preferential agreements compared with the MFN tariffs applied by Mexico, which, although they have fallen in recent years, still remain fairly high, has led to a significant imbalance between the MFN rates and the preferential tariffs. This imbalance raises concerns as to the possible deviation of trade and the distortions that it may cause in Mexico's tariff structure.¹²²

(v) Other charges affecting imports

72. In addition to tariffs, imports of goods may be subject to the DTA and the Derecho de Almacenaje (storage charge). Both imports and domestic products are subject to VAT, the Impuesto Especial sobre Producción y Servicios – IEPS (special tax on production and services), and the Impuesto sobre Automóviles Nuevos – ISAN (tax on new automobiles).

¹²¹ Article 104 of the Customs Law.

¹²² Ministry of the Economy (2004), pages 108-115 and 200. See also CIDE (2005), pages 7-12 and IDB (2006), pages 5 and 13.

73. The DTA is payable on customs operations that involve use of the corresponding customs declaration or document. In most cases, the rate is eight per thousand of the declared customs value; temporary imports of machinery and equipment for companies with authorized export programmes are at a rate of 1.76 per thousand and, in other cases, a special rate of Mex\$202 (US\$18) is payable per operation. Definitive imports of goods subject to a preferential regime under an FTA signed by Mexico are exempt from this fee provided that they meet the applicable origin requirements.¹²³

74. The storage charge is payable for depositing goods to be imported in the customs in-bond warehouses. Storage is free for the first two calendar days for goods stored in the air and land traffic customs posts, and for five days in the case of goods stored in maritime traffic customs posts. At the end of these periods, the rates laid down in the Federal Law on Duty apply and these depend on the period of storage and the nature of the goods (for example: volume; special storage requirements; explosive, inflammable or contaminating goods, inter alia).¹²⁴

75. VAT is payable on domestic and imported products at a general rate of 15 per cent of the price of the goods (including other applicable taxes or duties). For imported products, VAT is calculated on the customs value, to which is added the amount of import duty and any other duties payable upon importation, including, where applicable, anti-dumping or countervailing duties. Imports entering the border area are subject to a tax of 10 per cent. The sale of certain products for basic consumption such as foodstuffs and some beverages (water, milk, juices and syrups), pharmaceuticals, unprocessed products of plant or animal origin and goods for export, inter alia, are exempt from VAT.

76. The IEPS is applicable to both domestic and imported products at rates that range from 20 to 110 per cent of the product's value. In 2007, it applied to the following goods (the rates are shown in brackets): alcoholic beverages (25 to 50 per cent); alcohol, denatured alcohol and non-crystallized honey (50 per cent); tobacco products (20.9 to 110 per cent); and petroleum spirit and diesel fuel, whose rates are adjusted monthly.

77. In January 2002, Mexico started to impose the IEPS at a rate of 20 per cent on soft drinks and other beverages not sweetened with sugar cane; the IEPS was also imposed at a rate of 20 per cent on the distribution of these beverages. No IEPS was imposed on beverages sweetened with sugar cane. As these measures violated Article III (national treatment) of the GATT 1994, the United States requested consultations in this regard in March 2004. In October 2005, the Panel found that these taxes, as applied to imported sweeteners and soft drinks, were inconsistent with Article III and were not specified among the exceptions provided in Article XX of the GATT¹²⁵; the Appellate Body confirmed these findings.¹²⁶ At the end of 2006, Mexico abolished the aforementioned taxes through the Law on the Federation's Revenue for the Fiscal Year 2007, by which the provisions corresponding to the Law on the IEPS were repealed.

78. The ISAN is payable on the selling price of vehicles to the final consumer, including any optional equipment and before applying any reduction or discount under special offers. The ISAN applies to both Mexican and imported vehicles. Its amount is determined according to five price ranges for automobiles and comprises a specific amount that varies from Mex\$0 to

¹²³ Article 49 of the Federal Law on Duty, published in the Official Journal of the Federation of 27 December 2006.

¹²⁴ The rates can be consulted in the *Décima Primera Resolución de Modificaciones a la Resolución Miscelánea Fiscal* for 2006 and its annexes 7, 8, 9, 15 and 19, published in the Official Journal of the Federation of 27 December 2006.

¹²⁵ WTO document WT/DS308/R of 7 October 2005.

¹²⁶ WTO document WT/DS308/AB/R of 6 March 2006.

18,500 (US\$1,700) and an ad valorem rate (from 2 to 17 per cent) on the difference between the value of the vehicle and the lower limit of the price range within which the vehicle falls. In the case of imports of new vehicles, the ISAN is determined by applying the rate provided in the Law on the ISAN to the declared customs value, plus the amount of the import duty and any other duties payable upon importation, with the exception of VAT. Automobiles whose value does not exceed Mex\$156,135 (US\$14,350) are exempt from this tax.

79. In December 2005, Mexico abolished the requirement that "compact automobiles for popular consumption" must have a domestically manufactured motor in order to be exempt from the ISAN.¹²⁷

(vi) Prohibitions, restrictions and import licensing

80. Pursuant to the LCE, the SE and other competent authorities may determine regulatory measures and non-tariff restrictions on imports in certain circumstances, including the following: for balance-of-payments reasons; to regulate the entry of used goods and goods that lack a substantial market in their country of origin; in response to restrictions applied unilaterally to Mexican exports by other countries; in accordance with the provisions in international treaties; to prevent unfair trade practices; for reasons of national security, public health, animal and plant health, or environmental protection not covered by NOMs. With reference to the aforementioned circumstances, the authorities have indicated that, no measures have been adopted for balance-of-payments reasons or in response to restrictions applied unilaterally to Mexican exports by other countries.

81. Regulatory measures and non-tariff restrictions for adoption must go before the Foreign Trade Commission for its opinion, except in cases of emergency, and must be published in the Official Journal of the Federation identifying the tariff headings for the products subject to regulations or non-tariff restrictions.¹²⁸

82. Goods that are prohibited are listed in the tariff in the TIGIE, published in the Official Journal of the Federation.¹²⁹ Mexico imposes import prohibitions on a small number of tariff headings for reasons of public safety, health or public morals and child protection.¹³⁰

83. Mexico has a prior import (and export) licensing regime for sensitive products with the aim of protecting national security, public health and the exploitation of natural resources. Its objectives also include regulating trade in goods in accordance with the provisions in international treaties and providing programmes to support the domestic industry's competitiveness (Regla Octava (Eighth Rule)). The agreement published in November 2005 and its subsequent amendments considerably restricted the number of products subject to prior import licences issued by the SE.¹³¹ Some products require import licences issued by other ministries, including the Ministries of the Environment and Natural Resources; Public Health; and Defence.

¹²⁷ Law establishing and amending various fiscal laws, published in the Official Journal of the Federation of 26 December 2005.

¹²⁸ Articles 16 to 20 of the Foreign Trade Law (1993).

¹²⁹ Consulted at: <http://www.sicex.gob.mx>.

¹³⁰ The following are the HS tariff headings concerned: 0301.9901, 1208.9003, 1209.9907, 1211.9002, 1302.1102, 1302.1902, 1302.3904, 2833.2903, 2903.5903, 2903.5905, 2910.9001, 2931.0005, 293.91101, 3003.4001, 3003.4002, 3003.9005, 3004.4001, 3004.4002, 3004.9033, 4103.2002, 4908.9005 and 4911.9105.

¹³¹ Agreement establishing the classification and codification of merchandise whose importation and exportation are subject to the requirement of a prior licence from the SE, published in the Official Journal of the Federation of 9 November 2005, and amendments thereto of 20 December 2005, 2 October and 26 December 2006, and 29 March 2007. With the exception of the latter two, these instruments were notified to the WTO in document G/LIC/N/1/MEX/2 of 18 October 2006.

84. In June 2007, 160 tariff headings were subject to prior import licensing by the SE, including petroleum products, used tyres, used clothing and used vehicles (Table III.3). A prior import licence is also required for some imports covered by preferential agreements¹³² and for inputs and machinery imported by companies with PROSECs (see section (4)(iii)).

Table III.3
Products subject to the requirement of a prior import licence from the Ministry of the Economy, June 2007

Product	Number of tariff headings	Reason/purpose
Petroleum products	13 headings	Pursuant to Article 27 of the Constitution, which gives the Mexican State the exclusive right to exploit and market non-renewable sources in the subsoil
Used tyres	2 headings	Environmental protection
Used clothing	1 heading	For reasons of public health
Fructose	4 headings	In order to comply with international trade agreements
Used vehicles	49 headings	Environmental protection
Anti-contamination equipment	1 heading	Environmental protection
Research equipment	1 heading	In order to support scientific and technological research activities
Goods for sectoral programmes (Regla Octava)	24 headings	In order to boost the competitiveness of the domestic industry by allowing manufacturers to import inputs, materials, parts and components for transformation at a zero tariff

Source: WTO Secretariat, based on the Agreement establishing the classification and codification of merchandise whose importation and exportation are subject to the requirement of a prior licence from the SE, published in the Official Journal of the Federation of 9 November 2005 and annex 2.2.1 to the Agreement by which the SE issues general rules and criteria on foreign trade (Official Journal of the Federation of 6 July 2007).

85. Prior import licences for used vehicles are governed by special criteria and are only issued to particular beneficiaries and for specialized vehicles with features that are deemed necessary to allow certain sectors of the population to carry on their production activities.¹³³

86. In compliance with the reduction timetable in the NAFTA, Mexico undertook to allow the import of used vehicles at least ten years old from the United States and Canada as of January 2009. The restriction on the age of the vehicles will gradually be made more flexible and ultimately imports of used vehicles from these countries will be fully liberalized in January 2019. Since August 2005, the import of certain used vehicles ten to 15 years old from the United States and Canada has been allowed without any prior licence from the SE.¹³⁴ Import from the NAFTA countries without a prior licence is also permitted for certain used vehicles five to 15 years old and intended to remain permanently in the northern border zone of Mexico.¹³⁵

¹³² Namely, imports covered by the Economic Complementarity Agreements with Argentina, Brazil, Cuba, Ecuador, Panama, Paraguay and Peru (32 agricultural headings); the FTA with Chile (eight agricultural headings); and the FTA with Uruguay (25 agricultural headings).

¹³³ Annex 2.2.2, section IV, of the Agreement by which the SE issues general rules and criteria on foreign trade, published in the Official Journal of the Federation of 6 July 2007.

¹³⁴ Decree establishing the requirements for the definitive import of used automobiles, published in the Official Journal of the Federation of 22 August 2005.

¹³⁵ Decree establishing the criteria for the definitive import of used vehicles intended to remain permanently in the northern border zone of Mexico, in the states of Baja California and Baja California Sur, in the partial region of the state of Sonora and in the municipalities of Cananea and Caborca, state of Sonora, published in the Official Journal of the Federation of 26 April 2006.

87. The prior licences issued by the SE are given to a designated person, may not be transferred, and are valid for one year. The SE must decide on applications within a period not exceeding 15 working days; after expiry of this period, the licence is deemed to have been granted. According to the data provided by the authorities, 3,399 prior licences for used goods were issued in 2006.

88. In the aforementioned agreement of 9 November 2005, Mexico abolished the so-called "automatic notification of import" licensing mechanism. This had been established in 1998 to collect information on the price of specified products from certain countries prior to their entry into Mexico, using the services of preshipment inspection companies.¹³⁶ When notifying the abolition of this requirement, the Mexican authorities stated that it had fulfilled its objective of limiting under-invoicing of goods and had been superseded by other electronic systems for monitoring the value of goods. The automatic notification of export, however, remains in effect (section (3)(iii)).

(vii) Contingency measures

(a) Legal and institutional framework

89. Mexico's principal legal instruments on anti-dumping, countervailing duties and safeguards are the LCE of 1993 and its Implementing Regulations¹³⁷; the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement); the Agreement on Subsidies and Countervailing Measures (SCM Agreement); and the Agreement on Safeguards, of the WTO. In addition, several FTAs signed by Mexico contain relevant provisions.

90. The LCE has been the subject of several amendments published in the Official Journal of the Federation of 13 March 2003, 24 January 2006 and 21 December 2006. The 2003 amendments covered a large number of provisions on anti-dumping measures, countervailing duties and safeguards; the purpose of the majority of these was to adapt certain concepts and terms in the Law to the WTO Agreements.¹³⁸ Several provisions were also added on special procedures such as applicability, circumvention of anti-dumping or countervailing duties, the new exporter procedure and the termination of duties after five years. The December 2006 amendments stemmed from the recommendations of the WTO Panel in the Mexico – Definitive Anti-Dumping Measures on Bovine Meat and Rice dispute. The Appellate Body confirmed the majority of the Panel's conclusions and found that several provisions in the LCE were inconsistent with the rules of the WTO.¹³⁹

91. The LCE and its amendments were notified to the WTO by Mexico¹⁴⁰ and were discussed in the Committee on Anti-Dumping Practices, the Committee on Subsidies and Countervailing Measures, and the Committee on Safeguards.¹⁴¹ Among the main issues discussed were those relating to the

¹³⁶ For a description of this mechanism, see WTO (2003), Chapter III(viii)(b).

¹³⁷ Published in the Official Journal of the Federation of 30 December 1993 (latest revision published on 29 December 2000).

¹³⁸ Some of the major reforms related to calculation of dumping are commented on in Reyes de la Torre (2006b), pages 53-58. For an analysis of the origin and trends in Mexico's system of trade remedies, see Reyes de la Torre and J. G. González (2006a), pages 205-246.

¹³⁹ WTO documents WT/DS295/R of 6 June 2005 and WT/DS295/AB/R of 29 November 2005.

¹⁴⁰ WTO documents in the series G/ADP/N/1/MEX; G/SCM/N/1/MEX; and G/SG/N/1/MEX, and their respective supplements (Suppl.).

¹⁴¹ Since 2002, questions regarding Mexico's legislation have been posed in these Committees by the following WTO Members: Argentina, Chile, China, the European Communities and the United States. Mexico's replies appear in WTO documents G/ADP/Q1/MEX/5 (18 February 2004); G/ADP/Q1/MEX/8 (22 March 2004); G/ADP/Q1/MEX/9 (22 March 2004); G/ADP/Q1/MEX/10 (22 March 2004); G/ADP/Q1/MEX/11 (20 April 2004); G/ADP/MEX/13 (1 November 2004); G/ADP/MEX/13/Corr.1 (11 November 2004); G/ADP/Q1/MEX/15 (11 April 2005); G/ADP/Q1/19 (5 June 2007); G/ADP/Q1/20

definition of the domestic industry and threat of injury, cumulation, legal representation of interested parties, time limits for issuing preliminary and definitive resolutions, use of the highest dumping margin when, because there is no information from exporters, the facts available are used.

92. Mexico has notified the WTO that the competent authority for anti-dumping and anti-subsidy investigations is the Unidad de Prácticas Comerciales Internacionales – UPCI (International Trade Practices Unit) of the SE.¹⁴² The UPCI is competent to determine the existence of dumping, subsidization, material injury or threat of injury, and the corresponding anti-dumping and countervailing duties. It is also responsible for conducting and completing investigations into safeguards and for imposing the measures resulting from such investigations. The UPCI's other responsibilities include assisting Mexican exporters affected by contingency measures adopted by other countries and participating in the legal defence of the resolutions issued by the SE at the international level.

(b) Anti-dumping and countervailing measures

93. During the period under review, Mexico regularly submitted its half-yearly reports on the measures adopted under the respective Agreements to the Committee on Anti-Dumping Practices and the Committee on Subsidies.¹⁴³

94. Mexico continues to make extensive use of the anti-dumping mechanism: in March 2007, 70 anti-dumping measures were in effect, compared with 90 in March 2001. At 31 December 2006, definitive anti-dumping measures were mainly imposed on products from the following countries (the number of measures is shown in brackets): China (27); the United States (12); Russia (5); Brazil (4); and Ukraine (4). These measures affected the following products in particular: base metals and their by products; textiles; chemicals; agricultural products; ceramic ware; machinery and equipment (including electronic goods); tools; leather and footwear; and paper products.

95. Between January 2002 and December 2006, 42 anti-dumping investigations were initiated (the same number as between 1996 and 2000), of which 36 were concluded within the same period (Table AIII.2). Of the 42 investigations initiated, 25 resulted in the application of provisional duties, the majority of which were confirmed in the definitive decision (20 cases), while another five cases terminated without the application of anti-dumping measures, and the remainder had not been concluded by the end of 2006. Where no provisional duties had been imposed, the final determination resulted in the application of definitive duties in four cases (Table AIII.2).

96. In total, the investigations initiated and concluded during the period under review led to the application of definitive duties in 24 cases, while no final measure was applied in 12 cases (Table III.4). The ratio of cases in which definitive duties were imposed to the number of investigations completed was 66.6 per cent. As a result of sunset reviews and for other reasons, 14 definitive duties were annulled during the period.

(4 June 2007); G/ADP/Q1/MEX/21 (4 June 2007), and in documents bearing the symbol G/SCM/Q1/MEX/5; 8 to 11, 13, 15 and 19 to 21 of the same dates.

¹⁴² WTO documents G/ADP/N/14/Add.22 and G/SCM/N/18/Add.22, both of 10 October 2006.

¹⁴³ WTO documents in the series G/ADP/N/*/MEX and G/SCM/N/*/MEX.

Table III.4
Anti-dumping duties and countervailing measures, 1 January 2002 – 31 December 2006

	2002	2003	2004	2005	2006	Total
Anti-dumping						
Initiation of original investigations	10	14	6	6	6	42
Provisional duties imposed ^a	3	6	10	3	3	25
Definitive anti-dumping duties imposed ^a	0	5	7	8	4	24
No definitive duties imposed ^{a,b}	0	3	1	6	2	12
Annulment	3	3	5	2	1	14
Countervailing measures						
Initiation of initial investigations	0	1	0	0	0	1
Provisional duties imposed	0	0	1	0	0	1
Definitive countervailing duties imposed	0	0	0	1	0	1
Annulment	0	0	0	0	0	0

a Only refers to original investigations notified during the period.

b Because the final determination was negative.

c The annulment notified during the period under review may refer to investigations carried out prior to this period.

Source: WTO Secretariat, based on data provided by the UPCI of the SE.

97. Between January 2002 and December 2006, 79 per cent of the definitive anti-dumping duties imposed consisted of ad valorem duties and 21 per cent of specific duties. Forty-one anti-dumping measures still applied five years after they had come into effect; in all instances, the SE reviewed these measures or undertook a five-yearly examination of their application.

98. All the anti-dumping investigations conducted during the period 2002-2006 were initiated at the request of the domestic industry, with the exception of one which was initiated ex officio. The SE paid 42 visits to companies in order to verify information. A price undertaking was reached with the exporters in order to eliminate the dumping. In addition, 43 public hearings were held at which interested parties had the opportunity to rebut and contest the arguments of their counterparts.

99. The countries that were the subject of the largest number of anti-dumping investigations initiated were (the number of investigations is shown in brackets): China (15); the United States (9); Ukraine (3); Russia (2); Romania (2); and Brazil (2). The anti-dumping investigations mainly concerned the following products: base metals; chemicals; cement and ceramic ware; machinery and equipment (including electronic goods and parts thereof); and paper products.

100. As a result of the negotiations on China's accession to the WTO, Mexico agreed with China that the anti-dumping measures it imposed on imports from China would not be subject to the application of the WTO Agreement or any anti-dumping provision contained in China's Protocol of Accession for a period of six years after the accession of China to the WTO, i.e., until 11 December 2007.¹⁴⁴ In practice, this provision ensured that the measures applied by Mexico were not the subject of contestation in the WTO dispute settlement system. Prior to expiry of this period, the Mexican authorities ex officio initiated the review of some of the measures in question.

101. Moreover, the use of countervailing measures has been very limited. According to the notifications made by Mexico to the Committee on Subsidies and Countervailing Measures, between January 2002 and December 2006 there was only one investigation into subsidization (Table III.4). This led to a provisional measure and subsequently the application of a definitive countervailing duty on imports of olive oil from the European Communities.

¹⁴⁴ Annex 7 to the Protocol of Accession of the People's Republic of China, WTO document WT/L/432 of 23 November 2001.

102. During the period under review, the WTO dispute settlement mechanism was used in two instances to contest anti-dumping duties and on another two occasions against countervailing duties imposed by Mexico. In 2003, the United States requested consultations on the definitive anti-dumping duties applied by Mexico to bovine meat and rice. In June 2005, the Panel found that Mexico had not acted consistently with the provisions of the Anti-Dumping Agreement when determining the existence of injury and the margin of dumping in the investigation and accepted the majority of the claims made by the United States; the Appellate Body confirmed most of the Panel's findings. In December 2005, the reports of the Appellate Body and the Panel (with the amendments made by the Appellate Body) were adopted.¹⁴⁵ Mexico eliminated these measures in September 2006.

103. In June 2005, Guatemala requested consultations in relation to the definitive anti-dumping duties applied by Mexico on imports of certain steel pipes and tubes. In June 2007, the Panel which examined the case concluded that Mexico had acted inconsistently with its obligations at various stages of the anti-dumping investigation, including during the initiation of the investigation itself and, consequently, recommended that the anti-dumping measures applied to imports of steel pipes and tubes from Guatemala be revoked.¹⁴⁶

104. In August 2004, the European Communities requested consultations regarding the provisional countervailing measures applied by Mexico to olive oil; no panel was established and no solution to this matter has been notified. Nevertheless, in March 2006, the European Communities requested further consultations, this time in relation to the definitive countervailing measures imposed by Mexico on olive oil; the corresponding Panel was set up in February 2007.

(c) Safeguard measures

105. In 2003, some amendments to the safeguards provisions in the LCE were introduced.¹⁴⁷ These include the requirement that a safeguard measure be applied only to the extent necessary to prevent or remedy serious injury; adaptation of the concept of domestic industry when determining serious injury or threat of injury; the introduction of the concept of significant overall impairment in the definition of serious injury; the impossibility of considering factors other than the increase in imports as factors causing injury; the requirement that the factors evaluated by the investigating authorities be "objective and quantifiable"; and elimination of the factor concerning the capacity of companies to generate capital.

106. In April 2005, an agreement was published containing the transitional safeguard mechanism to be found in the Protocol of Accession of the People's Republic of China to the WTO¹⁴⁸, and in August that year the administrative provisions required to implement the said mechanism were issued.¹⁴⁹ In January 2006, the LCE was amended to allow the SE to impose safeguard measures as a result of investigations carried out in that regard in the past, the Ministry only had the authority to recommend the corresponding measures to the President of the Republic. By 31 July 2007, Mexico had not made use of the transitional safeguard mechanism provided in China's Protocol of Accession to the WTO.

107. Mexico reserved the possibility of utilizing the special safeguard provided in the Agreement on Agriculture in respect of 294 tariff headings, but has notified the Committee on Agriculture that

¹⁴⁵ WTO documents WT/DS295/R of 6 June 2005 and WT/DS295/AB/R of 29 November 2005.

¹⁴⁶ WTO document WT/DS331/R of 8 June 2007.

¹⁴⁷ Amendments to the LCE published in the Official Journal of the Federation of 13 March 2003.

¹⁴⁸ Agreement published in the Official Journal of the Federation of 21 April 2005.

¹⁴⁹ Agreement published in the Official Journal of the Federation of 23 August 2005; revision published on 7 April 2006.

between 2000 and 2005 it had not utilized this provision.¹⁵⁰ In connection with this Review, Mexico indicated that it had not used this safeguard mechanism. Mexico also reserved the right to apply the transitional safeguard provided by Article 6 of the Agreement on Textiles and Clothing, but has not utilized this provision.¹⁵¹

108. During the period under review, Mexico notified the WTO of the initiation of a safeguards investigation. The notification was submitted in August 2002 and refers to imports of plywood panels, plywood or triplay.¹⁵² The investigation concluded without any measures being imposed because the complainant withdrew.¹⁵³

(viii) Technical regulations and standards

(a) Legal and institutional framework

109. The Agreement on Technical Barriers to Trade (TBT Agreement) came into effect in Mexico on 1 January 1995. In addition to this Agreement, the basic legal framework for standardization and conformity assessment is to be found in the Federal Law on Metrology and Standardization (LFMN) of 1992¹⁵⁴ and its Implementing Regulations of 1999.¹⁵⁵ The Dirección General de Normas – DGN (Directorate-General of Standards) of the SE acts as the enquiry point for the purposes of paragraphs 1 and 3 of Article 10 of the TBT Agreement.¹⁵⁶ The DGN is also the administrative unit responsible for the notification procedures laid down in the Agreement. Mexico's most recent declaration on the implementation and administration of the TBT Agreement was notified in July 1996.¹⁵⁷

110. The Comisión Nacional de Normalización (National Standardization Commission), created pursuant to the LFMN, is responsible for coordinating standardization policy and for the activities of the Federal Public Administration's agencies and bodies competent in this sphere¹⁵⁸, as well as for approving the national standardization programme published annually in the Official Journal of the Federation and notified to the WTO by Mexico each year.¹⁵⁹ The Commission is composed of the public authorities responsible for issuing technical regulations and standards, private standardization bodies and representatives of academia, industrial, commercial and consumer groups.¹⁶⁰

111. Mexico's standardization system comprises three categories of instrument: technical regulations (NOMs); standards (Normas Mexicanas – NMXs (Mexican standards); and normas de

¹⁵⁰ WTO document G/AG/N/MEX/12 of 25 April 2006.

¹⁵¹ Mexico submitted its lists of textile products and clothing included in the first and second stages of integration into the GATT 1994 and to which it was not possible to apply special safeguard measures. WTO documents G/TMB/N/249 of 27 May 1997 and G/TMB/N/401 of 21 May 2001.

¹⁵² WTO document G/SG/N/6/MEX./1 of 29 August 2002.

¹⁵³ The final resolution was published in the Official Journal of the Federation of 2 July 2005.

¹⁵⁴ Published in the Official Journal of the Federation of 1 July 1992; amended in 1997, 1999 and 2006 (the latest amendment was published in the Official Journal of the Federation of 28 July 2006).

¹⁵⁵ Published in the Official Journal of the Federation of 14 January 1999.

¹⁵⁶ WTO document G/TBT/2/Add.14 of 19 July 1996.

¹⁵⁷ Ibid.

¹⁵⁸ These are the Ministries of: the Economy; Social Development; the Environment and Natural Resources; Energy; Agriculture, Livestock, Rural Development, Fisheries and Food; Communications and Transport; Health; Labour and Social Welfare; and Tourism; as well as the PEMEX and the Federal Electricity Commission.

¹⁵⁹ The most recent notification is contained in WTO document G/TBT/GEN/7/Add.5 of 20 October 2006.

¹⁶⁰ Articles 59 and 60 of the LFMN.

referencia – NRs (reference standards). The NOMs are binding and are intended to establish specifications for goods, services or production processes in order to guarantee the safety of persons, protect human, animal and plant health, as well as natural resources and the environment. The NMXs are intended to guide producers and consumers and promote quality; they are voluntary, except when their application is required by a NOM if the producers, on their own initiative, declare that their products or services comply with a specific standard or when public bodies purchase goods or services. The NRs are drawn up by decentralized bodies of the Federal Public Administration in order to establish specifications for goods and services that are the subject of government procurement, when there is no NMX or any international standard or when these cannot be applied. The bodies which issue NRs are *Petróleos Mexicanos* (PEMEX) and the Federal Electricity Commission (CFE).

112. The DGN keeps a catalogue of standards that includes all the NOMs, the NMXs and the NRs in force, as well as drafts of new measures and the corresponding comments.¹⁶¹

(b) Technical regulations

113. Pursuant to the LFMN, the development and revision of NOMs are subject to the following procedure: the agencies belonging to the Federal Public Administration, according to their respective competence, draw up draft NOMs, together with a regulatory impact assessment (MIR), and transmit these to the corresponding advisory committee on standardization, in which all interested parties from the public and private sectors may take part. In accordance with the Federal Law on Administrative Procedures, the MIRs must be put before the *Comisión Federal de Mejora Regulatoria – COFEMER* (Federal Regulatory Improvement Commission), whose decision is an essential requirement before the NOMs can be published in the Official Journal of the Federation.¹⁶²

114. Pursuant to the legislation, when it is foreseen that the proposed NOM will have a significant impact on the domestic economy or on a specific sector, the declaration must include a monetary cost/benefit analysis as well as a comparison with international standards.¹⁶³ The authorities have indicated that, in practice, all draft NOMs require a cost/benefit analysis through the MIR. Once the draft NOM has been approved by the respective advisory committee, it is published in the Official Journal of the Federation for public consultation for a period of 60 days and is notified to the WTO. The replies to comments received as well as any amendments to the draft are published in the same way. The competent agency then publishes the final version of the NOM in the Official Journal of the Federation. In general, a period of no less than 60 days is allowed for the entry in force of the NOM after it has been published.¹⁶⁴

115. The competent agencies are authorized to issue emergency NOMs when unexpected events occur that jeopardize the achievement of the LFMN's objectives. Emergency NOMs remain in effect for a maximum of six months and may be extended for a further six months. If the agency issuing an emergency NOM decides to extend its application or make it permanent, it must submit it as a draft according to the normal approval procedure.

¹⁶¹ The catalogue of standards may be consulted at: http://www.economia_noms-gob.mx and at: <http://www.economia-nmx.gob.mx/>.

¹⁶² Information on the MIRs can be consulted at: <http://www.cofemer.gob.mx>.

¹⁶³ Article 45 of the Federal Law on Metrology and Standardization.

¹⁶⁴ See Mexico's communication to the TBT Committee on Good Regulatory Practice, WTO document G/TBT/W/248 of 3 November 2004.

116. The LFMN provides that NOMs should be revised every five years after their entry into force. The outcome of the revision must be notified to the technical secretariat of the National Standardization Commission. If no such notification is made, the technical secretariat must order annulment of the NOM and the agency which drew it up must publish the annulment in the Official Journal of the Federation.

117. Since the previous Review of Mexico, the number of NOMs adopted has increased slightly. By June 2007, 795 NOMs were in force, compared with 717 in August 2001. Of the total NOMs, only two were emergency standards; there were also 201 draft NOMs going through the approval process.¹⁶⁵ According to the DGN's catalogue, the NOMs mainly apply to the following sectors: waste management; services related to agriculture and forestry; computer, communication and other equipment; electronic components and accessories; air transport; medical services; fishing; activities by the Government; and hospitals.

118. From January 2002 to the end of April 2007, Mexico submitted 132 notifications on technical regulations and conformity assessment procedures to the TBT Committee (Table III.5). The majority of these related to draft NOMs, followed by draft conformity assessment procedures; in both cases, a period for public consultation was allowed. In addition, some emergency NOMs were notified, as were the amendment or annulment of NOMs and draft NOMs. Seven agencies were involved in drawing up the NOMs notified, particularly the Ministries of the Economy and Energy.

Table III.5
Notifications of technical regulations and conformity assessment procedures to the TBT Committee, January 2002 – April 2007

	2002	2003	2004	2005	2006	2007
Total notifications ^a	34	53	24	8	10	3
Including:						
Draft NOMs	21	35	11	5	7	3
Draft conformity assessment procedures	3	4	1	3	0	0
Emergency standards	6	2	2	0	1	0
Amendment ^b	2	6	2	0	2	0
Annulment ^c	0	1	3 ^e	0	0	0
Other ^d	2	5	5	0	0	0
Bodies responsible:						
Ministry of Agriculture (SAGARPA)	1	3	0	0	1	0
Ministry of Communications and Transport (SCT)	9	5	4	1	3	0
Ministry of the Economy (SE)	8	12	14	4	3	2
Ministry of Energy (SENER)	7	14	1	0	0	1
Ministry of the Environment and Natural Resources (SEMARNAT)	5	0	2	2	2	0
Ministry of Health (SSA)	4	19	3	0	1	0
Ministry of Labour and Social Welfare (STPS)	0	0	0	1	0	0

a Including notifications in documents bearing the symbol "Add", but excluding those with the symbol "Corr".

b Amendments or draft amendments to NOMs.

c Annulment of NOMs, emergency NOMs, or draft NOMs.

d Notice of extension of emergency NOMs; extension of the period for public consultation; or clarifications.

e Three notices communicating the annulment of five draft NOMs.

Source: WTO Secretariat, based on notifications submitted by Mexico.

119. During the period under review, comments were made in the TBT Committee on two draft technical regulations notified by Mexico. In one instance, the European Communities expressed concern at the lead and cadmium limits laid down in the draft NOM for glazed pottery ware, glazed ceramic ware and porcelain ware (G/TBT/N/MEX/69), stating that these were stricter than the limits

¹⁶⁵ Catalogue of Mexican Standards, consulted at: <http://www.economia-noms.gob.mx>.

set in the ISO's international standards.¹⁶⁶ In the second instance, concerning the draft NOM for pre-packaged products (G/TBT/N/MEX/95), the European Communities noted that the draft differed from the revised version of the international standard OIML R 87.¹⁶⁷ At the Committee's meeting in March 2005, Mexico stated that consultations had been held with the European Communities and agreement had been reached on how to deal with their comments.¹⁶⁸

120. In Mexico, the import of medicines requires sanitary authorization by the Comisión Federal para la Protección contra Riesgos Sanitarios – COFEPRIS (Federal Commission for Protection against Health Risks) of the Ministry of Health and importers of such products must be domiciled in Mexico.¹⁶⁹ Moreover, establishments wishing to import or market medicines and other health-related inputs must have a "sanitary registration".¹⁷⁰ In order to obtain such registration from the COFEPRIS, the requirements in the General Law on Health must be met, as well as those in the Regulations on Health-Related Inputs, various NOMs and the so-called "Farmacopea" regulations.

121. One of the requirements for obtaining sanitary registration is to be in possession of a sanitary licence for plants or laboratories producing medicines or biological products for human use.¹⁷¹ In other words, obtaining sanitary registration means establishing a plant or laboratory to produce medicines in Mexico, so in practice only manufacturers with an establishment in Mexico can be authorized to import or market medicines.

122. The requirement to be in possession of a licence for a plant or laboratory came into effect over three decades ago and seems to have contributed to the expansion and consolidation of Mexico's pharmaceutical industry, which had over 200 plants or laboratories in mid-2007 and supplied 86 per cent of the medicines consumed in Mexico; according to the authorities, it has also helped to ensure the sanitary responsibility of applicants for registration. In 2007, the Government started work on modifying this requirement and setting up an alternative scheme that would guarantee the safety and efficacy of medicines; in October 2007, it was thought that the amendments to the Regulations on Health-Related Inputs would be published and come into effect at the end of this year.

(c) Accreditation and conformity assessment

123. All domestic and imported products must comply with the corresponding technical regulations. For domestic products, compliance with the NOMs is verified both at the production and distribution sites; for imported products, verification usually takes place at the border. Pursuant to the LCE, the SE is responsible for publishing in the Official Journal of the Federation those NOMs compliance with which must be verified by the customs authorities at the point of entry into Mexico; only imported products identified by their HS code can be verified. Independently of the verification carried out at the point of entry, compliance with the NOMs can also be verified once the products

¹⁶⁶ WTO documents G/TBT/M/33 of 31 August 2004 and G/TBT/M/34 of 5 January 2005.

¹⁶⁷ WTO document G/TBT/M/34 of 5 January 2005.

¹⁶⁸ WTO document G/TBT/M/35 of 24 May 2005.

¹⁶⁹ Articles 295 and 285 of the General Law on Health.

¹⁷⁰ Article 258 of the General Law on Health. In addition to medicines, inputs for health include psychotropic substances, narcotics, and raw materials and additives for preparing medicines, as well as medical appliances, prostheses, diagnostic agents, surgical and therapeutic material (Article 194 bis of the General Law on Health).

¹⁷¹ Article 168 of the Regulations on Health-Related Inputs.

have entered Mexico. A list of NOMs to be verified by the customs authorities was published in the Official Journal of the Federation of 27 March 2002.¹⁷²

124. With the exception of certain products to which labelling requirements apply, the import of goods subject to NOMs verifiable at the border must be accompanied by the original or a copy of the corresponding NOM certificate. In order to obtain a NOM certificate, the importer must send samples to a laboratory accredited by the competent Mexican authority. After it has been ensured that the product complies with the NOM, the competent agency or the accredited private certification entity issues the certificate in the name of the importer. Some imports are exempt from compliance with NOMs, for example, samples and goods not intended for sale and those coming under special customs regimes (such as temporary import and bonded warehouses).

125. Conformity of products with the NOMs is assessed by the competent agencies, certification entities, testing or calibration laboratories, or verification units authorized by an accreditation entity, and, where applicable, approved by the corresponding agencies. The Entidad Mexicana de Acreditación – EMA (Mexican Accreditation Entity) is the only private entity authorized to accredit conformity assessment bodies. In line with its policy to promote participation by the private sector in standardization and conformity assessment activities, Mexico has a large number of private bodies and laboratories carrying out these tasks.¹⁷³ Nevertheless, by mid-2007, these did not include any foreign certification bodies or testing laboratories.

126. Procedures for assessing conformity have to be developed by the competent agencies after consultation with interested parties and in accordance with the LFMN, its Implementing Regulations and international guidelines. The procedures must be published in the Official Journal of the Federation for public consultation (unless they are contained in the corresponding NOM) and, if they involve additional formalities, they have to be transmitted to the SE for its opinion before they are issued. Conformity assessment procedures issued by the SE were published in the Official Journal of the Federation of 24 October 1997 and have been amended on several occasions; the most recent amendment being in July 2004.¹⁷⁴ Other Federal Government agencies have only partly published their respective procedures.

127. The SE's procedures require that the importer obtain a separate certificate for each product he wishes to import. The SE, however, allows producers in countries with which Mexico has FTAs to submit their products for testing and the certificate thus obtained may be used by other importers. This procedure, known as extension of certification, is undertaken at the request of the manufacturer and has mainly been used for electrical and electronic goods. In the case of NOMs issued by other agencies, importers must obtain a certificate for each product they wish to import, whether or not it comes from countries with which Mexico has an FTA.

128. In Mexico, conformity assessment is generally undertaken by a third party, in other words, through an accredited body independent of the supplier or buyer in order to obtain impartial and

¹⁷² The list has been amended and supplemented on several occasions by means of agreements published in the Official Journal of the Federation on the following dates: 8 November 2002, 11 July 2003, 5 January and 15 April 2004, 3 February, 17 May and 26 October 2005, 2 February and 3 May 2006, and 6 July 2007.

¹⁷³ In October 2007, there were 47 certification bodies, 890 testing laboratories, 344 calibration laboratories and 947 verification units. The lists of these bodies and laboratories can be consulted at: <http://www.economia-normas.gob.mx> y en <http://www.ema.org.mx>.

¹⁷⁴ The amendments were published in the Official Journals of the Federation of: 20 February and 24 May 2000, 10 December 2001, 5 July 2002, 4 March 2003 (compilation) and 27 July 2004.

reliable decisions. The assessment procedure based on the supplier's declaration of conformity (DCP) only applies to a few cases of low-risk products.

129. Mexico has signed various mutual recognition agreements (MRAs) with its trade partners. It has agreements on recognition of laboratory testing for specific electrical products, household appliances and tyres with the United States and Canada. In addition, several Mexican private entities have signed mutual recognition agreements with certification bodies or testing laboratories in Canada, Colombia, France, Hong Kong, China, the Netherlands, Norway, Sweden, the United Kingdom, the United States, and the Asia-Pacific Economic Cooperation Forum (APEC); the majority of these relate to electrical equipment.¹⁷⁵

130. Under the Inter-American Telecommunication Commission (CITEL) framework, Mexico hoped to implement the first phase of the recognition agreement on laboratory testing for telecommunications equipment during 2007. Mexico also participates in other international and regional bodies such as the Quality Assessment Recognition System (QSRA); InterAmerican Accreditation Cooperation (IAAC); and International Laboratory Accreditation Cooperation (ILAC). In October 2006, an agreement was signed with the latter under which the EMA recognized the accreditation of testing and calibration laboratories granted by members of the ILAC.

131. The network of testing and calibration laboratories is supervised by the DGN, with the participation of the EMA, the Centro Nacional de Metrología – CENAM (National Metrology Centre) and the Procuraduría Federal del Consumidor – PROFECO (Federal Consumer Protection Agency). The CENAM is the national reference laboratory and is responsible for maintaining and developing national measurement standards, as well as for supplying calibration, assessment and advisory services to secondary laboratories and companies. The DGN is preparing a project for the formal introduction of the Sistema Nacional de Calibración – SNC (National Calibration System), with the objective of ensuring the uniformity and reliability of measurements effected in Mexico in relation to commercial transactions of goods and services, as well as of industrial processes and the corresponding scientific and technological development work. The SNC is composed of the SE, the CENAM, the EMA and accredited calibration laboratories, together with other experts in the field. The draft SNC project was submitted to the authorities for approval in 2006 and in October 2007 the process was continuing.

(d) Marking, labelling and packaging

132. Pursuant to the provisions in the LFMN and other instruments such as the Federal Consumer Protection Law and the General Law on Health, the requirements concerning commercial information, including labelling and marking, must be set out in a NOM. Domestic and imported products are subject to the same marking and labelling requirements.

133. In April 2007, 16 NOMs referring expressly to commercial information and labelling requirements were in effect. In addition, there may be special labelling requirements in other NOMs. The three most important technical regulations in this respect are NOM-050-SCFI-2004¹⁷⁶, which lays down general requirements for packaging and labelling; NOM-051-SCFI-1994¹⁷⁷, which contains labelling requirements for pre-packaged foodstuffs and non-alcoholic beverages; and NOM-004-SCFI-2006¹⁷⁸, covering the labelling of textile products and clothing. The draft for the

¹⁷⁵ The most up-to-date information on the mutual recognition agreements signed by Mexico was published in the Official Journals of the Federation of 5 April and 24 October 2000, and 29 March 2006.

¹⁷⁶ Published in the Official Journal of the Federation of 1 June 2004.

¹⁷⁷ Published in the Official Journal of the Federation of 24 January 1996.

¹⁷⁸ Published in the Official Journal of the Federation of 21 June 2006.

latter NOM was notified to the WTO in October 2003, allowing the regulatory time for receiving written comments from other Members. The definitive NOM came into force on 21 August 2006 and was the subject of an amendment notified to the WTO in September 2006.¹⁷⁹

134. There are also labelling or packaging requirements for products such as hides and skins; electronic and electrical goods and household appliances; paints and dyes; flame retardants; canned tuna; certain fruits; alcoholic beverages; toys, perfumery and cosmetic products; and lubricant oils for petrol or diesel engines.

(e) Standards

135. The national standardization bodies, which are non-profit-making private entities, develop and issue voluntary standards (NMXs). These bodies must be registered with the SE and prove that their standardization work is conducted through committees that represent all interested sectors and have national coverage. Acceptance of the TBT Agreement's Code of Good Practice is a requirement for the registration of national standardization bodies.¹⁸⁰ In 2006, there were nine standardization bodies.

136. Pursuant to the LFMN, the NMXs must be included in the National Standardization Programme; accordingly, the work programmes of those institutions that have adopted the Code of Good Practice are incorporated into the National Standardization Programme which Mexico notifies annually to the WTO. The NMXs must be based on international standards, except where these are not suitable. The NMXs must also be put up for public consultation for a minimum period of 60 days prior to being issued, in the form of a notice published in the Official Journal of the Federation containing an extract of the NMX; the full text may be obtained or requested from the body responsible for drafting it. The same procedure as that applicable to developing an NMX applies to its revision or annulment, but in some cases they must be revised or updated within five years of the declaration of their entry into force.

137. In those areas not covered by national standardization bodies or when the standards they issue do not reflect the interests of the sectors involved, the SE may on its own initiative or at the request of any other competent agency or interested party issue an NMX. In June 2007, there were 5,738 NMXs (compared with 5,900 in August 2001) and 170 draft standards.¹⁸¹ The standards apply above all to the chemical, food, electricity, electronics, agricultural, iron and steel and building materials industries.

(ix) Sanitary and phytosanitary measures

(a) Legal and institutional framework

138. In addition to the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), some of the other main legal instruments applicable in this area are: the LFMN; the Federal Animal Health Law (2007)¹⁸²; the Federal Plant Health Law (1994)¹⁸³; the

¹⁷⁹ WTO documents G/TBT/N/MEX/84 of 8 October 2003 and G/TBT/N/MEX/84/Add.1 of 13 September 2006.

¹⁸⁰ The most recent list of Mexican standardization institutions that have accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards may be consulted in WTO document G/TBT/CS/2/Rev.13 of 2 March 2007.

¹⁸¹ Catalogue of Mexican Standards, consulted at: <http://www.economia-noms.gob.mx>.

¹⁸² Published in the Official Journal of the Federation of 25 July 2007.

Internal Regulations of the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) of 2001; the General Law on Health¹⁸⁴, the Regulations on Sanitary Control of Products and Services of 1999¹⁸⁵, the Regulations of the Federal Commission for Protection against Sanitary Risks¹⁸⁶, and the General Law on Sustainable Development (2003). Pursuant to the SPS Agreement, Mexico notified that its national enquiry/notification point was the SE's DGN.¹⁸⁷

139. The Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria – SENASICA (National Health, Food Safety and Agri-Food Quality Service), a decentralized agency of the SAGARPA, is responsible for Mexico's animal and plant health policy. Its tasks include control and monitoring to ensure that animals and plants, their products and by-products, imported into, transported through or exported from Mexico do not endanger the health of agriculture and livestock, aquaculture and fisheries. The SAGARPA's Directorates-General of Animal Health, Plant Health, Food Safety and Animal and Plant Health Inspection act as the SENASICA's administrative and technical units. The COFEPRIS, which is a decentralized agency of the Ministry of Health, is responsible for the health regulation, control, monitoring and promotion of products that might present risks for human health, including foodstuffs, beverages, nutrients and pesticides. The Directorate-General of Forest and Soil Management, belonging to the SEMARNAT, is responsible for national policy on the health of forests.

140. Mexico is a member of the three international organizations referred to in the SPS Agreement, namely, the Codex Alimentarius Commission (FAO/WHO), the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). Mexico also participates in regional bodies such as the North American Plant Protection Organization (NAPPO) and the International Regional Organization for Plant and Animal Health (OIRSA).

141. In order to lessen the potential risk of introducing quarantine diseases into Mexico, by mid 2007 Mexico had signed phytosanitary cooperation agreements with 15 countries.¹⁸⁸ Agreements were also being drawn up with five other countries.¹⁸⁹ It has agreed to protocols and "work programmes" on imports (and exports) with the phytosanitary authorities of a number of countries in which the phytosanitary requirements and procedures to be fulfilled for the import (and export) of certain plant products and their by-products are set out. All the FTAs signed by Mexico contain provisions on sanitary and phytosanitary measures.

142. As regards animal health, Mexico has signed agreements with Chile, the United States and Japan under which these countries recognize zones free of Newcastle disease in Mexico. In the case of classical swine fever, Mexico has obtained recognition of free zones from Chile, Canada, the United States and Japan. For its part, Mexico has recognized Chile as being free of avian influenza (sub-type H7N3). By October 2007, Mexico had not signed any mutual recognition agreements on animal health with other countries.

¹⁸³ Published in the Official Journal of the Federation of 5 January 1994 (latest revision published on 26 July 2007).

¹⁸⁴ Published in the Official Journal of the Federation of 7 May 1997 (latest amendment published on 6 June 2006).

¹⁸⁵ Published in the Official Journal of the Federation of 9 August 1999 (not revised).

¹⁸⁶ Published in the Official Journal of the Federation of 13 April 2004 (not revised).

¹⁸⁷ WTO documents G/SPS/ENQ/19/Add.2 and G/SPS/NNA/9/Add.2, both of 26 June 2006.

¹⁸⁸ Algeria, Argentina, Bulgaria, Canada, Chile, China, Cuba, Ecuador, Guatemala, India, the Netherlands, New Zealand, Peru, the United States and Uruguay.

¹⁸⁹ Brazil, Lebanon, Poland, Romania and Turkey.

(b) Drafting and implementation

143. Measures intended to prevent the introduction of pests and diseases into Mexico are in the form of NOMs, animal and plant health requirement sheets or phytosanitary import certificates in the case of forestry. NOMs are drafted and implemented according to the same procedures and periods as those mentioned in section (viii) above.

144. The National Advisory Committees on Standardization of Animal Health Protection (CONAPROZ), Phytosanitary Protection (CONAPROF) and the Environment and Natural Resources (COMARNAT) are responsible for drafting NOMs concerning animal health, phytosanitary and forestry matters, respectively. These Committees are composed of associations of industrialists, service providers, traders, producers, academic institutions and representatives of the SAGARPA, the SEMARNAT, the SE and the PROFECO. The Committees examine the draft NOMs and their regulatory impact assessments, approve them and transmit them for publication in the Official Journal of the Federation; a period of 60 days for public consultation then starts and the corresponding notification is made to the WTO.

145. In accordance with the laws on animal health, plant health and sustainable forest development, the NOMs must be based on scientific principles and a cost/benefit analysis, including a risk assessment, and must also take into account international standards. If contingencies arise, the SENASICA and the SEMARNAT have the power to publish emergency NOMs, following the procedures defined in the LFMN.

146. In August 2007, 60 NOMs on animal health were in effect, 41 on plant health, six on food safety and six on forest protection. The authorities have indicated that all the plant health NOMs are based on the guidelines and the International Standards for Phytosanitary Measures (ISPMs) of the IPPC, those on animal health are based on the OIE regulations, while food safety NOMs are based on the standards of the Codex Alimentarius. The NOMs on animal and plant health and food safety can be consulted on the Internet in the respective databases kept by the SENASICA.¹⁹⁰ The standards on health control and food safety issued by the COFEPRIS can be found on the Internet site of the Ministry of Health.¹⁹¹

147. From January 2002 to August 2007, Mexico submitted 51 notifications on sanitary and phytosanitary regulations to the SPS Committee; of these, 13 corresponded to draft NOMs, two to conformity assessment procedures and 11 to emergency NOMs. Amendments were also notified (12) as was annulment (seven) of various sanitary and phytosanitary regulations, and the adoption of the new Animal Health Law (Table III.6). The objectives pursued in the notifications related, in order, to: food safety, animal health, protection of plants and others, while several notifications cited more than one objective.

Table III.6
Notification of sanitary and phytosanitary regulations to the SPS Committee, January 2002 – August 2007

	2002	2003	2004	2005	2006	2007
Total notifications^a	16	17	10	5	0	3
Including:						
Draft NOMs	4	8	1	0	0	0
Draft conformity assessment procedures	0	0	0	2	0	0

Table III.6 (cont'd)

¹⁹⁰ See: http://senasicaw.senasica.SAGARPA.gob.mx/portal/html/senasica_principal/normalización.

¹⁹¹ See: <http://www.salud.gob.mx> and <http://www.cofepris.gob.mx>.

	2002	2003	2004	2005	2006	2007
Emergency standards	5	4	1	0	0	1
Amendment ^b	4	3	1	3	0	1
Annulment ^c	0	2	5	0	0	0
Other ^d	3	0	2	0	0	1
Authority responsible:						
Ministry of Agriculture (SAGARPA)	10	6	2	1	0	2
Ministry of the Environment and Natural Resources (SEMARNAT)	5	2	3	4	0	1
Ministry of Health (SS)	1	9	5	0	0	0
Objective:						
Food safety	2	8	5	1	0	0
Animal health	4	2	2	1	0	2
Plant protection	4	5	3	3	0	1
Other	6	2	0	0	0	0

a Including notifications in documents bearing the symbol "Add", but excluding those with the symbol "Corr".

b Amendment of NOMs or draft amendments of NOMs.

c Annulment of NOMs, emergency NOMs, or draft NOMs.

d Includes notice of extension of emergency NOMs and adoption of a law.

Source: WTO Secretariat based on the notifications submitted by Mexico.

148. During the period under review, some Members of the WTO cited five of the sanitary or phytosanitary measures adopted by Mexico as trade concerns in the SPS Committee.¹⁹² Two of these were resolved in 2006.¹⁹³ Over the same period, Mexico participated in one instance as a defendant in an SPS-related dispute; the case related to Mexican measures on the import of dried beans, raised by Nicaragua. In March 2004, Nicaragua withdrew its request for consultations after reaching a settlement in its negotiations with Mexico.¹⁹⁴

149. The Agreement on the Classification and Codification of Imported Goods (hereinafter the SAGARPA Agreement)¹⁹⁵ determines the list of products whose import is subject to sanitary or phytosanitary regulations by the SAGARPA. The products listed therein must meet the criteria in the corresponding NOMs¹⁹⁶, or the phytosanitary requirement sheets (HRFs)¹⁹⁷ or animal health requirement sheets (HRZs)¹⁹⁸, as well as inspection requirements.

150. Persons wishing to import plants, their products and by-products listed in the SAGARPA Agreement and for which there is no special NOM must request an HRF from the Directorate-General of Plant Health or the offices designated by the SAGARPA, which must reply within a period of ten working days. An HRF can only be issued when there are already phytosanitary import requirements for the products or origins requested. If this is not the case, the importer must request a pest risk analysis (ARP) pursuant to NOM-006-FITO-1996.

¹⁹² These were the following measures: ban on the import of milled rice (raised by Thailand); restrictions on imports of bovine meat (Argentina); restrictions on Austrian products (European Communities); restrictions on poultry (United States); and restrictions on the import of dried beans (United States).

¹⁹³ These were the ban on the import of milled rice and the restrictions on the import of dried beans. WTO document G/SPS/GEN/204/Rev.7/Add.3 of 7 February 2007.

¹⁹⁴ WTO documents in the WT/DS284 series.

¹⁹⁵ Agreement on the classification and codification of goods whose import is regulated by the SAGARPA, published in the Official Journal of the Federation of 30 June 2007.

¹⁹⁶ The phytosanitary and animal health NOMs for imports may be consulted on the Internet at: http://senasicaw.senasica.SAGARPA.gob.mx/portal/html/senasica_principal/normalizacion.

¹⁹⁷ The HRF may be consulted at: <http://senasicaw.senasica.sagarpa.gob.mx/requisitosfito/Inicio.aspx>.

¹⁹⁸ The HRZ are available at: <http://148.245.191.4/zooweb/Funcion.aspx>.

151. The import of animals, their products and by-products listed in the SAGARPA Agreement require an HRZ from the Directorate-General of Animal Health or the offices designated by the SAGARPA. If an HRZ for the product requested already exists in the SAGARPA's public catalogue, it is issued immediately. If this is not the case, a decision is taken within five working days and the applicant is informed whether or not a technical analysis is required. In some cases, the establishment of the animal health requirements has to be agreed with the authorities of the exporting country, so the time limit for the final reply will depend on the outcome of the consultations with these countries.

152. The HRFs and HRZs apply according to the product and its origin and are governed by the respective manuals of procedure for compliance with the phytosanitary and animal health requirements.¹⁹⁹ The authorities have indicated that the requirements laid down in the HRF are based on the pest risk analysis principles of the IPPC and that those laid down in the HRZ are based on national standards and the international reference standards determined by the OIE.

153. In addition to the list of importers kept by the SHCP, there is no special register in which importers of plants, their products and by-products or the importers of animals and animal products must be registered. The import of plants, their products and by-products is subject to certificates issued by the national plant protection organization in the exporting country; products that require such a certificate are those which represent a threat of disease, determined through a risk analysis and referred to in ISPM 12 of the IPPC. The animal health requirements laid down in the HRZ, which must be complied with in the country of origin of the goods, must be officially certified by the competent authority.

154. The majority of products listed in the SAGARPA Agreement are subject to physical inspection when entering Mexico and to obtaining an animal health or phytosanitary import certificate. These certificates are issued at the point of entry by the Oficina de Inspección de Sanidad Agropecuaria – OISA (Agricultural Health Inspection Office) of the SAGARPA. Compliance with the animal and plant health requirements does not exempt the importer from the licences required by the SE (section (2)(vi) above), the Ministry of Health or other authorities.

155. Forestry products and by-products which require phytosanitary certificates are listed in the Agreement, which establishes the classification and codification of goods whose import and export are regulated by the SEMARNAT.²⁰⁰ The corresponding phytosanitary certificates must be requested from the Directorate-General of Forest and Soil Management or the state delegations of the SEMARNAT, which must reply within a period of six working days. In addition, all the products listed in the SEMARNAT Agreement are subject to physical inspection when entering Mexico.

156. Mexico has 87 plant and animal health inspection centres at the entry points into Mexico and 43 internal verification points in five quarantine zones. There are 74 forestry phytosanitary inspection centres. Some products may only enter through specified points. For example, animals and their products, as well as products for veterinary use that imply an animal health risk, may only be imported through the customs posts jointly determined by the SAGARPA and the SHCP.²⁰¹ Likewise, meat products must come through customs posts where there is the necessary infrastructure for verification or through internal verification points. Mexico has also established inspection in the country of origin, in which Mexican technicians cooperate with the competent authorities of the

¹⁹⁹ Manual of procedure for compliance with phytosanitary requirements, published in the Official Journal of the Federation of 21 September 1999; and manual of procedure for obtaining an animal health requirement sheet, published on 24 September 1999.

²⁰⁰ Published in the Official Journal of the Federation of 30 June 2007.

²⁰¹ Article 28 of the Federal Law on Animal Health.

exporting country. In the case of live animals, inspection may be either abroad or at the entry points into Mexico.

157. In assessing conformity and carrying out inspections, the authorities are supported by a number of private certification bodies, inspection units and testing laboratories approved by the SAGARPA in accordance with the laws on animal and plant health, the LFMN and the NOMs issued for this purpose. In the forestry sector, the SEMARNAT has a reference laboratory for forest parasitology analysis.

158. The SENASICA has authority and responsibility for international trade-related risk analysis, in cooperation with other competent authorities. This is carried out by the Epidemiological Monitoring Directorate of the Directorate-General of Animal Health in the case of imports of animals, their products and by products, and by the National Phytosanitary Reference Centre of the Directorate-General of Plant Health in the case of products and by-products of plant origin. In the case of forestry products, the Directorate-General of Forest and Soil Management of the SEMARNAT is responsible. According to the Mexican authorities, risk analysis is based on the relevant international guidelines.

159. In the case of plant health, the risk analysis methodology comprises three stages: (i) initiation of the analysis (identification of the potential pests or quarantine diseases); (ii) assessment of the risk (in terms of the potential for its establishment, dispersion, economic damage and entry); and (iii) risk management (development, evaluation, comparison and selection of measures to combat it). As regards animal health, the process includes the identification of risks, risk assessment, management and communication of the risk. There is no predetermined time for the conclusion of risk analyses and this depends on the complexity of the case and the availability of information and resources. The State assumes the cost of risk assessment.

160. Imports of foodstuffs, alcoholic and non-alcoholic beverages, food supplements and pesticides are subject to sanitary control by the Ministry of Health.²⁰² The Agreement establishing the classification and codification of goods and products whose import, export, admission and exit are subject to sanitary regulations by the Ministry of Health determines those products which require prior import authorization.²⁰³ Importers of these products must be domiciled in Mexico²⁰⁴ and comply with the applicable provisions. In addition, imports of foodstuffs, food supplements, beverages and raw materials must be accompanied by the following documents, as applicable, issued by the competent authority in the country of origin: sanitary certificate or free sale certificate and laboratory analysis, as well as the original label and the label under which the product is to be marketed in Mexico. For those products that do not require a prior import licence under the General Law on Health, a certificate issued by the health authority in the country of origin must be submitted and the Ministry of Health must be informed of the arrival and destination of the goods.²⁰⁵

161. Mexico signed the Cartagena Protocol on Biosafety, which came into force on 11 September 2003. The Comisión Intersecretarial de Bioseguridad y Organismos Genéticamente Modificados – CIBIOGEM (Interministerial Commission on Biosafety and Genetically Modified Organisms)²⁰⁶ is responsible for coordinating government policy on the production, consumption,

²⁰² Articles 284 and 298 of the General Law on Health.

²⁰³ Published in the Official Journal of the Federation of 1 November 2004.

²⁰⁴ Article 285 of the General Law on Health.

²⁰⁵ Article 286 bis of the General Law on Health.

²⁰⁶ The CIBIOGEM is composed of those in charge of the Ministry of Health, the SAGAR, the SEMARNAT, the SE, the SHCP, the Ministry of Public Education and the National Scientific and Technological Council; it has specialized committees to follow up specific matters.

import, export and transport of genetically modified organisms (GMOs). In accordance with the Law on the Biosafety of Genetically Modified Organisms, published in the Official Journal of the Federation of 18 March 2005, liberalization of trade and import of any GMO is subject to the relevant licence issued by the competent authority (either the SAGARPA or the SEMARNAT depending on the circumstances) after a risk analysis has been carried out on a case-by-case basis. Licences are issued within a period of four months. Subsequent imports do not require new licences provided that they concern the same GMO to be used in the same area.

162. The marketing or import of GMOs for human use or consumption (including grains) and for the processing of food for human consumption requires authorization by the Ministry of Health. After evaluating the technical studies submitted by the interested parties on a case-by-case basis, the Ministry determines whether a "letter of no objection to marketing" can be issued for the product in question. The following are some of the biotechnological products for human consumption approved for sale in Mexico: tomatoes, potatoes, cotton, canola and maize.²⁰⁷

163. In principle, Mexico does not impose restrictions on imports of animals and animal products treated with hormones. Nevertheless, in meat processing only the hormones listed in the agreement establishing the classification and requirements for veterinary pharmaceuticals by the risk level of their active ingredients may be used.²⁰⁸ This agreement also indicates the active ingredients that are restricted or banned for use in animals.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

164. All exporters must submit an export declaration to the customs, through a customs agent or broker, accompanied by a commercial invoice and, where applicable, documents proving compliance with the regulations and non-tariff restrictions on exports. All exporters must be listed in the Federal Register of Taxpayers.

165. In addition, pursuant to the Law on the IEPS, exporters of beverages with an alcoholic content and beer, alcohol, denatured alcohol, non-crystallized honey and processed tobacco must be listed in the Register of Sectoral Exporters kept by the General Customs Administration.²⁰⁹ This Register was established in 1998 in order to avoid fictitious exports intended to evade payment of internal taxes.

(ii) Export taxes and duties

166. Exports are subject to the DTA unless they are going to a country that is party to a free-trade agreement signed with Mexico.²¹⁰ The general rate is Mex\$202 (around US\$18) per transaction.

167. The products subject to the IEPS (beverages with an alcoholic content and beer, alcohol, non-denatured alcohol, non-crystallized honey and processed tobacco) are not subject to this tax if they are

²⁰⁷ The list of biotechnological products approved for sale may be consulted at: <http://www.salud.gob.mx>.

²⁰⁸ Published in the Official Journal of the Federation of 12 July 2004.

²⁰⁹ Article 19, section XI, of the Law on the IEPS, published in the Official Journal of the Federation of 30 December 1980; the latest revision was published on 27 December 2006.

²¹⁰ Article 29 of the Federal Law on Duty; latest amendment was published in the Official Journal of the Federation on 27 December 2006.

exported, provided that the exporters are listed in the Register of Sectoral Exporters.²¹¹ The IEPS applies if the goods are disposed of in Mexico.

168. Table III.7 lists the products subject to export taxes and the corresponding rates. No minimum prices are used when applying them.

169. In the context of the present Review, the Mexican authorities indicated that, even though the revenue from export taxes was insignificant, they had mainly been kept for reasons of supply in the domestic market.

Table III.7
Goods subject to export taxes

HS heading	Description	Ad valorem duty (%)
0507.90.01	Shells and claws of turtles and parts or waste thereof	50
1211.90.05	Rauwolfia heterophila root	50
1506.00.02	Turtle fat or oil	50
2715.00.99	Other	25
3001.90.01	Human organs or tissue for therapeutic purposes, teaching or research	50
3001.90.02	Biological cardiac valve prostheses	50
3001.90.03	Bone substances	50
3001.90.04	Phospholipids of cerebral grey matter in powder form	50
3001.90.06	Heparinoid	50
3001.90.99	Other	50
3002.10.14	Human globular packages	50
3002.90.01	Bacteriological cultures for hypodermic or intravenous injections; lyophilized lactic bacillus	50
3002.90.02	Diphtheria antitoxin	50
3002.90.03	Human blood	50
3002.90.99	Other	50
3301.90.05	Alcoholate, extracts or tinctures derived from Rauwolfia heterophila root containing the alkaloid called reserpine	50
4301.80.03	[Skins] of wildcats, tiger ocelots and ocelots	50
9705.00.06	Articles of historic, palaeontological or ethnographic interest that have not been declared archaeological or historic monuments by the SEP	50
9706.00.01	Antiques of an age exceeding 100 years	50

Source: WTO Secretariat, based on the Decree containing the TIGIE, published in the Official Journal of the Federation of 18 June 2007.

(iii) Export prohibitions and restrictions and licensing regime

170. The export of some goods is prohibited, including certain products of animal origin, plants, narcotics and archaeological goods. This prohibition is based on the commitments in international agreements signed by Mexico (for example, CITES), the control of dangerous substances (such as narcotics), sanitary, phytosanitary and health reasons, and protection of the cultural and historical heritage.²¹²

171. A prior export licence issued by the SE is required for the export of 16 tariff headings (Table III.8); the grounds for these licences are the Mexican State's exclusive right to exploit and

²¹¹ Articles 8 and 9 (section XI) of the Law on the IEPS, published in the Official Journal of the Federation of 30 December 1980; the most recent revision was published on 27 December 2006.

²¹² The HS tariff headings concerned are: 0301.9901, 0302.6902, 0303.7901, 0410.0001, 1207.9101, 1208.9003, 1209.9907, 1211.9002, 1302.1102, 1302.1902, 1302.3904, 2833.2903, 2903.5202, 2903.5905, 2910.9001, 2931.0005, 2939.1101, 3003.4001, 3003.4002, 3003.9005, 3004.4001, 3004.4002, 3004.9033, 4103.2002, 4908.9005, 4911.9105, 9705.0005. See the Decree containing the TIGIE, published in the Official Journal of the Federation of 18 June 2007.

market non-renewable natural resources, provided by Article 27 of the Constitution. Since the previous Review of Mexico, the number of HS headings subject to a prior export licence has almost been halved (the previous report mentioned 28 headings subject to this requirement). The procedure for obtaining a prior export licence (like an import licence) is completed with the SE; the licence is free of charge and the time for a reply is 15 working days.

Table III.8
Goods subject to a prior export licence or notification to the Ministry of the Economy

HS heading	Description
Goods subject to a prior export licence	
2709.00.99	Other (other oils obtained from petroleum or bituminous minerals, crude)
2710.11.04	Petroleum spirit, except that included in heading 2710.11.03
27.10.19.04	Gas oil or diesel oil and mixtures thereof
2710.19.05	Fuel oil
2710.19.07	Paraffin oil
2710.19.08	Jet fuel (kerosene) and mixtures thereof
2710.19.99	Other (petroleum oils)
2711.12.01	Propane
2711.13.01	Butane
2711.19.01	Butane and propane, mixed together, in liquid state
2711.19.99	Other (petroleum gas and other gaseous hydrocarbons, in liquid state)
2711.29.99	Other (in gaseous state)
2712.20.01	Paraffin wax containing by weight less than 0.75 per cent of oil
2712.90.02	Micro-crystalline wax
2712.90.04	Waxes, except those included in headings 2712.90.01 and 2712.90.02
2712.90.99	Other (petroleum jelly, paraffin wax, petroleum wax)
Goods subject to automatic notification of export	
0702.00.01	"Cherry" tomatoes
0702.00.99	Other. Except: husk tomatoes or green tomatoes

Source: WTO Secretariat, based on the Agreement establishing the classification and codification of goods whose import or export is subject to a prior licence from the SE, published in the Official Journal of the Federation of 9 November 2005 and amendments thereto, including the most recent amendment published on 29 March 2007.

172. In addition, two tariff headings for tomatoes are subject to an automatic notification of export to the SE (Table III.8). Once this notification has been received, an automatic export licence is issued and is valid for four months.

173. Pursuant to an agreement on trade in cement between Mexico and the United States (March 2006), which ended the dispute at the WTO²¹³ as well as several disputes under Chapter 19 of the NAFTA, exports of Mexican cement to the United States are regulated through quotas administered by the SE by means of prior export licences.²¹⁴

174. Under the LCE, other Ministries belonging to the Federal Public Administration may impose restrictions, including prior import licensing, provided that these measures are submitted in advance to the Foreign Trade Commission for its opinion.²¹⁵

²¹³ United States – Anti-Dumping Measures on Cement. Request for consultations submitted by Mexico: WTO document WT/DS281/1 of February 2003. The Panel's work was suspended because of negotiations on reaching a mutually acceptable solution.

²¹⁴ The corresponding headings are: 2523.1001, 2523.2999 and 2523.9099.

²¹⁵ Article 27 of the 1993 LCE; the most recent amendment was published in the Official Journal of the Federation of 21 December 2006. The products whose export is subject to regulation by other agencies may be consulted at: <http://www.siicex.gob.mx/portalSiicex/SICETECA/SICETECA.html>.

(iv) **Tariff and tax concessions**

175. Mexico promotes exports by means of tariff and tax concessions and administrative facilities. During the period under review, the main export support programmes were still the Maquila programme and the PITEEX, which were amalgamated into a single instrument in November 2006. The High-Volume Exporting Companies (ALTEX) programme, the Foreign Trading Companies (ECEX) programme and import duty drawback are still in effect.

176. In July 2006, 3,179 companies had Maquila programmes and 3,339 had PITEEX programmes. According to the authorities, the companies benefiting from these two programmes accounted for 65 per cent of Mexico's total exports and 82 per cent of its exports of manufactures, in addition to employing 54 per cent of the workers in the manufacturing industry.²¹⁶

177. The authorities have indicated that at the end of 2006 there were 2,644 companies in the ALTEX programme, 340 in the ECEX programme and that requests for the refund of duty approved under the drawback programme between 2002 and 2006 amounted to 46,989.

178. The only export programme notified to the WTO by Mexico pursuant to Article 25 of the SCM Agreement is the PITEEX.²¹⁷ Prior to the previous Review of Mexico, some WTO Members posed questions regarding this notification and expressed concern that other export promotion programmes such as the Maquila, ALTEX, ECEX and drawback had not been notified.²¹⁸ In Mexico's view, these programmes do not comply fully with the notification requirements in Article 25 of the SCM Agreement. During the period under review, only one Member has commented on certain export promotion programmes not notified by Mexico, inter alia, some export credit and sectoral promotion programmes.²¹⁹ Mexico has replied to these comments.²²⁰

179. In accordance with the SCM Agreement, Mexico had to abolish the export-performance-related subsidies at the latest by 31 December 2002. Since 2001, no notifications of new or updated subsidies have been received from Mexico.

The Maquila and PITEEX programmes and the new IMMEX programme

180. Until November 2006, the Maquila²²¹ and PITEEX²²² programmes remained in effect; even though, over the period 2000 to 2003, both these programmes were the subject of several amendments²²³ in order to adapt them to the commitments undertaken under the NAFTA and the

²¹⁶ Decree amending the provisions on the promotion and operation of the in-bond assembly industry for export, published in the Official Journal of the Federation of 1 November 2006.

²¹⁷ WTO documents G/SCM/N/3/MEX of 21 November 1996, G/SCM/N/38/MEX of 17 November 1998 and G/SCM/N/60/MEX of 15 November 2000.

²¹⁸ Questions were posed by Argentina, Canada, Chile, the European Union, Poland, the Republic of Korea, Turkey and, the United States. Mexico's replies are contained in WTO documents G/SCM/Q2/MEX/11 of 20 June 1997, G/SCM/Q2/MEX/15 of 11 February 2000, and G/SCM/Q2/MEX/17 of 25 September 2001.

²¹⁹ WTO document G/SCM/Q2/MEX/16 of 8 June 2001.

²²⁰ Mexico's replies are contained in WTO document G/SCM/Q2/MEX/17 of 25 September 2001.

²²¹ Decree on the promotion and operation of the in-bond assembly industry for export, published in the Official Journal of the Federation of 1 June 1998 and amendments thereto of 13 November 1998, 30 October and 31 December 2000, and 12 May and 13 October 2003.

²²² Decree establishing temporary import programmes for the production of articles for export, published in the Official Journal of the Federation of 3 May 1990 and amendments thereto of 11 May 1995, 13 November 1998, 30 October and 31 December 2000, 12 May and 13 October 2003.

²²³ The amendments to the Decrees on the Maquila and PITEEX programmes were published in the Official Journal of the Federation of 31 December 2000, 12 May and 13 October 2003.

agreements with the EU and EFTA regarding restrictions on drawback, customs duty deferral and waivers for non-originating products.²²⁴ As a result of these amendments, the requirements and benefits under the Maquila and PITEX programmes were gradually harmonized. In general terms, both these schemes allow companies that meet certain minimum export requirements temporarily to import raw materials, spare parts and components free of duty, except as otherwise provided in the FTAs signed by Mexico, and at a VAT rate of 0 per cent. From 2001 onwards, temporary import of machinery and equipment under these programmes was subject to payment of the corresponding tariffs. Annual sales abroad exceeding US\$500,000 or exports amounting to at least 10 per cent of total sales are required for the temporary import of raw materials, trailers and containers. Exports accounting for at least 30 per cent of annual sales are required for the temporary import of machinery, equipment and various instruments.²²⁵

181. In order to streamline procedures and lower administrative costs both for companies and for the Federal Government, on 1 November 2006 the Decree on the Promotion of the Manufacturing and In-Bond Assembly (Maquiladora) Industry and Export Services (IMMEX) was published, amalgamating the Maquila and PITEX programmes into a single instrument that gradually came into force as of 13 November 2006.²²⁶ As a result of this amalgamation, the name of the Maquila programme was changed and the PITEX programme was terminated, even though the benefits of both programmes remained in effect until the IMMEX Programme entered into force fully, which was planned for 1 July 2007. In October 2007, however, it was decided to defer its full application until January 2008. The IMMEX Programme is for an indefinite period.

182. The IMMEX Decree redefines the Maquila concept to include not only the industrial process or services for the processing, transformation or repair of goods imported temporarily before returning abroad, but also the supply of export services. Sub-manufacturing operations are defined as industrial processes or services directly related to manufacturing in a company with an IMMEX Programme, carried out by a person other than the latter company's owner. Consequently, sub-manufacturing does not only include processes that complement manufacturing for export but also complete processes provided that they are related to the operations of an IMMEX company.

183. The IMMEX Programme can be authorized in several forms; in addition to those included under the former Maquila scheme (industrial, services, accommodation and holding companies), a new form has been introduced called "tertiarization" (shift towards the tertiary sector), which allows a company that does not have its own production facilities to engage in manufacturing through third parties registered in the programme. The purpose is to respond to new business needs such as outsourcing and to encourage the integration of small and medium-sized enterprises into the export market.

184. Under the IMEX programme, the temporary import of raw materials, parts and components is subject to a regime called "deferred payment of tariffs", under which the tariff is not paid as long as the inputs are incorporated into a product for export; the tariff on the temporary import of machinery and equipment still has to be paid.²²⁷ The provisions on the application of MFN or preferential tariffs on inputs contained in FTAs signed by Mexico, where applicable, still apply.

²²⁴ The corresponding revisions can be found in Articles 303 and 304 of the NAFTA; Article 14 of Title IV of the EU FTA; and Article 15 of Title IV of the EFTA Agreement.

²²⁵ For further details, see: WTO (2002), Chapter III(3)(vii).

²²⁶ Decree amending the provisions on the promotion and operation of the in-bond assembly industry for export, published in the Official Journal of the Federation of 1 November 2006.

²²⁷ Articles 104 and 110 of the Customs Law. See also information from the SE online. Consulted at: http://www.economia.gob.mx/?P=asp_gen_immex.

185. The VAT rate on temporary imports of raw materials, parts and components, and machinery and equipment, is 0 per cent²²⁸, whereas the general rate payable on definitive imports is 15 per cent (section (2)(v)). The supply of export services under the IMMEX programme is also at a VAT rate of 0 per cent.

186. The IMMEX Programme also retains the streamlined administrative scheme for payment of income tax (ISR) and other benefits concerning the fixed assets tax (IMPAC) available to enterprises under the Maquila programme. Essentially, these benefits consist of giving Maquila companies a special fiscal regime by considering them to be non-permanent establishments, thereby allowing them to opt for a streamlined payment scheme that may result in a partial reduction of the ISR and to be exempt from the IMPAC on inventories owned by residents abroad.²²⁹

187. Under the fiscal legislation, in order to be eligible for the ISR benefits provided under the IMMEX Programme, companies must have a Maquila contract with a foreign taxpayer in a jurisdiction with which Mexico has signed a double taxation agreement or meet the agreement's requirements regarding non-permanent residence.²³⁰

188. Companies in the IMMEX Programme that are also registered with the SHCP as a "certified company" have additional benefits such as being exempt from listing in the register of importers in specific sectors and they may obtain refunds of VAT payments on exports within a maximum period of five working days; in general, the time limit is 20 working days for companies in the IMMEX Programme alone.

189. The minimum export requirements are more flexible under the IMMEX Programme. For example, in order to import raw materials, parts, components, containers, machinery and equipment temporarily with the benefits of the Programme, a company's annual sales abroad must exceed US\$500,000 or the company must invoice exports of at least 10 per cent of their total invoices (previously exports had to account for at least 30 per cent of total sales in order to import machinery and equipment).²³¹

190. According to the authorities, the benefits of the IMMEX programme are not subject to minimum export requirements, although the legislation lays down parameters that are merely indicative and failure to respect them does not result in a fine or sanction.

191. The same time limits apply for the return abroad of goods imported temporarily, namely, 18 months for raw materials, parts and components; two years for containers and trailers; and throughout the life of the Programme for machinery and equipment. Temporary import of sensitive goods (some agricultural and livestock products) and textile products and clothing listed in Annexes II and III to the IMMEX Decree are subject to a time-limit of 12 months in general and six months in certain cases.²³²

²²⁸ Article 25 of the Law on the Value-Added Tax.

²²⁹ Article 33 of the IMMEX Decree; Articles 2 and 216B of the Income Tax Law, published in the Official Journal of the Federation of 1 January 2002 and amendments thereto; and the Tenth and Eleventh Articles of the Decree granting various benefits to taxpayers as indicated therein, published in the Official Journal of the Federation of 30 October 2003.

²³⁰ Article 2 of the Income Tax Law.

²³¹ Article 24 of the IMMEX Decree.

²³² The SE laid down the specific requirements for the temporary import of the goods listed in Annexes II and III to the IMMEX Decree. See the Third Amendment to the Agreement by which the SE issued

192. Other requirements to be met by companies in order to be eligible for the IMMEX Programme are to keep a computerized inventory and to submit an annual report on their operations to the SE.

193. At mid-July 2007, IMMEX Programmes had been authorized for around 6,064 companies. There are no economic analyses of the costs and benefits expected under the IMMEX Programme or those under the Maquila and PITEX programmes which preceded it.

(b) Other fiscal and administrative facilities

194. The Import Duty Drawback Programme for Exporters²³³ allows beneficiaries to obtain refund of duty paid on raw materials, parts and components, spare parts, containers and packaging, fuel and other materials incorporated into goods for export or goods that are re-exported without being transformed. The Programme has been amended twice to bring it into line with the restrictions under the NAFTA (as of 2001) and in agreements with the EU and the EFTA (as of 2003) concerning drawback of import duty on non-originating inputs. The drawback request must be submitted within 12 months following the date of the import declaration and export must take place within this period, and within 90 working days as of the date of the export declaration.

195. The ALTEX Programme²³⁴ is intended to provide exporters with support through administrative facilities. Non-petroleum exporters of goods exporting directly for an amount of US\$2 million or the equivalent of 40 per cent of their annual sales are eligible for the Programme; producers with indirect exports corresponding to 50 per cent of their annual sales and foreign trading companies are also eligible.

196. Benefits under the ALTEX include the refund of VAT within five working days; free access to the trade information system of the SE; exemption from the requirement to carry out a second inspection of goods for export at the customs point of exit when the goods have been cleared at an internal customs post; and the possibility of appointing a customs broker to operate at several customs posts for different products. In addition to the minimum export requirement, an annual report on foreign trade operations has to be submitted to the SE.

197. The objective of the ECEX Programme²³⁵ is to promote exports by small and medium-sized enterprises through administrative facilities and financial support from the development banks. It is intended for two types of enterprise: "export consolidators", which must have minimum capital of Mex\$2 million and export the products of at least five producers; and "export promoting" companies, which must have minimum capital of Mex\$200,000 and export goods of at least three producers.

198. Benefits under the ECEX include immediate receipt of a declaration as an ALTEX company; a discount of 50 per cent on the cost of non-financial services determined by the Foreign Trade Bank; and financial support, training and technical assistance services from the National Finance Company. ECEX enterprises undertake to export goods for a minimum value of US\$250,000 in the case of promoting companies and US\$3 million for consolidators during the first fiscal year following their

General Rules and Criteria for Foreign Trade, published in the Official Journal of the Federation of 8 March 2007.

²³³ Decree establishing the drawback of import duty for exporters, published in the Official Journal of the Federation of 11 May 1995 and its latest amendment of 29 December 2000.

²³⁴ Decree on the promotion and operation of high-volume exporting companies and revisions thereof, published in the Official Journal of the Federation of 3 May 1990, 17 May 1991 and 11 May 1995.

²³⁵ Decree regulating the establishment of foreign trading companies, published in the Official Journal of the Federation of 11 April 1997.

registration; in addition they must keep computerized inventories and submit an annual report on their foreign trade operations to the SE.

(v) Export financing, insurance and guarantees

199. Financial support for the export sector is still mainly through the Banco Nacional de Comercio Exterior – BANCOMEXT (National Foreign Trade Bank), which acts as the Federal Government's development bank specializing in financing and promoting exports and has its own legal status and assets.

200. BANCOMEXT gives short, medium and long-term loans, and guarantees and insurance to direct or indirect exporters, particularly small and medium-sized enterprises. The main instruments used by the Bank to provide financial support are: loans to exporting companies to finance their working capital, export sales and export-related investment projects; lines of credit for importers of Mexican goods and services; insurance, collateral and pre- and post-export guarantees for commercial financing; as well as other financial services to facilitate export transactions such as letters of credit and trust fund services (Table III.9).

201. In addition to acting as a first-tier bank, BANCOMEXT operates through banking and non-banking financial intermediaries in order to expand the scope of its services and access to credit by companies. During the first half of 2007, BANCOMEXT distributed US\$2,017 million in support of foreign trade activities, of which US\$106 million (5.2 per cent) were channelled through the commercial banks and other financial intermediaries.

202. Of the US\$2,017 million distributed by BANCOMEXT between January and June 2007, 94.8 per cent was channelled directly as follows: 87.5 per cent to the private sector, 6.8 per cent to the public sector and 0.5 per cent in guarantees. This distribution reflects the Bank's strategy of focusing its efforts on the private sector, whose financing increased by 46 per cent in comparison with the same period the previous year. Of the total financing, 87 per cent was granted through short-term instruments intended to finance needs related to the production cycle and sales, and the remainder through long-term instruments to finance investment projects and strengthen the financial structure of exporting companies.

Table III.9
Credits and financial services from the National Foreign Trade Bank (BANCOMEXT)

Loans	
Credits for export sales	To facilitate foreign trade transactions
Credits for the production cycle	To ensure continuity of exporters' production processes
Credits for buyers of Mexican exports	To facilitate export transactions
Credits for purchasing equipment	To guarantee the continuity of exporters' production processes
Credits for investment projects	To guarantee the continuity of exporters' production processes
Simplified scheme for small and medium-sized enterprises	Credits for working capital or for buying machinery and equipment for a maximum of US\$250,000
Financial services	
Trust fund services	To support companies' financial management
Letters of credit	To facilitate foreign trade transactions
Guarantee programme	To facilitate foreign trade transactions
Investment bank	To support companies' financial management
Cash flow services	Technical and financial advice in support of exporting companies

Table III.9 (cont'd)

Risk capital	
Risk capital	Risk capital to increase companies' capitalization Other support schemes: BANCOMEXT
Development of suppliers	Credits and financial services to facilitate import substitution
Young business creativity	Temporary capital for projects and companies of young professionals to allow them to set up or consolidate small enterprises

Source: WTO Secretariat, based on information on line published by the CIPI. Consulted at: http://www.cipi.gob.mx/desc_prog_apoyo.pdf [31 May 2007].

203. The sectors with the major share of BANCOMEXT financing from January to June 2007 were (their percentage of the total is shown in brackets): the agricultural sector (30.2), services (24.1), electrical-electronics sector (10.9), and building materials (8.5).²³⁶

204. Through its subsidiary Bancomext Insurance, BANCOMEXT provides export credit insurance and guarantees to support exports and facilitate access to credit. The guarantees protect exporters and commercial banks from the risk of default on the credit granted from the start of production until the goods or services for export are marketed.

205. Bancomext Insurance provides two types of guarantee: financial guarantees and guarantees against political risk. Financial guarantees are channelled through the commercial banks and are intended to facilitate the financing of working capital, export sales and investment projects for direct or indirect exporters; they cover between 50 to 70 per cent of the credit granted to the companies. Political risk guarantees (or post-export guarantees) are given to direct exporters in order to protect them against the possibility of non-payment by a buyer abroad for political reasons; the guarantee covers up to 90 per cent of the value of the export invoice. Between January and June 2007, BANCOMEXT insured and guaranteed operations amounting to US\$134 million.²³⁷

206. During the period under review, BANCOMEXT experienced financial problems and has become less competitive than major international banks. According to studies by the World Bank and the International Monetary Fund, BANCOMEXT has been the only Mexican development bank whose financial accounts have not shown positive results or a solid capitalization position in recent years. According to both studies, this situation is caused, inter alia, by the continual losses incurred by BANCOMEXT as a result of its export promotion activities.²³⁸ Until recently, this function was financed through BANCOMEXT's other activities (cross subsidization) instead of through financial contributions from the Federal Government's budget, as is the case for trade promotion activities in other countries.

207. In addition, BANCOMEXT's problems have been exacerbated by its large amount of non-performing assets and by the impossibility of recovering some large debts that have resulted in proceedings before the courts. For example, according to the review of public accounts in 2003, prepared by the Federation's Principal Audit Office, at that date the amount of BANCUBA's debts accounted for 61 per cent of BANCOMEXT's portfolio at dispute and amounted to Mex\$5,982 million (some US\$533 million), increasing the need to create contingency reserves for credit risks, a situation that affected BANCOMEXT's financial situation.²³⁹ In December 2005, the Federal

²³⁶ Data provided by BANCOMEXT.

²³⁷ Ibid.

²³⁸ World Bank (2006), pages 28-31; IMF (2006a), pages 16-18.

²³⁹ Principal Audit Office of the Federation, report on the results of the review and principal audit of the public accounts of 2003, page 583.

Government provided Mex\$1,500 million (some US\$140 million) for BANCOMEXT's capitalization.²⁴⁰

208. At the end of 2007, BANCOMEXT was in the process of institutional reorganization with the aim of making it into a financially solid organization on a world scale with processes that clearly focused on the client and in particular SMEs belonging to the export chain. For this purpose, a strategy based on new credit policies is being implemented, together with the extension of guarantees and new financial alternatives in order to operate through intermediaries and thus provide financing to companies that have so far been underserved.

209. The National Finance Company, another Mexican development bank, also provides support for exports through several foreign trade financing programmes (see section (4)(iii) below).

210. Mexico does not take part in the OECD's Arrangement on Officially Supported Export Credits.

(vi) Export promotion

211. During the period under review, export promotion activities continued to be the responsibility of private organizations and the government sector, the latter mainly through the SE and BANCOMEXT. It should be noted that, as of mid-2007, the BANCOMEXT's export promotion tasks became the responsibility of a new semi-State body called ProMexico.

212. The Comisión Mixta para la Promoción de las Exportaciones – COMPEX (Joint Export Promotion Commission) is responsible for promoting exports by agreeing on action to streamline administrative procedures and overcome the technical barriers faced by exporters. The Commission is chaired by the SE and is composed of representatives of other Ministries²⁴¹, the BANCOMEXT and the private sector. The COMPEX acts as a mechanism for consultation and coordination to enable dialogue between the exporting sector and government officials and operates at the national, regional and state levels. Support from the COMPEX is mainly aimed at small and medium-sized enterprises to bolster their foreign trade projects and promote an "export-oriented outlook".

213. During the period 2001-2006, the main problems raised by exporters in the COMPEX context concerned customs operations, non-tariff regulations, certificates of origin, promotion programmes and completing import/export declarations.²⁴²

214. The SE also implements the Export Offer Programme with the aim of encouraging the permanent incorporation of micro, small and medium-sized enterprises into export activities. Promotion is through a network of 56 business support centres located in Mexico and other countries which provide training, technical assistance and identification of business opportunities for small exporting companies or those with export potential. The Programme is financed by SME Fund resources. According to the SE's estimates, at the end of 2006 there were 5,958 companies involved in exporting with support from the SME Fund (around 10 per cent of the total number of exporting SMEs).²⁴³

215. The Sistema Nacional de Orientación al Exportador – SONE (National Scheme for Guidance

²⁴⁰ *Idem*, page 255.

²⁴¹ These are the Ministries of: Foreign Relations; Finance and Public Credit; Agriculture, Livestock, Rural Development, Fisheries and Food; Communication and Transport; and Labour and Social Welfare.

²⁴² Ministry of the Economy (2006c), page 105.

²⁴³ *Ibid.*

to Exporters) is another promotion instrument that provides information on export opportunities, as well as free guidance and advice to companies on export-related issues through 62 advisory units throughout Mexico.

216. Up to mid-2007, BANCOMEXT offered various export promotion services. In particular, it gave small and medium-sized enterprises technical assistance to identify business opportunities in foreign markets and to support their production, export and marketing efforts. BANCOMEXT also supported participation by Mexican companies in international fairs and provided training, technical assistance and specialized advice on trade regulations in various export markets. According to data provided by BANCOMEXT, as a result of the promotion services given to exporters, from January to June 2007 sales abroad generated US\$1,058 million.

217. On 13 June 2007, a decree creating a government body called ProMexico was published in the Official Journal of the Federation.²⁴⁴ It will act as a specialized body of the Federal Public Administration with the aim of promoting exports and foreign investment. The trust fund will have a Technical Committee chaired by a representative of the SE and composed of representatives of various government agencies²⁴⁵ and the private sector. Its principal responsibilities will be to advise Mexican companies, particularly small and medium-sized companies, on their export activities, promoting the sale of their products and services on the international market. ProMexico will initially have a budget of Mex\$800 million (around US\$72 million) for this purpose.

218. In the preamble to the aforementioned Decree, it is explained that coordination and concentration of activities to promote trade and attract foreign investment will prevent duplication of functions and structures and will orient government resources to measures that have the greatest impact on export promotion. Following the creation of this trust fund, the BANCOMEXT's export promotion activities will come under the scope of ProMexico.

219. Some states in the Mexican Republic also have programmes specifically designed to promote exports by providing technical assistance, advice and help in identifying sales opportunities abroad; these include the states of Baja California, Durango, Guanajuato, Jalisco, Morelos, Puebla, Querétaro and Veracruz.

(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

(i) Establishment and taxation of companies

103. The establishment, operation and liquidation of commercial corporations are governed by the 1934 General Law on Commercial Corporations and the 1993 Foreign Investment Law.²⁴⁶ The SE is responsible for the National Register of Foreign Investment and for the Public Commercial Register, the latter in coordination with the governments of the Federation's 32 states.

104. Commercial corporations may be set up as general partnerships, limited partnerships or partnerships limited by share capital, public limited companies, limited liability companies or cooperatives; any of these types of company, with the exception of cooperatives, may be established

²⁴⁴ Decree establishing the public trust fund deemed to be a Government-controlled entity called ProMexico, published in the Official Journal of the Federation of 13 June 2007.

²⁴⁵ Namely, the Ministries of: Foreign Relations; Finance and Public Credit; the Environment and Natural Resources; the Economy; Agriculture, Livestock, Rural Development, Fisheries and Food; and Tourism; together with a representative of BANCOMEXT, S.N.C.

²⁴⁶ The latest revisions of the General Law on Commercial Corporations and the Foreign Investment Law were published in the Official Journals of the Federation of 28 July 2006 and 18 July 2006, respectively.

as an open capital company. The most common types of company in Mexico are public limited companies and limited liability companies.

105. Public limited companies must have a minimum of two shareholders, registered capital of not less than Mex\$50,000 (approximately US\$4,500) and their shares may be held by private shareholders or be offered to the public. A public limited company is owned by its shareholders and the latter's liability is limited to the capital paid up. They may be managed by a single director or by a board of directors, which may include foreigners provided that the articles of association do not provide otherwise or such participation is not contrary to special legal provisions. Limited liability companies must not have more than 50 partners and their registered capital must not be less than Mex\$3,000 (around US\$271). The partners' liability is limited to the capital paid up and any change in the company's structure must be approved by shareholders owning the majority of the capital, unless the articles of association state otherwise.²⁴⁷

106. Foreign companies may act through an agency, branch, subsidiary, joint enterprise or by purchasing shares or assets in companies already existing in Mexico. In order to set up a new company, a national or foreign enterprise must obtain a non-automatic permit from the Ministry of External Relations (SRE), so as to avoid duplication of trade names; the Ministry must grant or reject the request for such a permit within a maximum period of five working days, after which the request is deemed to have been approved. Within 90 working days of the date on which the permit was obtained, the company must be registered in the Public Commercial Register in the area of the Federation where the company is domiciled. Also within 40 calendar days of the date of registration in the Public Commercial Register, the company must be registered in the National Register of Foreign Investment.²⁴⁸ It must also be registered in the Federal Register of Taxpayers in order to obtain a tax number, without which it cannot start to operate.²⁴⁹

107. The number of procedures, the time taken and the cost involved in establishing a company vary considerably in the Federation's 32 states. A World Bank study indicates that, to set up a company in the State of Nuevo León (which occupies first place as far as the ease with which a company can be set up is concerned), eight procedures have to be completed, which last on average 24 days and cost an average of US\$1,092 (corresponding to 9.7 per cent of per capita GDP in Nuevo León), whereas in the State of Veracruz (in last place) ten procedures are necessary, lasting an average of 46 days and at an average cost of US\$995 (corresponding to 27.6 per cent of per capita GDP in Veracruz); in the Federal District (DF) eight procedures are required, lasting an average of 27 days at an average cost of US\$2,217 (corresponding to 14.2 per cent of per capita GDP in the DF).²⁵⁰ Also according to this study, Mexico is one of the ten economies surveyed that made the most positive reforms in its business regulations between 2005 and 2006.

108. In January 2002, the Sistema de Apertura Rápida de Empresas – SARE (Rapid Business Start-Up System) was introduced in order to streamline the administrative procedures required for the creation of new companies. The SARE reduces the time taken to open a company to 72 hours or less

²⁴⁷ General Law on Commercial Corporations of 4 August 1934.

²⁴⁸ Articles 15-16 of the Foreign Investment Law published in the Official Journal of the Federation of 27 December 1993 and Articles 13-18 of the Implementing Regulations for the Foreign Investment Law, published in the Official Journal of the Federation of 8 September 1998.

²⁴⁹ Article No. 27 of the Federation's Tax Code, whose most recent revision was published in the Official Journal of the Federation of 27 December 2006.

²⁵⁰ World Bank (2007).

and is in effect in 125 of the 2,454 municipalities in Mexico. According to official data, between May 2002 and June 2007, around 115,000 new companies were set up under the SARE.²⁵¹

109. In addition to VAT and the IEPS (described in section (2)(v)), the principal federal taxes applicable to companies in Mexico are income tax (ISR), the assets tax and the flat rate business tax (IETU), as well as certain social contributions (Table III.10). The distribution and remittance of dividends abroad is exempt from income tax.

Table III.10
Principal taxes applicable to companies and natural persons engaged in business activities

Tax	Legal framework/scope	Rate (%)
Income tax	Income Tax Law of 1 January 2002. Tax on profit-making activities by companies resident in Mexico. The income of companies established in Mexico by non-residents or the income received by non-residents from Mexican sources are also subject to this tax. Dividends paid to resident companies are exempt from the tax if they are distributed according to the Law. Activities relating to agriculture, fishing and publishing receive a discount of up to 50% of the tax.	28% of companies' net income and 3-28% of the net income of natural persons.
Assets tax	Assets Tax Law of 31 December 1988. This tax applies to the assets of natural persons engaged in business activities, of companies resident in Mexico and companies not resident in Mexico but with assets in Mexico. During the first three years of operation, companies do not have to pay this tax.	1.8% on assets
Flat rate business tax	Law on the Flat Rate Business Tax of 1 October 2007. This tax applies to natural and legal persons resident in Mexico or resident abroad but with a permanent establishment in Mexico. The taxable base is the income received for disposing of goods, supplying services or allowing the use of goods, irrespective of the place where these occur. The tax should come into effect in January 2008.	16.5% in 2008; 17.0% in 2009; 17.5% in 2010 and beyond.
Contribution to the IMSS	Social Welfare Law of 21 December 1995. The employer must retain and pay to the Instituto Mexicano del Seguro Social – IMSS (Mexican Social Welfare Institute) contributions relating to: (a) sickness and maternity; (b) disability; (c) retirement and pensions; and (d) risks at work.	(a) 8.75%; (b) 2.8%; (c) 5.15%; (d) 5.4 – 7.5% of employees' wages
Contribution to the INFONAVIT	Law on the Instituto del Fondo Nacional del Vivienda para los Trabajadores – INFONAVIT (Workers' National Housing Fund Authority) of 24 April 1972. The employer must contribute to the INFONAVIT, which is used to finance the purchase and building of housing.	5% of employees' wages

Source: Ministry of Finance and Public Credit

110. The states and the DF apply the real estate transfer tax and the municipalities apply the land tax; the rates vary according to the value of the real estate and are determined by the states, the DF and the municipalities. In 2005, one state (Guanajuato) also imposed a schedular tax on the income of natural persons earned from their business activities or the supply of professional services. This tax may be credited against the ISR and is at a rate of 2 per cent. It should be noted that all the other states are legally authorized to introduce such a tax if they so decide.²⁵²

111. In order to avoid double taxation, Mexico has signed tax agreements with 34 countries, including its principal trade partners.²⁵³ Since 2002, agreements have been signed with the following countries (the dates of publication in the Official Journal of the Federation are shown in brackets): the Czech Republic (13 November 2002), Indonesia (26 June 2003), Australia (30 December 2003),

²⁵¹ COFEMER (2007).

²⁵² Article 43 of the Value Added Tax Law, whose most recent revision was published in the Official Journal of the Federation of 18 July 2006.

²⁵³ Mexico has signed such agreements with: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, Romania, Singapore, Spain, Sweden, Switzerland, the United Kingdom and the United States,

Brazil (28 May 2004), Austria (28 October 2004), Greece (3 March 2005), and the People's Republic of China (26 January 2006).

(ii) Competition policy and price controls

(a) Competition policy

112. The main general provisions on competition policy are to be found in the Federal Law on Economic Competition (LFCE) of 1993, which was revised by a Decree published in the Official Journal of the Federation of 28 June 2006. The Implementing Regulations for the LFCE were published in the Official Journal of the Federation of 12 October 2006 and repealed those of 4 March 1998. They establish definitions, inter alia, for substantial market power, monopolistic practices and the relevant market. Pursuant to the LFCE, the following economic agents are not deemed to be monopolies: legally-constituted workers' associations; privileges conferred by copyright and patents; cooperative export associations that do not sell or distribute their products in Mexico; and activities to which the State has an exclusive right in strategic sectors which, by law, are reserved to the State (see Chapter II(4)(ii)). Nevertheless, the LFCE determines that even these economic agents are subject to the rules governing anti-competitive conduct in their respective markets, unless they are expressly protected under the Constitution.

113. The Comisión Federal de Competencia – CFC (Federal Competition Commission) is responsible for implementing the LFCE and is empowered to conduct investigations, issue administrative resolutions and impose conditions and sanctions for anti-competitive practices. The CFC is a decentralized body of the SE with technical and operational autonomy, although it does not have financial autonomy. The CFC has power to impose financial sanctions; the resources are transferred directly to the SE. The CFC is composed of five commissioners (one of whom chairs the Commission), appointed by the President of the Mexico for a period of ten years in interims between presidential elections.²⁵⁴

114. Commissions which regulate specific sectors such as telecommunications and energy do not have any direct involvement in implementing the LFCE. The latter, however, empowers the Comisión Federal de Telecomunicaciones – COFETEL (Federal Telecommunications Commission) to issue specific regulations (for example, fixing tariffs or minimum quality requirements) for concessionaires of public networks declared by the CFC to be agents with substantial market power. Likewise, the Comisión Reguladora de Energía – CRE (Regulatory Commission for Energy) may issue specific regulations in cases where the CFC declares that there are no effective competition conditions. The CFC may also issue binding or non-binding opinions on acts by any regulatory authority that may restrict competition.

115. The CFC has developed programmes to encourage competition and has played a more active role in discussion of sectoral regulatory issues, giving 11 opinions on legislative initiatives in 2006.²⁵⁵ By mid-2007, however, the CFC had not issued any binding opinion.

116. The CFC has sought to protect competition in Mexico by analysing cases and applying remedial measures. During the period 2001-2006, it dealt with a total of 5,986 cases, compared to 2,628 during the period 1994-2000. Of these, 1,431 (24 per cent) concerned mergers, 313 (5 per cent) monopolistic practices and other restrictions on competition, 3,521 (59 per cent) tenders, concessions and licences, 224 related to enquiries (4 per cent) and 491 (8 per cent) to requests for review. During the period 2001-2005, the CFC authorized an average of 91 per cent of the mergers examined without

²⁵⁴ Information from the CFC online. Consulted at: <http://www.cfc.gob.mx>.

²⁵⁵ CFC (2006).

imposing conditions; it approved virtually all requests for participation in tenders, concessions and licences; and issued sanctions and/or recommendations in 15 per cent of the total cases of monopolistic practices or other competition-restricting conduct investigated. In the case of requests for review, 59 per cent of the decisions examined were confirmed, 23 per cent rejected and the remaining 17 per cent were modified or annulled.

117. In 2004, a peer review of Mexico's competition legislation and policy took place in the OECD's Competition Committee based on a report on competition in Mexico.²⁵⁶ The report underscored the highly analytic quality of the LFCE and its Implementing Regulations, as well as consolidation in the LFCE of authority to make the market power determinations that not only apply to cases involving mergers and monopolistic conduct but also the granting of concessions and sectoral licences. The OECD emphasized that the CFC had become a credible organization that applied best principles of management and the highest standards of public service.

118. On the other hand, the OECD report stated that the degree of general support for competition policy remained an open question in Mexico and a possible source of vulnerability. The report indicated that the weakness of certain statutes and judicial processes (including especially the amparo process²⁵⁷), added to the decline in the CFC's budget and staffing levels, constrained its ability to remedy anti-competitive conduct.²⁵⁸ Other issues considered problematic by the OECD have been overcome by reforming the LFCE.

119. In 2006, Congress approved a series of reforms of the LFCE.²⁵⁹ These introduced three main changes: (i) they clarified the procedures adopted by the CFC; (ii) they reinforced the CFC's powers, for example, by increasing the amount of sanctions; and (iii) the binding nature of the CFC's opinions on government programmes and policies in regulated sectors was strengthened. In addition, the reforms to the LFCE expressly determined that five additional monopolistic practices were illegal and introduced an immunity programme, giving the CFC greater powers to combat monopolistic practices.

120. The CFC may initiate investigations into monopolistic conduct, prohibited mergers or restrictions on inter-state trade either *ex officio* or at the request of a party. Pursuant to the LFCE, an investigation lasts 30 to 120 days, which may be extended by a maximum of 480 days when there are duly justified reasons. At the conclusion of the investigation, a resolution is issued under which the CFC may close the case or impose sanctions and/or conditions. The parties involved have 30 days in which to lodge an appeal for review of the resolution with the CFC and the latter has five days to communicate its decision on the appeal to the parties.

121. Once an investigation has been initiated, the CFC may send official letters requesting information from the parties involved and the latter may request amparo proceedings against the said decision before a district court. The judge in the district court may nullify the official letters and accordingly oblige the CFC not to take into account the information contained therein. Likewise, if the parties do not agree with the final resolution, they may bring an amparo suit before a district court or administrative litigation before the Federal Tribunal for Fiscal and Administrative Justice. These actions are mutually exclusive and can only be initiated against resolutions issued by the CFC during the review process because this is when a CFC resolution is deemed to be definitive.

122. District courts have frequently granted motions to stay the CFC resolutions (including fines)

²⁵⁶ OECD (2004).

²⁵⁷ In an amparo process, it is decided whether an unconstitutional statute has been applied or the regulatory procedure has not been followed.

²⁵⁸ OECD (2004).

²⁵⁹ Decree published in the Official Journal of the Federation of 28 June 2006.

during the review of the sentence's legality.²⁶⁰ The CFC has also pointed out that these cases may take several years to resolve. Nevertheless, since 2004, the number of amparo suits has shown a marked decline and in 2007 the CFC won the majority of cases.

123. Despite the CFC's increased activity and the reforms introduced in recent years, there are still large monopolies or limited levels of competition in several key sectors of the economy such as electricity, hydrocarbons extraction and refining, telephony, television, some financial services, railways, and in the maize-tortilla chain (see (ii) below).

124. The free trade agreements with the United States and Canada, Chile, Colombia, the European Communities, Israel and Uruguay, as well as the Economic Association Agreement with Japan, contain special provisions on competition policy. Mexico has also signed bilateral agreements on competition with the United States, Canada, Chile and the Republic of Korea.²⁶¹

(b) Price controls

125. The LFCE governs price controls, giving the SE the power to determine the price of products and services, but only in those markets where the CFC declares that there are no effective competition conditions. This is intended to ensure that price controls are not used for political purposes or in response to pressure by economic groups. The SE is also empowered to coordinate the necessary measures with producers or distributors in an effort to minimize the effects on competition and free price comparison. The PROFECO, coordinated by the SE, is responsible for inspection, monitoring and sanctions relating to controlled prices.

126. All petroleum-based fuels, as well as petrochemicals, are subject to official prices administered by the SHCP; the price of natural gas and liquefied petroleum gas is also administered by the Regulatory Commission for Energy.²⁶² Electricity rates are set by the Federal Electricity Commission (see Chapter IV(4)). Tariffs for public services, including public transport, the supply of water and professional services and the services of public notaries, are determined at the state or local level.

127. Medicines are still subject to an official price regime. Pursuant to the agreement between the SE and the pharmaceutical industry, pharmaceutical laboratories determine the formulas used to establish maximum selling prices to the public, as well as the dates for their revision and the amount of the adjustment. The price of generic medicines is freely determined by the manufacturers.²⁶³

128. In January 2007, the Government signed an agreement with companies involved in the production and marketing chain for tortillas, which terminated in August 2007, under which the companies undertook not to raise the price of their products.²⁶⁴ At the same time, in order to ensure supplies for manufacturing tortillas, changes were made to the allocation of import quotas for white maize (see Chapter IV(2)). The CFC also initiated an investigation ex officio in order to detect possible monopolistic practices in the maize-tortilla chain and, if necessary, to adopt public policy measures to boost competition in this chain.

²⁶⁰ OECD (2004).

²⁶¹ CFC information online. Consulted at: http://www.cfc.gob.mx/index.php?option=com_content&task=view&id=1063&Itemid=138.

²⁶² Basic Law on the Public Administration of 29 December 1976, Planning Law of 5 January 1983, and Law on the Regulatory Commission for Energy of 31 October 1995.

²⁶³ PROFECO information online. Consulted at: http://www.profeco.gob.mx/encuesta/brujula/bruj_2006/bol08_preciomax1.asp.

²⁶⁴ Information from the SE online. Consulted at: <http://www.economia.gob.mx/>.

(iii) Incentives**(a) Overview**

129. Mexico has a large number of sectoral promotion programmes (section (b) below) and business support programmes. The latter are mainly intended for micro, small and medium-sized enterprises and basically consist of financial assistance, tax concessions and administrative facilities; other measures include technical assistance, training and business advice. The 2007-2012 National Development Plan establishes a strategy for comprehensive assistance to SMEs through financing, training, management, technological and marketing innovation. The support measures for export are described in section (3)(iv) above, while those for the agricultural sector are set out in Chapter IV(2)).

130. The objective of the Comisión Intersecretarial de Política Industrial – CIPI (Interministerial Industrial Policy Commission) of the SE is to coordinate and evaluate business support programmes and action by Federal Government agencies and entities. The CIPI is chaired by the SE and also includes those in charge of several other Ministries and government agencies.²⁶⁵

131. The CIPI keeps an inventory of the Mexican Government's industrial promotion programmes and instruments and this may be consulted on the Internet.²⁶⁶ At the end of October 2007, the CIPI inventory included 154 support programmes, with the SE and the SHCP being the Federal Government entities that had the largest number of instruments (Table III.11).

132. One of the CIPI's other tasks is to evaluate the impact of business support programmes. According to a survey of the situation in small and medium-sized enterprises, in 2002, only 9 per cent of Mexican SMEs were involved in export (21 per cent in the case of manufacturing SMEs) and the destination of their exports was highly concentrated (North and Central America).²⁶⁷ The reasons given by the enterprises surveyed for their low level of export mainly concerned factors in their environment: the scarcity and high cost of transport, the slow pace and excessive number of customs formalities, the high cost of information on export markets, and the unsatisfactory rates and terms of financing. The endogenous factors that limited export capacity mainly concerned the organizational and production capacity inadequacies of the enterprises.²⁶⁸

Table III.11
Federal programmes in support of industrial activity by entity, October 2007

Programme	Number
Total	154
Federal Government agency or body	
Ministry of the Economy (SE)	56
Ministry of Finance and Public Credit (SHCP)	23
Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA)	15
Ministry of Labour and Social Welfare (STPS)	8
Table III.11 (cont'd)	
Ministry of Tourism	8
National Foreign Trade Bank (BANCOMEXT)	8
National Finance Company, S.N.C. (NAFIN)	8

²⁶⁵ The Ministries of Agriculture, Livestock, Rural Development, Fisheries and Food; Social Development; Public Education; Public Administration; Finance and Public Credit; the Environment and Natural Resources; Labour and Social Welfare; and Tourism; as well as representatives of BANCOMEXT, NAFIN and the National Science and Technology Council. The Ministry of Agrarian Reform is also invited.

²⁶⁶ The inventory appears on <http://www.cipi.gob.mx>.

²⁶⁷ CIPI (2003). Survey conducted by the SE and the Inter-American Development Bank in 2002 and published by the CIPI.

²⁶⁸ CIPI (2003), pages 55-57.

Programme	Number
Ministry of the Environment and Natural Resources (SEMARNAT)	7
Ministry of Social Development (SEDESOL)	6
National Science and Technology Council (CONACYT)	6
Ministry of Public Administration	4
Ministry of Agrarian Reform	3
Ministry of Public Education (SEP)	2

Source: CIPI, Description of the Federal Government's business support programmes included in the CIPI inventory [on line]. Consulted at: http://www.cipi.gob.mx/html/body_programas_de_apoyo.htm [31 October 2007].

133. In addition to the promotion programmes implemented at the Federal level, the states also have mechanisms to promote economic activities. In general terms, the support consists of financial assistance channelled to specific economic agents, mainly micro, small and medium-sized enterprises through trust funds. In some cases, the assistance may also include tax concessions. In October 2007, the CIPI's inventory contained information on around 531 programmes in 31 states.²⁶⁹

(b) Tax incentives

134. In August 2002, the Decree establishing Various Sectoral Promotion Programmes (PROSECs) was issued²⁷⁰ with the aim of establishing competitive conditions for the supply of inputs and machinery to the production sector. The programme responded to the need to offset the effects of the amendments made to the PITEX and Maquila programmes pursuant to Mexico's commitments under the NAFTA and other international agreements.

135. Companies with PROSECs that manufacture particular goods may import various inputs to be used to produce those goods at a reduced tariff, irrespective of whether the goods are to be exported or are for the domestic market. The tariffs applied range from 0 to 5 per cent. The goods to be imported and the articles to be produced are grouped by sector. The benefits of the programme only apply to those inputs included in the sector in question and may not be used for other purposes.

136. In October 2007, there were 22 sectoral programmes in the following industries: electricity; electronics; furniture; toys, games and sports articles; footwear; mining and metallurgy; capital goods; photography; agricultural machinery; chemicals; articles of rubber and plastic; iron and steel; medical equipment, medicines and pharmaceutical products; transport (except the automobile industry); paper and paper board; wood; hides and skins; the automobile industry and automobile parts; textiles and clothing; chocolates, confectionery and the like; coffee and various industries.

137. According to the directory kept by the SE, in October 2007, 4,142 companies had an authorized PROSEC.²⁷¹ The duration of the programmes is one year and they are automatically renewed once the beneficiary has submitted its annual report on operations carried out under the programme to the SE. Beneficiary companies must also have a system for the control of inventories using magnetic media.

138. Tariff concessions are also available for other products not covered by the PROSECs and these are administered through import licences under heading 98.02 of the tariff in the TIGIE, provided that the beneficiaries have a programme authorized by the SE and meet the criteria in the

²⁶⁹ These programmes may be consulted on the Internet at the site: www.cipi.gob.mx/marco_inst_edos.pdf

²⁷⁰ Published in the Official Journal of the Federation of 2 August 2002; revised on 4 September and 31 December 2002; 10 July and 31 October 2003; 23 March, 2 and 28 December 2004; 3 January, 17 March, 7 September and 7 December 2005; 20 January, 5 September, 27 and 28 November 2006.

²⁷¹ The directory may be consulted at: <http://www.economia.gob.mx/?P=760>.

Regla Octava (Eighth Rule) of the Complementary Rules for the interpretation and application of this Law. These criteria are the following: non-existence or insufficiency of domestic production; diversification of sources of supply; the goods imported are required at a stage prior to the commencement of production under new projects; and the commercial obligations in international markets are respected.²⁷²

139. Other programmes give tax concessions for specified activities such as agriculture, breeding livestock, forestry and fishing, air and maritime transport, and the cinematographic industry. Fiscal assistance is also given for acquiring equipment to combat contamination and for technological research and development activities (Table III.12).

Table III.12
Tax incentives for the promotion of economic activities

Institution	Name of the programme	Description
Ministry of Finance and Public Credit (SHCP)	Tax incentives in the agricultural and forestry sector	Incentives for investment in fixed assets.
	Fiscal consolidation of income tax	Controlling companies resident in Mexico and owning over 50% of the shares with voting rights in another controlled company or companies may fiscally consolidate income tax.
	Reduced rate of income tax applicable to the primary sector	Legal persons exclusively engaged in agriculture, breeding livestock, fishing or forestry are eligible for a reduced rate of income tax.
	Tax incentives for taxpayers entering into contracts with decentralized public bodies	Incentives for holding receivable accounts relating to contracts between the taxpayers and decentralized public bodies of the Federal Government.
	Tax incentives for investment	Option of applying an immediate deduction from income tax for investment made outside the metropolitan areas of Guadalajara, the Federal District and Monterrey.
	Tax incentives for adaptations to facilitate the use of facilities by persons with disabilities	100% depreciation allowed in income tax for adaptations made to facilities that involve additions or improvements to fixed assets in order to facilitate access and use of the taxpayer's facilities by persons with disabilities
	Tax incentives for employers recruiting persons with motor, mental, hearing or language disabilities or blind persons	Employers recruiting persons with motor, mental, hearing or language disabilities or blind persons may deduct from their income an amount corresponding to 100% of these employees' income tax.
	Tax incentives for generating energy from renewable sources	100% depreciation allowed for machinery and equipment used to generate energy from renewable sources.
	Tax incentives for real estate development	Tax incentive for taxpayers engaged in building and disposing of real estate developments.
	Tax incentives for persons whose total income does not exceed Mex\$4 million	Incentives for the assets tax on natural and legal persons whose total income does not exceed Mex\$4 million.
Tax incentives for fuel (diesel fuel)	Tax incentive for taxpayers using diesel fuel for final consumption.	
Technological development	Deduction from income tax of the contributions made to technological research and development funds.	

Table III.12 (cont'd)

Exemption from the Tax on New Automobiles (ISAN)	Described in section (2)(v).
Tax incentives for the cinematographic industry	Tax incentive for companies investing in national cinematographic production.
Incentives for public transport of passengers or freight	Tax incentive for persons purchasing diesel fuel for their final consumption to be used in vehicles exclusively intended for the public or private transport of passengers or freight.
Incentives for land transport of freight or passengers	Tax incentive for persons exclusively engaged in land transport of freight or passengers and in private transport of freight or passengers.
Incentives for the merchant marine	Tax incentive for persons purchasing special marine diesel fuel to be

²⁷² Agreement establishing the criteria for granting prior import licences under tariff lines in the heading 98.02 of the TIGIE, published in the Official Journal of the Federation of 31 March 2006.

Institution	Name of the programme	Description
		used in vessels for merchant marine activities.
	Incentives for commercial corporations building or buying real estate	Tax incentive for companies building or buying real estate.
	Incentives for investment in risk capital	Incentive for persons investing in shares issued by Mexican companies resident in Mexico.
Ministry of the Economy (SE)	Export promotion programmes: IMMEX, ALTEX, ECEX and drawback	The programmes are described in section (3)(iv).
	Sectoral promotion programmes (PROSECs)	Total or partial exemption from import duty for imports of specified inputs in certain industries. These programmes are described in part (b) of this section.
Ministry of the Environment and Natural Resources (SEMARNAT)	Duty-free import of anti-contamination equipment	The exemption only applies if the equipment to be imported cannot be substituted by equipment produced or that could be produced in Mexico. Subject to prior authorization by the SE.
	Accelerated depreciation of equipment to be used to prevent or control contamination	Incentive for companies purchasing equipment to be used to prevent or control contamination of the environment; 95.7 to 100% of the value of the purchase of the asset can be depreciated.

Source: Information provided by the Mexican authorities (October 2007).

140. According to data from the SHCP, fiscal costs, i.e. the amount which the Federal Government does not collect because of the various special fiscal treatment programmes, authorized deductions, tax exemptions and fiscal incentives, both for natural and legal persons, amounted to Mex\$502,225 million (US\$46,160 million) in 2006, representing 5.6 per cent of the GDP (Table III.13). It should be noted that the concept of fiscal costs is considerably broader than the tax incentives programmes mentioned in this report so the amount attributed to these programmes is much lower.

Table III.13
Fiscal costs budget, 2006

Item ^a	Mex\$ millions	Percentage of GDP ^b
Total (A+B+C+D)	502,225	5.59
A. Income tax (ISR)	295,667	3.29
ISR on companies	177,340	1.97
Special treatment for taxpayers in the motor transport sector	4,604	0.05
Special treatment for taxpayers engaged in agriculture, breeding livestock, fishing or forestry	16,770	0.19
Tax regime for the in-bond assembly industry ^c	n.a.	n.a.
ISR on natural persons	118,327	1.32
B. Value added tax (IVA)	174,765	1.94
C. Special taxes^d	16,849	0.19
Special tax on production and services (IEPS)	15,483	0.17
Exemption for soft drinks	15,086	0.16
Tax on new automobiles (ISAN)	1,363	0.01
		Table III.13 (cont'd)
D. Tax incentives	14,945	0.17
Air and maritime transport	n.a.	n.a.
Crediting the IEPS on diesel fuel for the agricultural, livestock and fishing sector	0	0.00
In-bond warehouses	27	0.00

n.a. Not available.

a There is no complete breakdown within each of the four major headings and only those tax incentive programmes that were the most relevant to this report were selected.

b The GDP for 2006 amounting to Mex\$8,991,800 million was used.

- c Permanent establishments have not been taken into account.
 d Including the special tax on production and services (IEPS), the tax on new automobiles (ISAN) and the tax on ownership and use of vehicles (ISTUV).

Source: WTO Secretariat, based on data in the 2006 Fiscal Costs Budget, SHCP; consulted at: http://www.apartados.hacienda.gob.mx/politica_economica/contenido/documento/subtema14/documento_presupuesto_gastos_fiscales_2006.pdf.

141. Pursuant to the Law on the Federation's Income, the SHCP must submit a "Fiscal Costs Budget" annually to the competent commissions in the Chambers of Deputies and Senators of the Congress of the Union. The information provided by the SHCP helps to promote greater transparency of fiscal costs. Furthermore, the Federal Law on the Budget and Financial Liability (2006)²⁷³ introduces fiscal liability principles and increases transparency in the spending and administration of public resources. The Law requires the SHCP to send detailed information on public revenue and spending and indebtedness to the Congress of the Union and to make it available to the general public on the Internet.

(c) Financial support and other programmes

142. In addition to the export financing, insurance and guarantee schemes described in section (3)(vi) above, Mexico has other financial support mechanisms at the Federal level. These include, in particular, various credit and financial services schemes provided by the NAFIN (Table III.14).

Table III.14
Credits and financial services of the National Finance Company, S.N.C. (NAFIN)

Credits	
Electronic factoring	Provides liquidity to micro, small and medium-sized enterprises that supply large companies or public sector entities, giving financing on the receivable accounts.
Forward financing	Credit for working capital of up to 50% of the final orders held by suppliers of large purchasing companies.
Financing of clients and distributors	Financing of accounts payable for clients that buy from large companies.
Modernization and equipping of businesses	Medium and long-term resources in Mexican pesos and United States dollars for companies in order to purchase machinery and equipment.
Ex Im Bank	Support for SMEs to purchase new or used goods or services from the United States.
Financing of small-scale transporters	Support for transporters for the purchase of new freight or passenger vehicles to modernize their fleet of vehicles.
Electronic liquidity	Provides liquidity to developers in the INFONAVIT by financing receivable accounts for housing built.
SME credit	Financial support for companies wishing to set up or expand their businesses.
Foreign trade	Foreign currency financing for companies with the aim of supporting their foreign trade transactions.

Table III.14 (cont'd)

Credin@fin	Financing of working capital and of new machinery and equipment for companies.
Credicadenas	Credit for working capital.
Financial services	
Guarantee of prompt payment	Financing of companies that grant and administer mortgage loans.
Guarantees	Complements the amount of the guarantees required by banks in order to finance new projects.
Indirect share investment	Support for private investment in projects that have a significant economic and social impact in their sphere of influence.
Financial markets	Promotes development of the stock market.
Trust fund services	Makes trust fund services available to the business community.

²⁷³ Federal Law on the Budget and Financial Liability, published in the Official Journal of the Federation of 30 March 2006.

Administrator of funds	Gives small investors and SMEs tools for easily accessible investment with a series of investment companies.
Other support schemes	
Programme for integral support of micro-enterprises	Financing, training and technical assistance for micro-enterprises.
Selling to the Government	Training, advice, information and credit for companies taking part in government procurement.
Technical assistance programme	Technical assistance activities to promote a new business culture.
Nafin-Mexico Eurocentre for Business Cooperation	Advisory services for implementing projects with counterparts in Europe.
Entrepreneurs support programme	Identification of entrepreneurs' projects, assessment of their viability and search for the necessary financial support to guarantee their implementation.
Invest in Mexico	Gives immigrants the opportunity to set up their own businesses in their communities of origin.

Source: WTO Secretariat, based on data provided by the Mexican authorities (October 2007).

143. From 2001 to 2005, the NAFIN channelled credits (first and second tier) and guarantees to companies in the private sector amounting to Mex\$412,816 million (US\$39,316 million). Micro, small and medium-sized enterprises received an average of 78.5 per cent of the resources channelled annually; the average allocation to industrial activities was 52.8 per cent.²⁷⁴ In December 2006, the NAFIN's total portfolio was just over Mex\$117,000 million (around US\$10,754 million) and accounted for 38 per cent of the credit granted by development banks.²⁷⁵

144. Both the NAFIN and BANCOMEXT have their own legal status and financial autonomy and as development banks are entities of the Federal public administration under the terms of the Law on Credit Institutions (Article 30). Consequently, both institutions have the guarantee of the State and a sovereign credit rating.

145. In recent years, the NAFIN has undergone large-scale reorganization, improving the efficiency of its operations and achieving a solid financial position. According to a joint evaluation carried out by the World Bank and the IMF, the NAFIN and other Mexican development banks²⁷⁶ have made noteworthy progress in reorganizing their finances and in the gradual adoption of market interest rate instruments (not subsidized). For example, interest rate subsidies in loans granted by these institutions have been significantly reduced while an increasing share of subsidies is financed through the Government's budget. Moreover, these banks have tended to channel more resources through commercial banks rather than acting mainly as first-tier banks. At the same time, the development banks have improved their management mechanisms, their disclosure standards and their transparency and are supervised with the same rigour as commercial banks. Both the World Bank and the IMF recommend that, in future, reform should preserve the achievements already made and should continue to rationalize the numerous financial subsidies and guarantee programmes so as to avoid duplication of functions and infrastructures and the process of separating subsidies from financing should continue.²⁷⁷

²⁷⁴ Office of the President of the Republic, Sixth Report of the Government, 2006.

²⁷⁵ National Banking and Securities Commission (2006a).

²⁷⁶ The development banks and institutions covered by this study are: Financiera Rural – FIRA (Rural Financing Company), NAFIN, BANOGRAS, BANSEFI, SHF and BANCOMEXT. With the exception of the latter, the others all reported a positive performance in their financial situation during the period 2001-2006.

²⁷⁷ World Bank (2006), pages 28-31; IMF (2006a), pages 16-18.

146. Apart from the credit granted by development banks, financial support is also given through credits, payments and, in some instances, risk capital for social, technological development and environmental protection projects and is channelled through special funds and trust funds managed by various Federal Government agencies and organizations.²⁷⁸

147. Other support schemes offered by Federal Government agencies and organizations include several training, technical assistance and advisory programmes intended for specific sectors or economic agents. These cover a wide range of activities, inter alia, training of managerial staff, technical assistance for technological development and quality promotion, as well as orientation or advisory services, particularly to promote exports.²⁷⁹ In addition, the SE has several programmes aimed at micro, small and medium-sized enterprises with the aim of developing production chains, industrial links and suppliers and creating strategic alliances with foreign companies.²⁸⁰

(d) Trade-related investment measures

148. Pursuant to the Agreement on Trade-Related Investment Measures (TRIMS Agreement), on 31 March 1995, Mexico notified several legal instruments relating to the automobile industry and transport vehicles (trucks and buses).²⁸¹ In general, these require companies to comply with national content and level of trade requirements. As a developing country, Mexico had to eliminate requirements inconsistent with the TRIMS Agreement by 1 January 2000. Pursuant to the Agreement, Mexico requested the WTO Council for Trade in Goods to grant an extension of the transition period in order to maintain the measures notified for a further period of four years.²⁸² The extension was granted until 31 December 2003.²⁸³ In January 2004, Mexico notified the WTO that it had eliminated the measures in question.²⁸⁴

(iv) State-trading enterprises and privatization

149. Mexico has notified the WTO that it does not have any State-trading enterprise that meets the definition in Article XVII of the GATT 1994.²⁸⁵

150. The Constitution provides that the State has exclusive rights in areas deemed to be strategic, for example, hydrocarbons and electricity (see Chapter (II)(ii)).

151. State involvement in the economy diminished substantially between 1982 and 2000 when a wide-ranging privatization programme was implemented, including liquidation, merger of State-owned companies and regulatory reforms.²⁸⁶ On the other hand, during the period 2001-2006, with the exception of the privatization of two airlines, an insurance company and a company marketing marine products, there were virtually no privatizations. This is partly because the number of entities that could potentially be privatized has diminished as the law provides that the State must play a predominant role in supplying goods and services in strategic or priority areas.

²⁷⁸ The CIPI publishes information about these programmes online. Consulted at: http://www.cipi.gob.mx/html/body_programas_de_apoyo.htm.

²⁷⁹ CIPI, Description of the Federal Government's business support programmes [online]. Consulted at: http://www.cipi.gob.mx/desc_prog_apoyo.pdf.

²⁸⁰ Ibid.

²⁸¹ WTO document G/TRIMS/N/1/MEX/1 of 12 April 1995.

²⁸² WTO documents G/C/W/171 of 23 December 1999 and G/C/W/293 of 31 August 2001.

²⁸³ WTO documents G/L/463 of 31 July 2001 and G/L/500 of 9 November 2001.

²⁸⁴ WTO document G/C/42 of 16 January 2004.

²⁸⁵ The most recent notification is contained in WTO document G/STR/N/6/MEX of 31 July 2004.

²⁸⁶ IDB (2004).

152. The State, particularly the Federal Government, nevertheless still has a majority shareholding, inter alia, in certain banks and credit institutions and in some airport management companies.

(v) Government procurement

153. Mexico has not signed the WTO Agreement on Government Procurement and does not participate as an observer in the WTO Committee on Government Procurement. The authorities have stated that the chapters on government procurement in the preferential agreements Mexico has signed guarantee national treatment to contractors in the respective countries and promote transparency in Mexican government procurement in general.

154. It is estimated that total government procurement in Mexico's public sector was around Mex\$515,322 million (US\$46,847 million) in 2007, corresponding to some 5.6 per cent of the GDP. Of this amount, 36 per cent corresponded to goods, 25 per cent to services, and 36 per cent to public works.²⁸⁷

155. The Ministries of State which award the most procurement contracts in terms of number and value are those of Communication and Transport; Public Education; Health; the SHCP; and the SAGARPA. The leading entities according to the same criteria are PEMEX, the CFE, the IMSS and the Instituto de Seguridad y Servicios Sociales para los Trabajadores del Estado – ISSSTE (Social Welfare and Services Institute for State Employees).²⁸⁸

156. Mexico has no central procurement office and the Federal entities, companies with a majority government shareholding and state entities have autonomy to plan and purchase. The Secretaría de la Función Pública - (Ministry of Public Administration), preceded by the Secretaría de la Contraloría y Desarrollo Administrativo – SEDOCAM (Ministry of the Comptroller General and Administrative Development), is responsible for determining and promoting the necessary measures to ensure the impartiality and transparency of procedures for government procurement of goods and services. The SFP is the only government body responsible for regularly monitoring and investigating unlawful acts in relation to purchases and public works.

157. The SHCP is responsible for authorizing the budget for the Programas Anuales de Adquisiciones, Arrendamientos y Servicios – PAAAS (Annual Purchasing, Leasing and Services Programmes) and the Programas Anuales de Obras Públicas - PAOP (Annual Public Works Programmes), presented annually by the various entities in order to determine their procurement needs. The SE receives the PAAAS and the PAOP, compiles them and publishes the compilation on the Internet.²⁸⁹

158. Article 134 of the Constitution provides that purchases and procurement of works by the State must be through public tenders involving a public invitation to tender so that bids may be freely submitted. The Constitution neither guarantees nor limits participation by foreigners in such tenders. Other regulations affecting government procurement include the Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público – LAASSP (Law on Purchasing, Leasing and Services by the Public Sector), the Ley de Obras Públicas y Servicios Relacionadas con las Mismas –

²⁸⁷ Information from the SE online. Consulted at: <http://www.economia-paasop.gob.mx/comonew.shtml>.

²⁸⁸ Ibid.

²⁸⁹ The PAAAS and the PAOP may be consulted at: <http://www.economia-paasop.gob.mx/>.

LOPSRM (Law on Public Works and Related Services), and their respective Implementing Regulations.²⁹⁰

159. Since the previous Review of Mexico, some changes have been introduced into the legislation with the aim of streamlining and improving the transparency of the government procurement process. For example, the procedure for opening bids has been simplified so that technical and commercial proposals from bidders are opened simultaneously; and government bodies must make available to the public on the Internet, at the latest by 30 November each year, their estimated annual procurement programme for the following year.

160. The LAASSP states that public tenders may be of three types: (i) national, in which only persons of Mexican nationality may participate and the goods to be purchased must be produced in Mexico with a minimum national content of 50 per cent; (ii) international covered by agreements, in which only Mexican and foreign bidders from countries that have signed the agreement may take part and the goods to be purchased must comply with the rules of origin in the agreement; and (iii) open international, in which any Mexican or foreign bidder can participate and the goods to be purchased may be of any origin.

161. In the course of the two previous Reviews of Mexico, the lack of statistics did not allow an evaluation of the relative importance of these three types of tender provided in the LAASSP. This lacuna has been overcome with the compilation of data from 2006 onwards, which show that, as a percentage of the total value of public tenders during 2006, the most common type was national tenders (45.8 per cent), followed by international tenders covered by agreements (30.3 per cent), and open international tenders (23.9 per cent).²⁹¹

162. Open international public tenders only apply when: (i) this is specified for procurement financed through external credits; (ii) it is appropriate in price terms; (iii) as a result of a market survey which concludes that Mexican suppliers or suppliers in countries with which Mexico has a preferential agreement containing a chapter on government procurement are unable to supply the goods or service; or (iv) when a national or international tender covered by an agreement failed to result in any bid or none of the bids met the requirements specified for the procurement. The LAASSP provides that when determining price advantage the calculation must include a preferential margin of up to 10 per cent of the price in favour of the Mexican supplier in open international public tenders. The states are not covered by these rules on international tenders, but they do apply to semi-State-owned companies such as PEMEX and CFL.

163. The LAASSP provides that public tenders should be the general procedure for government procurement. It does allow exceptions, however, in the form of an invitation to tender addressed to at least three people or direct award of a contract. For exceptions to public tender, the LAASSP determines that the total operations under these forms must not exceed 20 per cent of the authorized budget for the contracting entity in each financial year. In terms of numbers of procurement procedures, tenders account for approximately 60 per cent of the total and exceptions 40 per cent,

²⁹⁰ The latest revision of the LAASP was published in the Official Journal of the Federation of 20 February 2007; the latest revision of the LOPSRM was published in the Official Journal of the Federation of 7 July 2005; the latest revision of the Implementing Regulations for the LAASSP was published in the Official Journal of the Federation of 30 November 2006; and the latest revision of the Implementing Regulations for the LOPSRM was published in the Official Journal of the Federation of 29 November 2006.

²⁹¹ Information provided by the authorities for the purpose of this Review.

while in terms of the amounts of contracts, tenders account for 90 per cent and exceptions for the remaining 10 per cent.²⁹²

164. The LAASSP requires that notices to participate in public tenders be published in the Official Journal of the Federation. The SFP must also provide detailed information on the Internet (Compranet) so as to enhance the efficiency and transparency of government procurement procedures and to prevent the possibility of corruption.²⁹³ The publication of invitation and direct award procedures is not compulsory.

165. The LAASSP provides that the period for opening and submitting bids for international tenders may not be less than 20 consecutive days from the date on which the notice was published. Bids must be submitted in a sealed envelope or through electronic media certified by the SFP (24 per cent of bids are received electronically). If two or more bids meet all the technical and legal requirements imposed by the contractor, the contract is awarded to the bidder offering the lowest price or best cost/benefit ratio, as determined in the corresponding bases for the tender.

166. The LAASSP also requires that the decision on the tender be made public at a meeting of the public board, which may be attended by all the bidders that took part in the tender. Bidders also receive in writing an explanation of why their bid was not accepted.

167. The SFP may initiate investigations ex officio or following a claim of non-compliance by any person or company that considers that its rights have been affected, either by a decision awarding a contract or at any stage of the tender procedure. Within the time limits prescribed in the LAASSP, the SFP must take a decision on the alleged irregularities and, where appropriate, decide to suspend the procurement procedure. An appeal may be lodged against these decisions in accordance with the Federal Law on Administrative Procedures.²⁹⁴

168. The principles governing procurement of public works, laid down in the LOPSRM, are similar to those in the LAASSP.

169. Procurement by bodies in the states and municipalities that do not involve Federal funds, as well as contracts between entities or agencies of the Federal public administration are not governed by the LAASSP or the LOPSRM.²⁹⁵

170. Government procurement in the state sphere is subject to special state provisions. Nevertheless, very few of these differ significantly from the LAASSP. For example, legislation on government procurement in the Federal District provides for a public bidding procedure that mainly differs from the LAASSP in respect of the requirement that there must be 35 per cent regional content in products procured through international tenders.²⁹⁶ In the case of the state of Mexico, cooperatives and companies established in the state are given preference in bidding procedures over foreign companies and nationals from other States, all other things being equal.²⁹⁷

²⁹² Information provided by the authorities.

²⁹³ Consulted at: <http://www.compranet.gob.mx/>.

²⁹⁴ The most recent revision of the Federal Law on Administrative Procedures was published in the Official Journal of the Federation of 30 May 2000.

²⁹⁵ Article 1 of the LAASSP and Article 1 of the LOPSRM of 2005.

²⁹⁶ Law on Procurement by the Federal District, published in the Official Gazette of the Federal District of 28 September 1998.

²⁹⁷ Article 18 of the Law on Procurement by the state of Mexico, published in the Official Gazette of the state of Mexico of 2 February 1982.

171. Mexico has signed free trade agreements that include special chapters on government procurement; procurement by State governments or municipalities is not covered in these agreements.²⁹⁸

(vi) Protection of intellectual property

172. The WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement) has applied in full in Mexico since 1 January 2000. Mexico has notified its laws and regulations on the protection of intellectual property rights (IP) to the WTO and the TRIPS Council examined the legislation in 2000.²⁹⁹ Mexico has notified several legal provisions that subsequently amended its legislation on intellectual property rights.³⁰⁰ It has also provided information on its national enforcement system.³⁰¹

173. Mexico is a member of the World Intellectual Property Organization (WIPO) and has signed the majority of the international agreements on intellectual property rights (Table III.15). Since the previous Review, Mexico has put into force the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty. Mexico has also signed the Singapore Treaty on the Law of Trademarks, which had not yet entered into force by mid-2007. Mexico is not a member of the Madrid System for the International Registration of Marks. The authorities have indicated, however, that they are examining the advantages and disadvantages of acceding to this System and that Mexico participates as an observer in the WIPO working groups on the subject.

Table III.15
Mexican participation in international agreements on intellectual property rights

Agreement, convention or treaty (the most recent act in which Mexico participated)	Date of entry into force in Mexico
Paris Convention for the Protection of Industrial Property (Stockholm)	September 1903
Berne Convention for the Protection of Literary and Artistic Works (Paris)	June 1967
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	May 1964
Lisbon Agreement on the Protection of Appellations of Origin and their International Registration (Stockholm)	September 1966
Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms	December 1973
Convention Establishing the World Intellectual Property Organization	June 1975
Brussels Convention Relating to Programme-Carrying Signals Transmitted by Satellite	August 1979
Nairobi Treaty on Protection of the Olympic Symbol	May 1985
Treaty on the International Registration of Audiovisual Works	February 1991
Patent Cooperation Treaty	January 1995
International Convention for the Protection of New Varieties of Plants (1978 Act)	August 1997
WIPO Performances and Phonograms Treaty	May 2002
WIPO Copyright Treaty	March 2002
Locarno Agreement Establishing an International Classification for Industrial Designs	January 2001

Table III.15 (cont'd)

²⁹⁸ The FTAs which include special chapters on government procurement are: the North American Free Trade Agreement (with the United States and Canada); the FTA with Bolivia; the FTA with Costa Rica; the FTA with Nicaragua; the FTA with Colombia; the FTA with Israel; the FTA with the European Union; and the FTA with the European Free Trade Association (Iceland, Norway, Liechtenstein and Switzerland).

²⁹⁹ The questions posed to Mexico and the corresponding replies in the context of the examination are contained in WTO document IP/Q/MEX/1 of 14 November 2000

³⁰⁰ WTO documents IP/N/1/MEX/I/Add.1, IP/N/1/MEX/I/2/Add.1, IP/N/1/MEX/I/2/Add.2 of 26 August 2004, and IP/N/1/MEX/2 of 5 March 2007.

³⁰¹ WTO document IP/N/6/MEX/1 of 30 March 2000.

Agreement, convention or treaty (the most recent act in which Mexico participated)	Date of entry into force in Mexico
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	January 2001
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	March 2001
Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Geneva)	March 2001
Strasbourg Agreement Concerning the International Patent Classification	October 2001
Treaty on the Law of Trademarks (not yet in force)	Signed in October 1994
Singapore Agreement on the Law on Trademark Registration (not yet in force)	Signed in March 2006
The Hague Agreement Concerning the International Registration of Industrial Designs	Not a member
Geneva Act of The Hague Agreement Concerning the International Registration of Industrial Designs (not yet in force)	Not a member
Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods	Not a member
Madrid System for the International Registration of Marks	Not a member
Patent Law Treaty	Not a member

Source: WTO Secretariat, on the basis of information provided by the WIPO. Available at: <http://www.wipo.int/treaties/general/parties.html#1>.

174. Mexico has also undertaken commitments on intellectual property rights under the various free-trade agreements it has signed (see Chapter II(4)(iii)). The overall objectives on intellectual property rights in these agreements are similar although some specific provisions differ.

175. On 27 May 1997, Mexico and the European Communities signed an agreement on the mutual recognition and protection of designations for spirit drinks. The Agreement includes the obligation to recognize as originating in the Parties the designations used to protect the spirits indicated in two lists, one Mexican and the other European; as well as the commitment to prevent the marketing of spirits covered by the protected designations if they do not originate in the parties.

176. Mexico notified the WTO that the Instituto Mexicano de la Propiedad Industrial – IMPI (Mexican Industrial Property Institute) and the Directorate-General of Copyright are the contact points pursuant to Article 69 of the TRIPS Agreement.³⁰² In 1997, the Directorate-General of Copyright was replaced by the Instituto Nacional de Derecho de Autor – INDAUTOR (National Copyright Institute).

177. The IMPI is a decentralized body coordinated by the SE and is responsible, inter alia, for granting protection through patents, registration of utility models and industrial designs, registration of marks and trade notices and publication of trade names: it also authorizes the use of appellations of origin and regulates industrial secrets; prevents and combats acts that infringe intellectual property; and applies the corresponding sanctions.³⁰³ The INDAUTOR is a decentralized body of the Ministry of Public Education and is the administrative entity mainly responsible for promoting and protecting copyright and related rights, and for keeping the Public Copyright Register.³⁰⁴ The SAGARPA, through the Servicio Nacional de Inspección y Certificación de Semillas – SNICS (National Seed Inspection and Certification Service) is responsible, inter alia, for the registration of new plant varieties.

178. Mexico's legislation covers all the major aspects mentioned in the TRIPS Agreement

³⁰² WTO document IP/N/3/Rev.9 of 8 November 2005.

³⁰³ Information from the IMPI online. Consulted at: <http://www.impi.gob.mx>.

³⁰⁴ Information from the INDAUTOR online. Consulted at: http://www.sep.gob.mx/wb2/sep/sep_459_indautor.

(Table III.16). In some of these, including industrial designs, trademarks and copyright, Mexico grants rights that exceed the minimum terms laid down in the Agreement.

Table III.16
Summary of the protection of intellectual property rights in Mexico, 2006

Area	Scope	Term	Selected limitations and exclusions
Copyright and related rights	Original works susceptible of disclosure or reproduction by any medium related, among other spheres of activity, to literature, music, drama, dance, photography, architecture, audiovisual arts, radio and television, computer programs and compilations, including databases. Both moral and economic rights are recognized. Related rights include moral rights as well as the rights of performers and of broadcasting organizations. No registration is necessary for protection.	Economic rights are protected for the life of the author and 100 years after his death. Unless otherwise specified, economic rights are transferred for five years and only for over 15 years in exceptional circumstances. Moral rights are imprescriptible.	It is not considered that there has been infringement if the works are not used to obtain direct financial benefit or are used for educational or research purposes. No authorization is required, inter alia, for the reproduction of articles on current affairs, unless the owner of the rights has expressly prohibited it; partial reproduction for research purposes; reproduction by individuals or teaching or research institutes of a single copy of a work without gainful intent. The owner of the right retains the inalienable moral right to withdraw publication rights.
Patents ^a	Any invention that is new and involves an inventive step and is susceptible of industrial application.	20 years from the date of filing, not renewable.	The following may not be patented: biological processes for the reproduction and propagation of plants and animals; biological and genetic material present in nature; breeds of animals, the human body and its living parts; new plant varieties; computer programs; schemes for presenting information. Compulsory licences may be granted if a patent is not worked within the three years after it has been granted, or four years after filing of the application, unless it has been worked, including by means of imports. Public interest licences may be granted for use of a patent in cases of emergency or national security.
Industrial designs ^a	Subject to registration, designs that are new and susceptible of industrial application. Including industrial designs for ornamentation purposes.	15 years from the date of filing, not renewable.	
Utility models ^a	Subject to registration, objects, utensils, appliances or tools which offer a different function with respect to their component parts.	Ten years from the date of filing, not renewable.	
Layout designs of integrated circuits ^a	Subject to registration, the layout designs and circuits defined.	Ten years from the date of filing, not renewable.	Layout designs that have been used commercially for over two years.
Trademarks ^a	Subject to registration, any visible sign that distinguishes products or services from others of the same type or category on the market. Includes appellations and trade names	10 years from the date of filing, not renewable. In general, the registration of a trademark lapses if it ceases to be used during three consecutive years.	Geographical appellations, names that may mislead with regard to their origin, appellations similar to trademarks well known in Mexico. The use of trademarks may be regulated by the authorities, inter alia, for reasons of competition policy or in cases of national emergency.

Table III.16 (cont' d)

Area	Scope	Term	Selected limitations and exclusions
Geographical indications ^a	Subject to a declaration by the authorities, appellations of origin are defined as the name of a region used to designate a product originating therein whose characteristics are due exclusively to the geographical environment.	As long as the grounds which led to its protection persist.	The State owns the appellation of origin, which may only be used by virtue of the authorization issued by the IMPI.
Undisclosed information ^a	Information whose industrial or commercial application would confer a comparative advantage, deemed to be confidential and protected as such in documents and other media.	Indefinitely.	
New plant varieties	Plant varieties that are new, distinct, stable and uniform. A year of priority rights is given for foreign applications of members of UPOV.	18 years for perennials (including forest and fruit trees and vines); 15 years for others.	The consent of the rightholder is not required, inter alia, for research or consumption by the breeder.

a Protection is not granted when it could be contrary to public order or morals or legal provisions.

Source: WTO Secretariat.

179. The reform of the Federal Copyright Law, published in the Official Journal of the Federation of 23 July 2003, extended economic rights from 75 to 100 years; this protection had already been extended from 50 to 75 years in 1993. The authorities have indicated that it was decided to extend the period of protection in order to prevent unfair competition, including piracy. It would be useful to conduct an economic analysis comparing these and other benefits with the costs resulting from the royalties which Mexican users have to pay during the additional years in order to have access to cultural goods and services; the diminution of the public domain element and the ensuing impact on the creation of ideas could create additional costs.

180. As far as trademarks are concerned, Mexico has decided not to limit imports by an unofficial distributor of goods placed on the market in another country with the consent of the rightholder (parallel import). In the case of patents, parallel imports are not allowed. Concerning copyright, the holder of rights in an artistic or literary work, as well as the producer of phonograms and the publisher of books, has the possibility of authorizing or prohibiting the import of the work concerned into Mexico without his consent.

181. Mexico has not granted any compulsory licences or public utility licences pursuant to Articles 70 and 77 of the Industrial Property Law.

182. Between 2000 and 2006, Mexico recorded an increase in the filing of applications and in the issue of patents, utility models, industrial designs and trademarks.³⁰⁵ Trademarks are a particularly active and rapidly growing sector of intellectual property rights in Mexico; during the period 2000-2006, the number of applications for registration of a trademark increased by 15 per cent and the number of trademarks granted rose by 21 per cent. The effects of this increase can be seen, for example, in the Mexican alcoholic beverages industry, which is an intensive user of trademarks and geographical indications and has become one of Mexico's most dynamic export industries.³⁰⁶

183. Between 2002 and 2006, the IMPI received a total of 322,967 applications for protection of distinctive signs (trademarks, trade notices and trade names) and decided on 78 per cent of the applications. In the case of patents, the IMPI received a total of 68,399 applications and granted

³⁰⁵ The data on industrial property can be consulted in the IMPI Report in Figures 2007, consulted at: <http://www.impi.gob.mx/impi/docs/bienvenida/ImpiCifrasenero-junio2006.pdf>.

³⁰⁶ For more details on this aspect, see WTO (2002).

54 per cent of these over this period; the chemicals and metallurgy branches received the most patents. Concerning utility models and industrial designs, 2,053 and 12,218 applications were received, of which 33 per cent and 71 per cent, respectively, were granted.³⁰⁷

184. The IMPI and the INDAUTOR together are responsible for enforcement of intellectual property rights, the former as regards industrial property and the latter for copyright and related rights. Competence for copyright is shared by these two bodies in the case of trade-related infringement. Infringers of industrial property rights may be punished by terms of imprisonment of up to ten years, as well as fines of up to 20,000 times the daily minimum wage in Mexico City (US\$4.56 in early 2007). Infringement of copyright for commercial purposes may be punished by a term of imprisonment of up to six years and fines of up to 15,000 times the daily minimum wage.

185. In 2006, the Dirección Divisional de Protección a la Propiedad Intelectual – DDPPI (Divisional Directorate of Intellectual Property Protection) of the IMPI carried out 2,445 inspections, of which 1,507 were ex officio and 938 at the request of a party, relating to just over five million products, including in particular clothing, footwear, signs and computers; the approximate value of the products inspected was US\$13 million, of which 95 per cent corresponded to industrial property and 5 per cent to copyright.³⁰⁸

IV. TRADE POLICIES BY SECTOR

(5) OVERVIEW

186. During the review period, Mexico continued to pursue the reform process aimed at linking the agricultural sector more closely to the market. There were fewer trade-distorting interventions and transfers to producers were made more efficient, but price support and production-related payments continue to account for more than half the aid provided for producers. According to the OECD, the producer support estimate (PSE) has increased considerably since 2004 but remains relatively low when compared with the average for the OECD countries. Nevertheless, further reforms appear to be needed in order to facilitate the reallocation of resources and bring about a sustainable increase in the sector's productivity.

187. Mexico undertook to grant tariff quotas under the WTO for various agricultural products, although most were reserved for specific countries. For a large proportion of products, WTO quota allocation procedures were not defined in 2007. In practice, the products concerned are imported in larger quantities and under better access conditions, albeit under unilateral quotas or preferential agreements. Partly due to the coexistence of different kinds of quotas, their administration is complicated and not very transparent. Moreover, in the allocation of the WTO quota for powdered milk and the unilateral quotas for yellow and white maize domestic purchase and consumption requirements are imposed. Mexico sent the WTO its last quota notification, covering the period 1996-1999, in January 2001.

188. The manufacturing sector has played a key role in Mexico's development and in its integration into the world economy thanks, in particular, to its incorporation into the North American production networks. In recent years, the sector has lost some of its former momentum, due both to cyclical factors and to increasing competitive pressures in the world economy. Aware of these challenges, the authorities are contemplating structural reforms that would make it possible, among other things, to improve the competitiveness of the productive chains, particularly those with greater value added. Given the large scale and diversification of the Mexican manufacturing sector,

³⁰⁷ Information provided by the authorities (IMPI).

³⁰⁸ Ibid.

horizontal measures to increase productivity and minimize the distortions created by incentives would be more appropriate than sectoral approaches.

189. The energy sector has increased its contribution to exports and is of crucial importance for the public finances (see Chapter I). Under the Constitution, it is the State that must exploit hydrocarbons, as well as generate and distribute electrical energy for public use. A heavy tax burden and consumer subsidies have resulted in both the State oil company, PEMEX, and the State companies in the electrical sector finding it increasingly difficult to finance the necessary investment. It would therefore seem essential to carry out structural reforms in both the hydrocarbon and electricity sectors to ensure their financial viability and increase operator efficiency, as well as to improve Mexico's supply of energy resources.

190. In the services sector, Mexico has adopted specific commitments in 11 of the 12 GATS sectors. It has also participated in the post-Uruguay Round negotiations on basic telecommunications and financial services, undertaking to abide by the reference paper on telecommunications. Within the framework of the Doha Round negotiations Mexico submitted an initial offer in 2003 and a revised offer in 2005. In many cases, the provisions of the Mexican legislation relating to access to the services market are considerably more favourable than the commitments made by Mexico under the GATS. Accordingly, Mexico could increase the predictability of its investment regime by eliminating these differences, which would also result in a more uniform treatment as between preferential partners and other WTO Members.

191. The telecommunications sector has grown faster than the rest of the economy. At the same time, the level of competition in the sector continues to be limited and, consequently, services are expensive. The historical operator, TELMEX, continues to occupy a dominant position in key markets and there are still difficulties with interconnection between operators. The participation of foreign capital in telecommunications concessionaires is restricted to 49 per cent, except in mobile telephony where it may exceed that limit subject to authorization. The elimination of these restrictions on investment could usefully complement other efforts made by the authorities to improve the competitive environment.

192. In recent years, various reforms have transformed the Mexican financial system by improving its regulation and supervision. There has also been a notable process of internationalization of commercial banking. There are no restrictions on the participation of foreign capital from a signatory to a free trade agreement that includes a financial services chapter in either banks or insurance companies. Foreign capital from other countries may not effectively control an insurance company. In general, the law prohibits contracting for insurance services with foreign insurers if the risk can be covered by a Mexican insurer.

193. The Mexican air transport market has been dominated by a State duopoly, but the level of competition has increased enormously as a result of the process of privatization of the airlines that formed this duopoly and the penetration of the market by low-cost airlines. The provision of scheduled domestic air transport services continues to be restricted to Mexican enterprises with not more than 25 per cent of foreign capital. Foreign investment in public service airport concessionaires is also restricted by the establishment of a maximum of 49 per cent of the capital, except in cases of prior authorization. The authorities consider that the Mexican air transport sector is not yet ready for an open skies policy.

194. There has been considerable investment in the modernization of Mexico's ports, but the authorities are aware that further progress is needed to improve port infrastructure and remove bottlenecks in multimodal transport. Although almost all port administrations are State-owned, in

practice many port services are provided by the private sector through concessions. Foreign investment is restricted to a maximum of 49 per cent of the capital of shipping companies that commercially operate vessels intended for inland waterway navigation and cabotage. Although almost all international maritime transport is handled by foreign shipping companies, their participation is only allowed if the company's country of origin grants Mexico reciprocity.

195. To practise a profession in Mexico it is indispensable to hold a licence, which has national validity and, among other things, requires the holder to be in possession of a recognized diploma and to have completed "social service". At national level, there are certain professional and technical services reserved for Mexican citizens. In any event, the practice of a profession by foreigners is subject to the principle of reciprocity.

(6) AGRICULTURE

(i) General features

196. Between 2001 and 2006, Mexican agricultural sector GDP (including the activities of agriculture, livestock farming, forestry and fishing) grew at a real average rate of 2.1 per cent a year. The contribution of the agricultural sector to total GDP fell from 5.2 per cent in 2001 to 5.0 per cent in 2006.³⁰⁹ The structure by activity of agricultural production has remained relatively stable: in 2006, agriculture accounted for 64.2 per cent of agricultural GDP (62.6 per cent in 2001); livestock farming accounted for 26.9 per cent (28.8 per cent in 2001); forestry for 5.3 per cent (5.5 per cent in 2001), and fishing for 3.6 per cent (3.1 per cent in 2001).³¹⁰

197. From 2001 to 2006, employment in the sector declined from 17.5 per cent of the total gainfully employed population to 14.3 per cent, mainly as a result of the rural exodus and the growth of non-agricultural activities in rural communities.³¹¹

198. In 2006, the value of agricultural production was estimated at some 216.77 billion pesos (about US\$20 billion); grain and oilseed production accounted for about 30 per cent of the total, followed by vegetables (20.4 per cent) and fruit (16.7 per cent). Maize for human consumption continues to be the main staple product, accounting for 18.9 per cent of the total value of agricultural production, followed by sugar cane (8.0 per cent), fodder (5.8 per cent), tomatoes (5.3 per cent) and avocados (3.9 per cent).³¹² In 2006, the value of livestock production amounted to 192.014 billion pesos (about US\$18 billion).³¹³

199. In 2006, Mexican exports of agricultural products (WTO definition) amounted to US\$13.362 billion (a 76 per cent increase over 2001).³¹⁴ The main export products include fresh fruit and vegetables, food preparations and beverages, especially beer, tequila and canned products. Mexico is a net importer of agricultural products; the total values of imports of these products amounted to US\$16.261 billion in 2006. The main agricultural imports include maize, soya, beef, wheat, cotton, oilseeds, pork, and milk in powder.

³⁰⁹ Bank of Mexico and National Institute for Statistics, Geography and Data Processing.

³¹⁰ Ejecutivo Federal (2007), p. 11.

³¹¹ Ejecutivo Federal (2007), p. 101.

³¹² SAGARPA, Sistema de Información Agroalimentaria y Pesquera (SIAP). Estadísticas básicas (Agri-food and Fishing Information System. Basic Statistics). Consulted at: <http://www.siap.gob.mx/>.

³¹³ Ejecutivo Federal (2007).

³¹⁴ Calculated by the WTO Secretariat on the basis of United Nations Statistical Division Comtrade data.

(ii) Policy objectives

200. From 2001 to 2006, Mexico's agricultural policy, overseen by SAGARPA, pursued the objectives of the Sectoral Programme for Agriculture, Livestock, Rural Development, Fishing and Food (2001-06), namely, to produce food that is healthy for the consumer and profitable for the producer; to produce quality non-food goods for the end markets; to step up the development of the rural communities; and to preserve and improve the environment.³¹⁵ The National Development Plan for 2007-12 establishes similar objectives, including improving the income of agricultural producers through increased exports, value-added processes and the production of bio-energy crops. In October 2007, the corresponding sectoral programme had not yet been published.

201. In April 2003, the Federal Government concluded with various farmers' organizations the Acuerdo Nacional para el Campo – ANC (National Agreement for the Countryside) for the purpose of introducing a series of measures to promote agricultural development.³¹⁶ The Agreement was also intended as a response to the concerns of some groups of producers regarding the liberalization of trade in most agricultural products within the NAFTA framework. In this Agreement, the Government undertook, among other things, to: ensure the effective implementation of the trade remedies established in the Mexican legislation and the trade treaties signed by Mexico, reinforce sanitary and phytosanitary measures in order to guarantee the quality and safety of agricultural products, and strengthen the development bank Financiera Rural to facilitate access to credit in the agricultural sector.

(iii) Agricultural support indicators

202. The OECD's estimates indicate that, during the review period, aid for Mexican agricultural producers associated with government programmes (Producer Support Estimate – PSE) increased considerably in 2002, declined in 2003 and 2004, but increased again in subsequent years, reaching some 78,028 billion pesos (some US\$7,171 billion) in 2006 (Table IV.1). As a percentage of farm income, the PSE followed a similar trend, reaching 17.4 per cent in 2006; the latter figure is a little more than half the average for the OECD countries (29 per cent for 2004-2006). In 2006, price support (measured as the difference between domestic and international prices) constituted 49.3 per cent of the PSE, input-related payments accounted for 25.3 per cent and payments for historical entitlements that do not establish production requirements accounted for about 16 per cent.

203. The figure for the Total Support Estimate (TSE), which includes transfers from consumers and taxpayers and net fiscal revenue, increased significantly in 2002 and 2003, decreased in 2004 but, like the PSE, subsequently rose to 86,569 billion pesos (some US\$7,955 billion) in 2006, which represented 0.93 per cent of GDP. In this latter year, transfers from consumers and taxpayers were equivalent to 52 and 54 per cent of the TSE, respectively. The increase in support via prices largely explains the more than doubling of transfers from consumers between 2004 and 2006.

204. In a recent study, the OECD pointed out that Mexico had made good progress towards achieving a better linkage between its agricultural sector and the market.³¹⁷ The study notes that interventions that generate major distortions have been reduced by improving the efficiency of

³¹⁵ SAGARPA, Informe de Rendición de Cuentas de la Administración Pública Federal 2000-2006 (Report on Federal Public Administration Reporting). Part 1. See also Programa Sectorial de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación 2001-2006 (Sectoral Programme for Agriculture, Livestock, Rural Development, Fishing and Food 2001-2006).

³¹⁶ National Agreement for the Countryside, published in the Official Journal on 28 April 2003. For an account of the negotiations leading to the Agreement see Morales-Moreno, I. (2004).

³¹⁷ OECD (2007a), p. 189.

transfers of income to producers and increasing transparency through decentralization, while support for producers continues to be relatively low compared with the average for OECD members. However, the study also mentions that price support and production-related payments continue to account for more than half the support provided for producers. Moreover, delays in applying such concepts as the "polluter pays" and "user pays" principles have postponed the benefits for the environment and allowed the depletion of resources to continue; though reduced, subsidies for water use are still being granted.

Table IV.1
Agricultural support estimates, 2001-06
(in billions of pesos)

Item	2001	2002	2003	2004	2005	2006 ^a
Total value of production	305,838	305,380	336,553	377,470	380,768	408,784
Proportion of basic products subject to price support (%) ^b	65.8	67.2	66.5	69.4	67.6	66.6
Total value of consumption	310,546	314,825	346,777	373,715	374,201	426,365
Producer Support Estimates (PSE)	48,903	74,006	68,506	44,348	59,608	78,028
Percentage PSE (%)	15.3	23.1	18.5	10.8	14.3	17.4
General Services Support Estimates (GSSE)	6,062	6,074	9,474	9,285	10,718	9,889
Consumer Support Estimates (CSE)	-44,975	-69,105	-45,465	-20,582	-30,593	-45,485
Table IV.1 (cont' d)						
Total Support Estimates (TSE)	51,886	77,228	74,658	51,476	67,559	86,569
Transfers from consumers	42,248	67,948	42,340	19,202	27,895	44,875
Transfers from taxpayers	17,412	15,747	39,044	38,310	46,062	47,095
Tax revenue	-7,774	-6,466	-6,726	-6,036	-6,397	-5,402
Percentage TSE (share of GDP, %)	0.9	1.2	1.1	0.67	0.81	0.93

a Preliminary figures.

b The basic products subject to price support are: wheat, maize, other grain, coffee, tomatoes, rice, oilseeds, sugar, milk, beef, pork, poultry, eggs and beans.

Source: OECD, PSE/CSE database, 2007, consulted at: <http://www.oecd.org/dataoecd/13/16/39579404.xls>.

205. The same study notes that the increased support for the agricultural sector recorded in 2006 was the result of an increase in price support for maize, and that the increase in domestic prices exceeded the growth of world prices, adversely affecting Mexican consumers. The study concluded that further reforms are needed in the Mexican agricultural sector to remove the trade barriers that still prevail and replace the more distorting subsidies with better targeted measures.

(iv) Policy instruments

(a) Border measures

206. In 2007, the average MFN tariff for agricultural products (WTO definition) was 23 per cent³¹⁸ a figure considerably higher than the average tariff applied to non-agricultural products, which was 9.9 per cent in the same year (Chapter III (2)(iv)).

207. As part of the commitments assumed in the Uruguay Round, Mexico agreed to grant tariff quotas for various agricultural products, including poultry meat, animal fats, milk in powder, cheese, kidney beans, potatoes, coffee, wheat, barley, maize, and sugar and products with a high sugar content. For these products a bound in-quota tariff, initial and final, of 50 per cent was established, except for

³¹⁸ In the case of products subject to tariff quotas, only ex-quota tariffs were used to calculate the average tariff.

milk in powder for which the tariff was set at 0 per cent. The ex-quota tariffs were bound at considerably higher rates that had to be progressively reduced; the transition period stipulated was 1995-04 (Table IV.2). Mexico did not undertake to increase the quota volume, except in the case of coffee and sugar products.³¹⁹

Table IV.2
Multilateral tariff quotas and import volume, 2006
(US\$)

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) ^a
	In-quota	Ex-quota	In-quota	Ex-quota		
Powdered milk					120,000	138,727
04021001	0%	125.1%	0%	US\$ 1,044/ton but not<125.1%		
04022101	0%	125.1%	0%	US\$ 1,044/ton but not<125.1%		

Table IV.2 (cont'd)

Cheese, hard and semi-hard					9,385	31,802
04061001	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04063001	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04063099	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04069003	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04069005	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04069099	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
Coffee; coffee extracts, essences and concentrates					20,800	2,170
09012101	50%	72%	50%	72%		
09012201	50%	72%	50%	72%		
09019001	50%	72%	50%	72%		
09019099	50%	72%	50%	72%		
21011101	50%	140.4%	50%	US\$ 0.32/kg. but not<140.4%		
Meat and edible offal					40,543	255,014
02071403	50%	234%	50%	US\$ 1,512/ton but not<234%		
02071404	50%	234%	50%	US\$ 1,512/ton but not<234%		
02071499	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072601	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072602	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072699	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072703	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072799	50%	234%	50%	US\$ 1,512/ton but not<234%		

³¹⁹ Mexico's Schedule of Concessions (Schedule LXXVII-Mexico, Sections 1A1 and 1B1).

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) ^a
	In-quota	Ex-quota	In-quota	Ex-quota		
02073599	50%	234%	50%	US\$ 1.512/ton but not<234%	39,623	70,232
02073699	50%	234%	50%	US\$ 1.512/ton but not<234%		
Animal fats						
02090001	50%	254%	50%	US\$ 837/ton but not<254%	8,340	52,973
02090099	50%	254%	50%	US\$ 837/ton but not<254%		
15010001	50%	254%	50%	US\$ 837/ton but not<254%		
15161001	50%	254%	50%	US\$ 837/ton but not<254%		
Potatoes, fresh or frozen						
07019099	50%	254%	50%	US\$ 318/ton but not<245%		

Table IV.2 (cont'd)

Beans, except for seed					56,500	129,085
07133302	50%	125.1%	50%	US\$ 360/ton but not<125.1%		
07133303	50%	125.1%	US\$ 360/ton but not<125.1%	US\$ 360/ton but not<125.1%		
07133399	50%	125.1%	US\$ 360/ton but not<125.1%	US\$ 360/ton but not<125.1%		
Wheat					604,612	3,446,634
10011001	50%	67%	50%	US\$ 90/ton but not<67%		
10019001	50%	67%	US\$ 90/ton but not<67%	US\$ 90/ton but not<67%		
10019099	50%	67%	50%	US\$ 90/ton but not<67%		
Barley					4,742	77,751
10030002	50%	115%	50%	US\$ 144/ton but not<115.2%		
10030099	50%	155%	50%	US\$ 144/ton but not<115.2%		
Maize					2,501,000	7,567,058
10059003	50%	194%	50%	US\$ 185/ton but not<194%		
10059004	50%	194%	50%	US\$ 185/ton but not<194%		
10059099	50%	194%	50%	US\$ 185/ton but not<194%		
Sugar and products with a high sugar content					183,800	430,242
17022001	15%	15%	50%	0.18 dol/kg. but not<78.3%		
17023001	15%	15%	50%	0.29 dol/kg. but not<117%		
04029901	50%	15% + US\$ 0.36/kg.	50%	0.18 dol/kg. but not<78.3%		
04029999	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.18/kg. but not<78.3%		
18062099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.216/kg. but not<94%		
18063201	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.216/kg. but not<94%		

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) ^a
	In-quota	Ex-quota	In-quota	Ex-quota		
18069001	50%	20% + US\$ 0.36/kg.	US\$0.252/kg. but not<94%	US\$ 0.252/kg. but not<94%		
18069002	50%	20% + US\$ 0.36/kg.	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
18069099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.216/kg. but not<94%		
19019003	50%	10%	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
19019004	50%	10%	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
19019005	50%	109%	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
19019099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.252/kg. but not<109%		

Table IV.2 (cont'd)

21011101	50%	104%	50%	US\$ 0.32/kg. but not<140.4%		
21012001	50%	20%	50%	US\$ 0.32/kg. but not<140.4%		
21039099	20%	20%	50%	US\$ 0.27/kg. but not<117%		
21069001	15%	15%	50%	22.5%		
21069002	50%	15% + US\$ 0.36/kg.	50%	US\$ 0.165/kg. but not<71%		
22029001	10%	10%	50%	US\$ 0.108/kg. but not<47%		
22029002	20%	20%	US\$ 0.108/kg. but not<47%	US\$ 0.108/kg. but not<47%		
22029003	50%	20%	US\$ 0.108/kg. but not<47%	US\$ 0.108/kg. but not<47%		
22029004	50%	20%	US\$ 0.108/kg. but not<47%	US\$ 0.108/kg. but not<47%		
22029099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.108/kg. but not<47%		

a The total import volume includes imports under both unilateral and preferential quotas.

Source: Compiled by the WTO on the basis of information provided by the Mexican Ministry of the Economy and Schedule LXXVII-Mexico.

208. In accordance with Mexico's Schedule of Concessions, most tariff quotas include access rights reserved for particular countries. For example, the United States has been allocated 99.9 per cent of the total quota for maize; 97 per cent of that for poultry meat; 94 per cent of that for animal fats; 88 per cent of that for beans; and 75 per cent of that for cheese. Canada has received a substantial share of the quotas for barley (49 per cent) and wheat (28 per cent). The balance has been granted to other countries. The only products for which reserved access rights were not stipulated in Mexico's Schedule are coffee and sugar products.

209. Mexico's last WTO notification concerning tariff quota administration and imports, covering the period 1996-99, was submitted in January 2001.³²⁰

³²⁰ WTO document G/AG/N/MEX/11/Rev.1 of 25 January 2001.

210. The Ministry of the Economy administers import quotas under a certification system, in accordance with Article 24 of the Foreign Trade Law (1993) which lays down the following allocation procedures: competitive bidding; procedures in accordance with the international treaties signed by Mexico; or any other justified procedure established by the Ministry after consulting the Foreign Trade Commission. On the basis of this provision, the Ministry of the Economy has opted for direct allocation in accordance with the "first come, first served" principle for allocating WTO tariff quotas. In the case of milk in powder, up to 2005, a combined mechanism of direct allocation and competitive bidding was used, whereas since 2006 only direct allocation has been employed (see below). Quota certificates are nominative and non-transferable.

211. The requirements and procedures for allocating quotas are published annually in the Official Journal. The Decision announcing the mechanism for allocating tariff quotas established within the framework of Mexico's WTO commitments for 2007 was published in January of that year.³²¹ However, as distinct from the similar instrument that established the quota allocation procedure for 2006, the 2007 Decision only establishes tariff quotas for coffee and cheese. The Decision stipulates that, in accordance with the Foreign Trade Law, allocations will be made on a "first come, first served" basis.

212. Apart from the case of coffee and cheese, in October 2007 the WTO quota allocation procedures for that year had not yet been established.

213. In practice, the WTO quotas have not been used since the products concerned can be imported on better conditions of access under bilateral agreements; this applies, inter alia, to barley, maize and wheat. In other cases, the ex-quota applied tariff is less than or equal to the in-quota applied tariff, which makes the administration of these quotas unnecessary.

214. The authorities have also pointed out that in order to supplement the domestic supply and avoid adverse effects on the agri-food chain, unilateral quotas with tariffs lower than those established in Mexico's WTO Schedule of Concessions have been opened. According to the data provided by the Mexican authorities, in 2006 total imports (including under preferential and unilateral quotas) of products subject to tariff quotas within the framework of the WTO substantially exceeded the quantities specified in Mexico's commitments (Table IV.2)

215. With regard to milk in powder, quota allocation is governed by specific provisions, the latest updating of which was circulated in a 2007 Decision.³²² In accordance with this Decision and the Federal Revenue Law³²³, in 2007, the tariff quotas for milk in powder bound in the WTO were allocated as follows: 50 per cent was granted directly to the State-owned enterprise LICONSA for its programme for supplying milk at preferential prices to lower-income groups, and the remaining 50 per cent was allocated directly to private enterprises that use powdered milk in their production processes.

216. Altogether, 81 per cent of the powdered milk quota reserved for the private sector was subject to the satisfaction of domestic purchase and consumption requirements. To obtain duty-free quotas

³²¹ Decision announcing the tariff quota allocation mechanism for imports in 2007, with the preferential tariffs established within the framework of Mexico's WTO commitments, published in the Official Journal on 1 January 2007.

³²² Decision announcing the minimum quota for importing, in 2007, duty-free, powdered milk originating in Members of the WTO, published in the Official Journal on 23 January 2007 and amended on 11 May 2007.

³²³ Transitional Article 10 (IV) of the Federation Revenue Law for Fiscal Year 2007, published in the Official Journal on 27 December 2006.

enterprises had to show, through an audit of their dairy material consumption (liquid milk, powdered milk and other milk solids), that the proportion of imported powdered milk did not exceed 30 per cent of total consumption in 2006. Moreover, applicants had to make domestic milk purchase commitments for 2007 and register them with the Ministry of the Economy. The rest of the tariff quota (19 per cent) was allocated to enterprises that had not satisfied the above-mentioned consumption requirement. Apparently, these arrangements were made in response to difficulties in marketing and placing surplus domestic liquid milk experienced in recent years.

217. In this connection, the authorities have noted that the purchase commitments are buying intentions for the year, which each enterprise establishes in accordance with its supply requirements and strategic planning. They have also pointed out that these commitments, like the consumption requirements, are only used as a reference for making the corresponding estimates and do not constitute a condition for the allocation of quotas.

218. In the case of yellow maize, if satisfying the domestic demand means importing quantities that exceed the minimum duty-free quotas specified in the FTAs signed by Mexico, the Ministry of the Economy and SAGARPA establish additional import quotas and determine the tariff applicable. The additional quotas are allocated through a mechanism based on domestic grain purchase commitments as a function of previous consumption and vary depending on whether the applicant is an industrial consumer or belongs to the livestock and balanced feed sector.

219. With respect to white maize, the Federal Executive establishes a tariff of not less than 18.2 per cent for those imports that exceed the NAFTA minimum quota. In 2007, import quotas were authorized in certain states of the Republic in which a domestic shortage was shown to exist. The prerequisite for the authorization of minimum import quotas for the second half of 2007 was the conclusion of a purchase or agriculture contract per domestic crop contract from the previous cycle.

220. Mexico also applies tariff quotas for imports of certain agricultural products from countries with which it maintains free trade agreements, with the exception of imports from Bolivia, Colombia, El Salvador and the EFTA countries. The products included in these quotas vary from one preferential regime to another. Within the NAFTA framework, all tariff quotas and tariffs on agricultural products relating to imports from the United States will be abolished as from 2008.

(b) Domestic support measures

221. One of the most important means of providing domestic support for agriculture continues to be the Programme of Direct Support for the Countryside (PROCAMPO), instituted in 1994. The programme provides for direct payments per hectare to producers who during a base period prior to the implementation of the programme grew maize, beans, wheat, rice, sorghum, soybeans, cotton, safflower, or barley, on condition that the land continues to be used for agricultural production or for an environmental protection programme. Payment is based on the area planted during the base period rather than on the marketing of the product, which enables subsistence farmers to benefit from this support.

222. Since 2001, in order to grant preferential treatment to lower-income producers, holdings with an area of less than one hectare receive PROCAMPO support corresponding to a full hectare and, since 2002, farmers have been able to receive in a single advance payment the corresponding payments up to 2008, provided that they develop a viable project for investment in agricultural, forestry or fishing activities. Initially, PROCAMPO was to have ended in January 2008, but the National Development Plan for 2007-12 provides for it to continue until 2012.

223. During the period 2002 to 2006, the area cultivated and the number of farmers benefiting from PROCAMPO remained relatively stable, on average 13.0 million hectares and 2.6 million farmers. Total PROCAMPO payments increased from 11.85 billion pesos (some US\$1,149 billion) in 2002 to a little over 15 billion pesos (some US\$1,379 billion) in 2006.³²⁴

224. The Alianza para el Campo (Alliance for the Countryside), established in 1996 for the purpose of promoting technological development and agricultural productivity, was redesigned in 2003 to give rise to the Alianza Contigo (Alliance With You), which packages together numerous programmes, including investment subsidies, agricultural services and rural development programmes. The Alianza promotes the development of agro-businesses through capitalization, the strengthening of product-systems and technology transfer, with a view to boosting farmers' incomes and diversifying the sources of rural employment.

225. Preliminary data for 2007 indicate that federal resources destined for Alianza Contigo programmes amounted to 8,852 billion pesos (some US\$823 million), a figure in excess of the 6,438 million pesos (some US\$624 million) allocated to this programme in 2002.³²⁵ Total budgetary resources (federal and state) allocated to the main Alianza Contigo programmes and subprogrammes for 2006 amounted to 8,365 billion pesos (some US\$778 million), distributed as follows (percentage of total budget in brackets): crop farming (28.8), livestock farming (14.1), rural development (33.1), health and agri-food safety (14.5), and fishing and other (9.6).³²⁶ Out of the total for crop farming, 63.4 per cent corresponded to investment promotion and capitalization, 17.9 per cent to research and technology transfer, 2.6 per cent to the strengthening of product-systems, and 16.0 per cent to other programmes. Out of the total for livestock farming, 83.1 per cent corresponded to livestock development, 11.9 per cent to the development of integrated agricultural projects, and 4.9 per cent to other programmes.

226. Apoyos y Servicios a la Comercialización Agropecuaria – ASERCA (Agricultural Marketing Support and Services) is the Federal Government agency responsible for supporting the marketing of agricultural products, as well as for operating the PROCAMPO programme. Since 2001, ASERCA has provided support for producers through direct payments per ton marketed. In 2003, Mexico implemented the Programme of Direct Marketing Surpluses Support for the Producer for the Reorganization of Production, Integration of Agri-food Chains and Critical Factor Management, composed of various subprogrammes intended to promote marketing and integration into the market. The main measures include support for risk management, crop conversion and pledge schemes.

227. As part of this programme the Supplementary Support for Target Income subprogramme was introduced. This involves making a direct transfer to the producer in order to guarantee him a minimum income per ton marketed. The "supplementary support" granted is equal to the difference between the market price and the target income, if the former is lower than the minimum target income. This programme provides national coverage and the eligible crops are maize, wheat, sorghum, triticale, rice, soybeans, safflower, canola, and cotton.

228. Between 2001 and 2006, the total support granted by ASERCA for agricultural marketing averaged 5,607 billion pesos a year, reaching a maximum of 6,961 billion pesos (some US\$657 million) in 2006. This support was distributed as follows (percentages in brackets):

³²⁴ Ejecutivo Federal (2007), p. 143.

³²⁵ Ejecutivo Federal (2007), p. 146.

³²⁶ Ejecutivo Federal (2007), p. 147.

Supplementary Support for Target Income (64.5), financial coverage (13.0) and other marketing schemes (22.5).³²⁷

229. The livestock programme PROGAN, introduced in 2003, grants direct payments to producers (depending on the head of cattle) to fund the profitability of beef cattle farms and promote improvements in infrastructure and the purchase of modern equipment and technology. For 2006, the programme received a budget appropriation of approximately 2 billion pesos (some US\$189 million).³²⁸

230. Under the Rural Energy Law (2002), low-income agricultural producers benefited from a special electricity subsidy and preferential prices for diesel used in crop and livestock farming machinery and equipment.

231. Historically, Mexican farmers have had difficulty obtaining access to credit due, among other things, to the underdevelopment of the agricultural financing system.³²⁹ During the review period, institutional changes have been introduced and new financing arrangements designed to overcome these difficulties have been promoted. At the beginning of 2000, the main financial institutions serving this market included Banco de Desarrollo Rural (Banrural) and the Fideicomisos Instituidos en relación con la Agricultura – FIRA (Trust Fund for Agriculture). Banrural offered loans to producers at below-market rates; in 2003, after experiencing serious financial difficulties, it was replaced by Financiera Rural, which also grants direct loans to producers, but at market rates, and provides other financial services.³³⁰ In 2005, the financing granted by Financiera Rural amounted to 12,669 billion pesos (US\$1,176 billion).³³¹

232. FIRA continues operating and channelling resources through the commercial banking system and the development banks and, more recently, through rural financial intermediaries, the creation of which has been encouraged for the purpose of extending the coverage of the financial system to the less developed rural areas. FIRA grants partially subsidized loans and guarantees.³³² During 2005, FIRA channelled resources totalling 49,646 billion pesos (US\$4.61 billion).³³³

233. In order to make credit more accessible for small farmers, in 2003 SAGARPA instituted the Programme of Support for Access to the Rural Financial System (PAASFIR) which extends guarantees to producer organizations that participate in Investment and Contingency Funds for Development (FINCAS), established with public and private resources. In 2005, the loans granted by FIRA and Financiera Rural under the FINCAS programme amounted to 5,896 billion pesos (US\$547 million). At the end of 2005, the total loans granted to the agricultural and fishing sectors amounted to 82,335 billion pesos (US\$7,645 billion), an amount similar to that recorded in 2001.³³⁴

234. AGROASEMEX is the Federal Government agency responsible for developing an insurance system for the rural sector by encouraging private sector participation. Up until 2001, it was issuing insurance at subsidized rates directly to the farmers; since then it has operated as a reinsurer and channels the agricultural insurance subsidy through private insurers and insurance funds. Since 2003,

³²⁷ Ejecutivo Federal (2007), p. 144.

³²⁸ SAGARPA, Estado del Ejercicio Presupuestal al 31 de diciembre de 2006 (Statement for the Budgetary Year, 31 December 2006); consulted at: <http://www.sagarpa.gob.mx>.

³²⁹ OECD (2006a), p. 62.

³³⁰ World Bank (2006), p. 29.

³³¹ Loan granted by Financiera Rural, Statistical Annex to Sixth Government Report 2006.

³³² World Bank (2006), p. 29.

³³³ Ejecutivo Federal (2006).

³³⁴ OECD (2006a), p. 78.

it has offered protection against catastrophic weather events to strata of the rural population without access to commercial insurance schemes. In 2006, current subsidies granted by AGROASEMEX amounted to 520 million pesos (some US\$49 million).³³⁵

(7) MANUFACTURING

(i) Main features

235. Mexico's manufacturing sector is large and diversified, accounting for nearly a fifth of the country's GDP. Manufactures have been a key engine behind Mexico's insertion into the global economy, manufacturing exports (WTO classification) having made up 75 per cent of Mexico's total exports in 2006; the main exports are metal products, machinery and equipment (see Chapter I (3)).

236. A key factor fuelling Mexican manufacturing exports has been the growth of the in-bond maquiladora industry, with maquiladora exports rising from 19 to 44 per cent of total exports between 1985 and 2006.³³⁶ The sizable inflows of FDI have also been a significant factor (see Chapter I (3)). It has also been argued that Mexico's extensive network of free trade agreements has played an important role in boosting Mexican exports. The Mexican export basket has acquired higher value added, with some 72 per cent of the country's exports in 2005 classified as high or medium-high by technological sophistication, up from 69 per cent in 1992.³³⁷

237. The main drivers of the export boom are large and medium-sized firms mostly located in the northern and central parts of the country. According to IADB estimates, only four states – Baja California, Coahuila, Chihuahua and Nuevo Leon – made up some 60 per cent of the country's export growth in 1993-2003.³³⁸ In stark contrast, 16 southern states contributed only one per cent to export growth during the period.

238. Notwithstanding its export successes of the 1990s, the growth of Mexico's manufacturing sector has been relatively lackluster since 2001. Over the period 2001-2006, manufacturing GDP grew at an annual average of 0.5 per cent, below the growth of the overall economy. The lack of dynamism in the manufacturing industry can be explained to a large extent by the overall slowdown in exports. While Mexican manufacture sales to the US market rose from 5.9 per cent of all US imports in 1991 to 11.2 per cent in 2001, the figure dropped to 10.3 per cent in 2006.

239. Mexico's share of global manufacture markets went from 2.93 per cent of total global exports in 2001 to 2.39 per cent in 2006.³³⁹ On average, during the period 2004-2006 Mexican exports of manufactured goods increased by about 13 per cent. However, this performance is less than that recorded by the growing international competition. In this connection, the authorities have noted that Mexico is in the process of discussing structural reforms that should, among other things, help to make manufacturing more competitive and promote productivity and conversion to sectors with higher value added.

³³⁵ SHCP, Cuenta de la Hacienda Pública Federal (2006), Estado Analítico del Capítulo 4000 correspondiente a la SHCP (Federal Public Treasury Report (2006), Analytical Statement on Chapter 4000 corresponding to the SHCP).

³³⁶ IADB (2006), Mexico: Sectoral Note on Trade and Integration, page 13; and WTO Secretariat estimates based on INEGI, Banco de Información Económica, consulted at www.inegi.gob.mx

³³⁷ IADB (2006), Mexico: Sectoral Note on Trade and Integration, page 12.

³³⁸ IADB (2006), Mexico: Sectoral Note on Trade and Integration, pp. 14-15.

³³⁹ WTO Secretariat estimates based on the UN Statistical Division's Comtrade database.

240. Mexico's uneven export performance can be explained both by cyclical factors and by the growing competitive pressures in the global economy. First, the economic downturn at the beginning of this decade in the United States had a negative impact on Mexican sales. Second, Asian countries' and, in particular, China's strong expansion in the global and US markets has arguably eroded Mexican share of the US market.³⁴⁰ The global competitive pressures appear to have more than offset the decline in real unit labour cost and recent productivity gains in Mexico's manufacturing sector, as evinced by a growth in productivity per worker and hours worked (Table IV.3).

Table IV.3
Productivity in the manufacturing sector in real terms (percent), 2001-06^a

Year	Personnel employed	Average real salary per person	Average productivity per worker	Average productivity per hour worked	Real unit cost of labour
2001	-4.4	6.7	0.4	0.8	6
2002	-4.9	1.8	4.5	4.9	-2.7
2003	-3.4	1.3	3.1	3.3	-2
2004	-3.3	0.3	7	5.6	-6
2005	-0.82	-0.1	1.3	0.83	-1.4
2006 ^b	0.23	-2.7	3.3	4.3	-5.9

a Percentage changes reflect variations in salaries, productivity and labour costs after taking account of inflation.

b Average for first half of year.

Source: WTO Secretariat estimates based on Ejecutivo Federal (2006), *Sexto Informe de Gobierno*, September, pp. 376-377; and INEGI, Banco de Información Económica, consulted at: www.inegi.gob.mx.

241. The Mexican manufacturing sector is diverse. As shown in Table IV.4, in 2006 the largest manufacturing industries by value added were metal products, machinery, and equipment (31.8 per cent of total manufacturing); food products, beverages, and tobacco (26.3 per cent); and chemicals and plastics (14.2 per cent). Between 2000 and 2006, value added expanded most rapidly in food products, beverages, and tobacco (by a total of 15.2 per cent); non-metallic mineral products, except petroleum-derived (14 per cent); and basic metal industries (8.5 per cent). In the meantime, three subsectors contracted: textiles, clothing, and leather (21.3 per cent); wood and wood products (14.5 per cent); and paper, paper products, and publishing (3.2 per cent).

Table IV.4
Manufacturing industry's share of GDP, 2001-06
(Mex\$ billion, constant 1993 prices and percent)

	2001	2002	2003	2004 ^a	2005 ^a	2006 ^b
	(Mex\$ billion, constant 1993 prices)					
Food products, beverages, and tobacco	77	78.5	79.9	82.5	84.3	86.8
Textiles, clothing and leather	24	22.6	21.1	21.7	21.1	20.7
Wood and wood products	7.8	7.4	7.2	7.4	7.4	7.1
Paper, paper products, printing and publishing	13.4	13.2	13.0	13.4	13.5	13.6
Chemicals and plastics	44.1	44.0	44.6	46.0	46.7	46.8
Non-metallic mineral products, except petroleum derived	20.3	21.0	21.1	22.0	22.5	23.5
Basic metal industries	14.1	14.3	14.9	16.0	16.0	16.5
Metal products, machinery and equipment	94.9	93	88.4	93.0	94.1	105
Other manufacturing industries	9.2	8.9	8.7	9.0	9.0	9.7
All manufacturing	304.8	302.9	298.9	311.0	314.6	329.7
	(Index, real GDP (1993 prices), 2000=100)					

³⁴⁰ See IADB (2006), Mexico: Sectoral Note on Trade and Integration.

	2001	2002	2003	2004 ^a	2005 ^a	2006 ^b
Food products, beverages, and tobacco	102	104	106	110	112	115
Textiles, clothing and leather	91	85	80	83	80	79
Wood and wood products	93	89	86	89	89	86
Paper, paper products, printing and publishing	95	93	92	95	96	97
Chemicals and plastics	96	96	97	100	102	102
Non-metallic mineral products, except petroleum derived	98	101	102	107	109	114
Basic metal industries	92	94	98	105	105	109
Metal products, machinery and equipment	93	91	87	91	92	103
Table IV.4 (cont'd)						
Other manufacturing industries	97	94	93	96	96	103
All manufacturing	96	95	94	98	99	104

a Preliminary estimates.

b Annualized estimates based on first half.

Source: WTO Secretariat estimates based on WTO (2002), page 99; and Ejecutivo Federal (2006), Sexto Informe de Gobierno, September, p. 375.

242. Mexico's manufacturing sector is highly integrated into the North American production networks and global supply chains. Inter-industry trade's share of total trade between Mexico and the United States is high. For instance, in 2006, office machinery and telecommunications equipment accounted for 24.6 per cent of Mexico's manufacturing exports (WTO product definition), while also accounting for 20.1 per cent of its manufacturing imports.³⁴¹

(a) The in-bond maquiladora industry

243. The maquiladora industry plays a major role in the Mexican economy (for a description of the maquiladora programme see Chapter III (3)(iv)). Maquiladora exports accounted for US\$97.4 billion in 2005 and an estimated US\$53.9 billion in 2006, or some 55 per cent of total manufacturing exports; the industry employed 1,166,250 workers, or nearly one third of total manufacturing employment (Table IV.5).

Table IV.5
Structural indicators, maquiladora industry, 2001-2006
(US\$ million, nominal prices^a)

	Value of output (US\$ million) ^b	Value added (% of GDP)	Exports (US\$ million)	Imports (US\$ million)	Exports (% of total)	Imports (% of total)	Inputs (US\$ million)	Domestic inputs (% of total)	Wages (US\$ million)	Establishments (number)	Persons employed	Maquiladora empl./manufact. empl.
2001	65,888	3.1	76,881	57,599	48.4	34.2	42,006	3.8	8,158	3,630	1,198,942	30.8
2002	69,351	2.9	78,098	59,296	48.5	35.2	44,603	4.1	8,113	3,003	1,071,209	29.5
2003	76,865	2.9	77,467	59,057	47	34.6	51,717	3.5	8,404	2,860	1,062,105	30.1
2004	90,116	2.8	88,952	67,742	46.3	34.4	62,592	3.3	9,221	2,810	1,115,230	31.8
2005	..	2.8 ^c	97,401	75,679	45.5 ^c	34.1 ^c	66,770	3.7	10,060	2,816	1,166,250	..
2006	..	..	52,888	41,219	43.1 ^c	33.8 ^c	29,352	3.9	4,408	2,817	1,191,554	..

.. Not available.

a Estimates in US dollars made using a nominal exchange rate of 10.9 pesos to 1 US dollar.

b Value of output includes value of inputs and value added by capital and labour.

c Preliminary data.

Source: WTO Secretariat estimates based on Ejecutivo Federal (2006), Sexto Informe de Gobierno, September, pp. 379 and 380; and INEGI, Banco de Información Económica, consulted at: www.inegi.gob.mx.

³⁴¹ WTO Secretariat estimates based on data from the UN Statistical Division's Comtrade database.

244. Contrary to the late-1990s period when the maquiladora industry's growth was exponential, output growth has been less striking in the past few years. Value added in the industry grew by 7.7 per cent in 2000-2006, below the 33 per cent in the 1996-2000 period. These trends are also reflected in export growth. While maquiladora exports grew at a nearly 21 per cent per annum during 1996-2000, the figure was only 4.2 per cent in 2000-2006. Export expansion was more marked, however, in 2004 and 2005.

245. Some structural changes have taken place in the maquiladora industry in recent years. The industry has concentrated somewhat, to 2,817 establishments from the peak level of 3,630 in 2001. In the meantime, it has dispersed geographically to regions outside the border zone. In part as a result, 43 per cent of the industry's value added arose from such regions in 2005, a clear hike from 39.8 per cent and 28.6 per cent in 2000 and 1995, respectively. One constant in the industry is the share of domestic inputs in production, which was 3.7 per cent of all inputs used in the industry in 2005, up only slightly from 3.5 per cent in 2000. This indicates slow momentum toward establishing backward linkages with domestic industries, but is also indicative of Mexico's heavy integration into North American and global production networks.

(b) Policy objectives and instruments

246. Given that Mexico already enjoys preferential access to most of the main global markets and an unrivalled proximity to the largest market in the world, the country's means of gaining a greater foothold in international trade centre on domestic, supply-side factors. Accordingly, the authorities have developed and sought to improve a number of programmes aimed at improving the competitiveness of strategic manufacturing activities, for example, through PROSECs (see Chapter III(4)(iii)).³⁴²

247. The ITA Plus programme was adopted in 2003, with the aim of abolishing the tariffs on all of the inputs used in the electronics and high-tech industry. Since Mexico's last Review, tariffs on certain fibres, threads, textiles and other products have been reduced in efforts to foster the competitiveness of the textile and clothing industry; the government has also explored the possibility of incorporating several products under zero tariff in the shoe industry's PROSEC but, because of opposition from the related domestic industry, was able to incorporate only the products of subheading 3901.30 of the Harmonized System (ethylene-vinyl acetate copolymers) under a 5 per cent tariff.³⁴³

248. In 2006, the Ministry of the Economy introduced the Decree for the Promotion of the Manufacturing Industry, Maquiladora and Export Services (IMMEX Decree), which combines the Maquila and PITEX programmes in a single legal instrument (see Chapter III (3)(iv)). The Government has also sought to enhance Mexico's export promotion by creating ProMexico (see Chapter III (3)(vi)).

³⁴² The Government report of October 2004 evaluating the effect of these programmes focuses on five sectors: automotive industry, electronics and high-tech products, textiles and clothing, footwear, and exports of manufactured products in general. Ministry of the Economy (2004).

³⁴³ Ministry of the Economy (2004), pages 82 and 86.

(8) ENERGY**(i) Main features**

249. In 2006, the energy sector contributed approximately 2.6 per cent to Mexico's GDP and 15.5 per cent to total merchandise exports.³⁴⁴ Between 2001 and 2006 primary energy production grew at an annual rate of 1.7 per cent. In 2006, it amounted to 10,619 petajoules, of which hydrocarbons accounted for 90 per cent, primary electricity for 5 per cent, biomass for 3 per cent and coal for the remaining 2 per cent.³⁴⁵

250. Between 2001 and 2006, total investment in the energy sector grew at an average annual rate of 12 per cent, reaching a value of 192 billion pesos (US\$18 billion) in 2006. Of the investment made in 2006, 78 per cent was destined for the petroleum industry and the rest for the electricity industry. The Government estimates that during 2007-2012 an annual investment of about 264 billion pesos will be needed to ensure a reliable energy supply, an increase of 38 per cent on 2006.³⁴⁶

251. The Ministry of Energy (SENER) is responsible, among other things, for managing energy policy and the activities of the sector's State-owned enterprises, granting energy-related concessions, authorizations and permits, and issuing official standards within its area of responsibility.³⁴⁷ It is also responsible for implementing government policy on attracting private capital into the sector. In addition, it serves as chairman of the boards of the State-owned companies *Petróleos Mexicanos* (PEMEX) in the hydrocarbons sector and *Comisión Federal de Electricidad* (CFE) and *Luz y Fuerza del Centro* (LFC) in the electricity sector.

252. The task of the Regulatory Commission for Energy (CRE), a decentralized SENER agency, is to regulate activities in the natural gas, liquefied petroleum gas (LPG), and electricity sectors. The Ministry of Finance and Public Credit (SHCP) incorporates the PEMEX, CFE and LFC annual budget and financing programme in the consolidated annual budget, which it submits to Congress for approval. Moreover, subject to seeking the opinion of the Ministry of the Economy, SHCP is responsible for regulating and establishing prices and tariffs policy for crude petroleum and its derivatives and for electricity.

(ii) Hydrocarbons

253. In 2006, Mexico was the world's sixth largest crude petroleum producer. In that year, production of both crude petroleum and petroleum derivatives was 4.5 per cent higher than in 2001, but 3.3 per cent below the levels for 2004.³⁴⁸ In 2006, PEMEX produced an average of 3.3 million barrels of crude petroleum per day and almost 5,400 million cubic feet of natural gas per day.³⁴⁹ PEMEX is Latin America's largest enterprise in terms of sales, which amounted to 1,062 billion pesos in 2006 (about US\$97 billion).

³⁴⁴ The data for the energy sector include the production of petroleum and its derivatives, the basic petrochemicals industry and the distribution of gas and electricity. *Ejecutivo Federal* (2007). Consulted at: http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/.

³⁴⁵ Energy Information System (SIE) of the Ministry of Energy. Consulted at: <http://sie.energia.gob.mx/>.

³⁴⁶ National Infrastructure Programme 2007-2012. Consulted at: www.infraestructura.gob.mx.

³⁴⁷ Article 33 of the Law on the Organization of the Federal Public Administration of 29 December 1976.

³⁴⁸ First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226.

³⁴⁹ PEMEX information, consulted at: <http://www.pemex.com/index.cfm?action=content§ionID=2&catID=160&contentID=181>.

254. On 1 January 2007, proven reserves of crude petroleum stood at 11,048 million barrels of crude oil equivalent (Mbcoe), while reserves of natural gas (including condensates and liquid gas obtained in processing plants) were 4,467 Mbcoe. Both figures were a little over 50 per cent lower than in 2001, which is partly the result of the adoption of US Securities and Exchange Commission criteria in 2002. Although the rate of decline of hydrocarbon reserves has been reduced in recent years, the ratio of proven reserves to production fell from 20.6 to 9.6 years between 2001 and 2006.³⁵⁰

255. The decline in reserves and production levels is mainly a consequence of the depletion of Mexico's principal oil field (Cantarell), PEMEX's lack of the financial and technological means to develop the majority of its potential resources (in very deep waters), and the restrictions that the current regulatory framework imposes on the incorporation of new sources of investment.

256. Mexico has six refineries with a total installed capacity of 1.54 million barrels per day, but is a net importer of refined petroleum products. PEMEX is seeking to modernize its refineries and plans to increase their capacity by almost 50 per cent between 2007 and 2015, which will involve carrying out several projects and making the corresponding investments.³⁵¹

257. The Mexican petrochemical industry, which is divided into basic and secondary petrochemicals, has not succeeded in developing its full potential. As mentioned in Mexico's previous Review, despite the availability of petroleum inputs, the lack of integration and the failure to incorporate new technology has limited development. In order to boost investment in the secondary petrochemical industry (open to private investment) and revitalize the operation of the PEMEX-owned petrochemical installations, the National Development Plan 2007-12 and the National Infrastructure Programme are promoting strategic alliances with the private sector, both domestic and foreign, to attract investment additional to that provided by the State.

258. PEMEX's financial situation is paradoxical. In recent years, mainly as a consequence of high oil prices, PEMEX has obtained its best financial results ever, reporting record figures for total sales and tax payments (see Chapter I (2)(ii)); in 2006, gross profits³⁵² amounted to a little over US\$57 billion.³⁵³ At the same time, PEMEX's total liabilities have increased, reaching 1,165 billion pesos in 2006 (US\$108 billion).³⁵⁴ The combination of increasing liabilities, a heavy fiscal burden and accumulated net losses has led to a steady deterioration of the enterprise's assets. At the end of 2005, PEMEX's assets, which had been some 123 billion pesos (approximately US\$13 billion) in 2001, turned negative for the first time in its history, with only a slight improvement in 2006.³⁵⁵

259. In 2005 and 2007 the authorities reformed PEMEX's fiscal regime with a view to reducing the tax burden on its profits.³⁵⁶ In particular, it was decided gradually to reduce the payment that PEMEX has to make with respect to ordinary hydrocarbon duty. However, further reforms appear to be urgently needed to alleviate PEMEX's lack of resources and executive capabilities, modernize its

³⁵⁰ First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226.

³⁵¹ Ministry of Energy (2006b).

³⁵² Return before interest, taxes and use.

³⁵³ Gross profits are those before interest, taxes, depreciation and amortization.

³⁵⁴ The total is composed of debt (570 billion pesos), unfunded labour reserves (454 billion pesos), and other short-term liabilities (150 billion pesos) (approximately US\$52, 42 and 14 million, respectively). Information consulted at: <http://www.pemex.com.mx/index.cfm?action=content§ionID=2&catid=159&contentID=166>.

³⁵⁵ Figures in current pesos. Consulted at: <http://www.pemex.com.mx/index.cfm?action=content§ionID=2&catid=159&contentID=166>.

³⁵⁶ PEMEX Financial Performance Report 2005. Consulted at: <http://www.pemex.com.mx/index.cfm?action=content§ionID=2&catid=159&contentID=166>; and SHCP Press Release No. 081 of 16 September 2007. Consulted at: <http://www.shcp.gob.mx/>.

management, and prevent it from internalizing subsidies. Moreover, new forms of financing need to be developed to accommodate the higher levels of investment that PEMEX requires and/or more should be done to reform its fiscal regime.

260. The main legislation regulating the hydrocarbon sector consists of Articles 25, 27 and 28 of the Constitution, the Law Regulating Article 27 of the Constitution in the Petroleum Sector and its regulations, the Basic Mexican Petroleum Law and its regulations, the Law on the Regulatory Commission for Energy, the Natural Gas Regulations and the Liquefied Petroleum Gas Regulations.³⁵⁷

261. Under Article 27 of the Constitution, concessions and contracts may not be granted for the exploitation of hydrocarbons, which must be exploited by the State in accordance with the terms of the Law regulating that article. The Law Regulating Article 27 of the Constitution in the Petroleum Sector, amended in 2006, and its regulations establish the petroleum industry activities for which the State has exclusive responsibility, through PEMEX (see Table IV.6).

Table IV.6
Private participation in the hydrocarbon sector

Activity	Crude oil	Natural gas	Liquefied Petroleum Gas	Petrol and other petroleum derivatives	Basic petrochemicals
Exploration	No	No	n.a.	n.a.	n.a.
Exploitation	No	No	n.a.	n.a.	n.a.
Production/Refining	No	n.a.	No	No	No ^g
Storage in oil fields and refineries	No	No	No	No	No
Storage (other)	Yes ^a	Yes ^b	Yes ^b	Yes ^a	No
Transport by pipeline	No	Yes ^b	Yes ^b	No	No
Transport (other means)	Yes ^a	n.a.	Yes ^b	Yes ^a	No
Distribution	No	Yes ^b	Yes ^{b,c}	Yes	No
Marketing	No	Yes ^b	Yes ^b	Yes ^{c,d}	No
Import/Export	No ^e	Yes ^f	Yes ^f	Yes ^f	Yes ^f

n.a. Not applicable.

a Private participation in storage and transport by means other than pipelines is permitted after first-hand sale.

b Private participation under a system for granting permits.

c Activities reserved for Mexican nationals.

d Through the system of PEMEX franchises which can only purchase PEMEX-refined products.

e The legislation does not specifically restrict the import and export of crude petroleum, but in practice these activities are carried on exclusively by PEMEX.

f Private participation under the system for granting permits.

g If in secondary petrochemical production basic petrochemicals are obtained as by-products, they may be used in the same plant or delivered to PEMEX.

Note: "Yes" or "No" signifies whether or not permitted by the legislation.

Source: WTO Secretariat, based on the Mexican legislation.

262. The private sector can play a supporting role through works and services contracts which PEMEX signs with providers of goods and services, leaving hydrocarbons in the exclusive ownership

³⁵⁷ The most recent amendments to this legislation were published in the Official Journal on 26 June 2006, 8 January 1990, 12 January 2006, 30 April 2001, 23 January 1998, 8 November 1995, and 28 June 1999, respectively.

and control of the State. These contracts must always be remunerated in cash and neither a percentage of the products nor a share in the profits may be offered as a form of payment.

263. There are no restrictions on the participation of foreign enterprises in works and services contracts concluded with PEMEX. As an exception, under the relevant legislation³⁵⁸, in international competitive bidding PEMEX may refuse to allow foreign firms to participate if a government procurement treaty has not been concluded with the country of origin of the international bidder or if that country does not grant reciprocal treatment to Mexican bidders and contractors.

264. The works and services contracts that PEMEX has most frequently concluded with the private sector are those under the scheme for Projects with Deferred Impact in the Recording of Costs (PIDIREGAS). These contracts resulted in a total of 49 billion dollars of investment during 2001-2006, and accounted for 80 per cent of total PEMEX investment during that period.³⁵⁹ Moreover, under the PIDIREGAS scheme, the costs do not impact on public finances during construction, due to the fact that PEMEX undertakes to purchase the earning assets built by the private enterprises at the end of the project.³⁶⁰ Thus, for PEMEX this scheme represents a form of indirect borrowing.

265. PEMEX has exclusive control of the initial phases of exploration and exploitation of natural gas, but transport, storage and distribution are open to domestic and foreign private participation through the granting of permits. As of mid-2007, the CRE had granted private consortia, with domestic and foreign participation, 22 permits for the distribution of natural gas, as well as five storage permits and 21 transport permits for serving the public.³⁶¹ The private sector can also participate in the development of the industry by concluding Investment Agreements under Article 65 of the Natural Gas Regulations. Under this scheme an investor undertakes to build and commission the infrastructure for developing a natural gas transport system, and the cost of the investment can be recouped by collecting from users the tariffs approved by the CRE.

266. The retail trade in petrol and other petroleum derivatives, which can be carried on through PEMEX franchises, and the distribution of LPG are reserved for Mexican natural persons and companies, with an exclusion clause for foreigners.

267. The production of basic petrochemical products³⁶² is reserved for PEMEX³⁶³, whereas the production of other petrochemicals is not subject to restrictions on private investment, domestic or foreign.

268. The legislation gives the SHCP exclusive authority to set hydrocarbon prices, establishing various procedures and schedules for this purpose. In general, the producer price must reflect the opportunity cost with reference to international market prices, and the consumer price must be administered on the basis of criteria designed to ensure economic efficiency or prevent supply shortfalls. The prices of natural gas, LPG, petrol and diesel are set using methodologies that have

³⁵⁸ Law on Public Sector Procurement, Leases and Services and Law on Public Works and Related Services (see Chapter III (4)(v)).

³⁵⁹ First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226.

³⁶⁰ Presentation of the Ministry of Finance and Public Credit 2005: "Proyectos de participación pública y privada en México" (Public and private participation projects in Mexico). Consulted at: <http://portal.sre.gob.mx/ppp/pdf/panelvunidadinvers.pdf>.

³⁶¹ Ministry of Energy (2006a).

³⁶² Methane, ethane, propane, butane, pentane, hexane, heptane, naphtha and raw material for carbon black.

³⁶³ If in secondary petrochemical production basic petrochemicals are obtained as by-products, they may be used in the same plant or delivered to PEMEX.

resulted in subsidies for consumers of these products. It is estimated that in 2005 subsidies cost PEMEX approximately 33.5 billion pesos (US\$3.1 billion).³⁶⁴

269. In practice, crude petroleum is imported and exported exclusively by PEMEX. By way of exception, hydrocarbons owned by third parties may be imported for processing in PEMEX refineries, but the refined products must subsequently be exported. Prior authorization is required for the importation of refined petroleum products (see Chapter III (2)(vi)); in practice, such permits are not being granted.

270. The private sector may import and export natural gas and LPG, but to import LPG a permit must first be obtained from the ME.³⁶⁵ In practice, only PEMEX, through its subsidiary PMI Comercio Internacional, is authorized to import LPG. Where foreign trade in natural gas is concerned, no permit is required; the authorities have noted that, at the end of 2007, the private sector was importing natural gas, mainly for delivery to power stations.

(iii) Electricity

271. Mexico's electricity generating capacity rose from 42.5 to 56.4 GW. between 2001 and 2006, which represents an average annual increase of 5.9 per cent. In 2006, 86.6 per cent of total installed capacity corresponded to public service generators, including the CFE, the LFC and independent producers, and the rest to generators with permits for other uses. By type of plant, public utility capacity can be broken down into: thermal (including coal-fired) plants, with 73 per cent, and hydroelectric plants, with 22 per cent, with other types of plants accounting for the rest. The use of natural gas has increased considerably in recent years, having contributed 42.6 per cent to electricity generation in 2006. This partly reflects the policy of replacing fuel oil with natural gas in power plants, followed by the authorities up to 2005.³⁶⁶

272. According to the data supplied by the authorities, in 2006, electricity sales amounted to some 175,372 GWh., of which 58 per cent was consumed by industry, 25 per cent by households, 8 per cent by commercial establishments, 5 per cent by agriculture, and 4 per cent by services. As the demand for electrical energy did not develop as expected, in July 2007 the system had a reserve margin of 50 per cent which, according to the authorities, represents an underutilization of generating capacity and additional costs for the CFE and LFC.³⁶⁷

273. In practice, the Mexican electricity sector is organized in two subsectors, sales to the public and private consumption. The public electricity system is dominated by the CFE, a decentralized State-owned entity which operates most of the generating plants and all the transmission and distribution network jointly with LFC. In 2006, the CFE purchased 26 per cent of the energy it distributed from the Independent Power Producers (IPPs), which almost tripled their generating capacity between 2002 and 2006. At the same time, the private sector owns the means of generating electrical energy for self-consumption and foreign trade.³⁶⁸

³⁶⁴ The breakdown of the total cost by product is as follows (billions of pesos in brackets): LPG (4.7), natural gas (4.5), petrol (10.3), and diesel (13.8). PEMEX Financial Performance Report 2005. Consulted at: <http://www.pemex.com.mx/index.cfm?action=content§ionID=2&catid=159&contentID=166>.

³⁶⁵ Natural Gas Regulations 1995 and Liquefied Petroleum Gas Regulations 1999.

³⁶⁶ Statistical Annex to First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/.

³⁶⁷ First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226.

³⁶⁸ Ministry of Energy (2006c).

274. Under Article 27 of the Constitution, the State has exclusive responsibility for generating, transporting, transforming, distributing and supplying electrical energy as a public service. The legislation governing the sector includes the Law of the Public Electrical Energy Service (LSPEE) and its regulations and the Law on the Regulatory Commission for Energy (LCRE).³⁶⁹

275. Faced with the need to promote new investment and strengthen legal certainty for the investment already in place, in 2002 the Executive put forward a reform initiative for restructuring the electricity sector. The initiative proposed amendments to the Constitution as far as it concerns electricity, together with a package of reforms of the LSPEE, the LCRE and other laws. Among other things, it proposed: (i) vesting the CFE with managerial autonomy to make it financially viable; (ii) strengthening the CRE and giving it new functions, such as approving the tariff regime and imposing penalties for non-compliance with the legal framework, in order to give participants in the electricity sector greater legal certainty; and (iii) converting the National Energy Control Centre into a decentralized entity responsible for the dispatch and exchange of electricity, capable of guaranteeing market participants nondiscriminatory access to the distribution networks.³⁷⁰ This proposal for the reform of the electricity sector's legal framework was not adopted by Congress.

276. Under the LSPEE and its regulations, by obtaining permits issued by the CRE, the private sector can invest in generating plants for self-supply, cogeneration or small-scale production (up to 30 MW.) or under the IPP scheme. The latter makes it possible for the private sector to invest in generating plants with a capacity of more than 30 MW. provided that the output is sold exclusively to CFE or exported. Moreover, the CRE may grant permits for generation for export and for the importation of electricity for own use. With the exception of permits under the IPP scheme, which are reserved for Mexicans and Mexican enterprises, there are no restrictions on the obtaining of these permits by foreign companies or individuals.

277. In 2006, the subsidies granted by Mexico for electricity consumption amounted to 96.8 billion pesos (US\$8.9 billion), of which 67 per cent was destined for the domestic consumer, 15 per cent for industry, 8 per cent for the agricultural sector, and the rest for the commercial and services sectors. The data for 2006 indicate that, on average for all types of consumer, consumer tariffs covered only 75 per cent of the cost of the electricity supplied by the CFE and 53 per cent of the cost of that supplied by the LFC.³⁷¹

278. In 2006, the average tariff for the country as a whole was 1.14 pesos per kWh. (about US\$0.10 per kWh.), while, in particular, the large industries paid an average of 0.89 pesos per kWh. (about US\$0.8 per kWh.).³⁷² The authorities have pointed out that electricity costs in Mexico are relatively high as compared with other countries because in Mexico most generating plants use natural gas or fuel oil, whose prices on the international markets have risen sharply in recent years.

279. There is foreign trade in electrical energy with the United States and Belize. With the former, trade is carried on both through public system interconnections and through private lines owned by permit holders. In the case of Belize, Mexico essentially exports electricity through a single public system interconnection. The amount of electricity traded, primarily with the United States, has

³⁶⁹ The latest amendments to this legislation were published in the Official Journal on 22 December 1993, 24 May 2003 and 23 January 1998, respectively.

³⁷⁰ CRE, InfoCRE, July-August 2002, 5, No. 4. Consulted at: <http://www.cre.gob.mx/publica/infoCRE/2002/infocre0708-02.pdf>.

³⁷¹ Statistical Annex to First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/.

³⁷² Statistical Annex to First Government Report of 1 September 2007. Consulted at: http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/.

increased since 2001 and Mexico recorded a positive net balance in 2006; in the same year, in value terms, exports and imports were estimated at US\$255 million and US\$46 million, respectively.³⁷³

(9) SERVICES

(i) Multilateral commitments

280. Mexico adopted specific commitments in ten of the 12 GATS sectors, the exceptions being environmental services and recreational, cultural and sporting services (Table AIV.1).³⁷⁴ Nevertheless, among the ten sectors, Mexico only adopted commitments in two thirds of the subsectors, not adopting any in subsectors such as legal services, social services and maritime transport services. Mexico participated in the negotiations on basic telecommunications and financial services that followed the Uruguay Round, and the corresponding commitments feature in the Fourth and Fifth GATS Protocols.³⁷⁵ Mexico also undertook to abide by the Reference Paper on telecommunications.

281. Within the framework of the GATS, Mexico maintains horizontal commitments relating to the movement of natural persons. In the natural persons category, it guarantees temporary entry for up to 90 days for those directly responsible for the sale of a service, and the entry of executives, managers and specialists transferred within the same enterprise for an extendable period of one year.

282. The schedule of exemptions from MFN treatment contains two specific exemptions relating to the tourism sector: (i) the supply by foreign suppliers of passenger road transport services is limited to vehicles registered in the United States; and (ii) United States individuals attending business conventions receive a tax deduction for expenses incurred in Mexico.³⁷⁶ These exemptions from the MFN principle are of indefinite duration.

283. Within the framework of the Doha Round negotiations on services, Mexico submitted an initial offer in 2003 and a revised offer in 2005.³⁷⁷

(ii) Telecommunications

(a) Main features and structure

284. In 2001-2006, total income from telecommunications services (excluding unrestricted television broadcasting) grew at a nominal average rate of 13 per cent, reaching a total value of 277,697 billion pesos (US\$25,479 billion) in 2006.³⁷⁸ According to the authorities, the contribution of the telecommunications sector to GDP increased from 3.1 per cent in 2001 to 5.5 per cent in 2006. The authorities have also noted the dynamism of the sector, which recorded 18.3 per cent real growth in 2006.

285. In nominal terms, total investment in the telecommunications sector decreased by 32 per cent in 2006 as compared with 2001, the year in which investment reached a maximum of

³⁷³ INEGI Statistical Yearbook of Foreign Trade 2006. Consulted at: <http://www.inegi.gob.mx/inegi/default.aspx>.

³⁷⁴ WTO document GATS/SC/56 of 15 April 1994.

³⁷⁵ WTO documents WT/LET/213 of 30 January 1998 and WT/LET/288 of 18 February 1999.

³⁷⁶ WTO document GATS/EL/56 of 15 April 1994.

³⁷⁷ WTO information. Consulted at: http://www.wto.org/english/tratop_e/serv_e/s_negs_e.htm.

³⁷⁸ Information consulted at: http://www.cft.gob.mx/wb2/COFETEL/COFE_Estadisticas_de_telecomunicaciones_2.

US\$5.75 billion.³⁷⁹ The OECD's comparative indicators for 2005 (latest year available) indicate that Mexico has the OECD's second lowest level of per capita investment, and a level of investment in terms of public network access points below the OECD average.³⁸⁰ The authorities have pointed out that there was a recovery in investment during the period 2003-2006, when it grew at a rate of 44.7 per cent.

286. The reduction in investment levels could also reflect the limited competition in the sector, a situation that could discourage investment in new enterprises. From the viewpoint of the Federal Telecommunications Commission (COFETEL), the slowdown in investment in the Mexican telecommunications sector is part of a global phenomenon. For its part, the Ministry of Communications and Transport (SCT) considers that the main factors that have led to low levels of investment relate to the conditions of interconnection between operators, and the delay in establishing a procedure for enabling the public telecommunications networks that provide restricted television services to also offer telephony services and vice versa. The authorities have also pointed out that the foreign investment regime has favoured mobile telephony, where there are no limits on foreign participation, whereas in fixed telephony there is a 49 per cent limit (see below).

287. In 2001-06, the total number of fixed telephone lines in service per 100 inhabitants (teledensity) increased at an average annual rate of 6.6 per cent, which resulted in a fixed teledensity index of 18.9 per cent by the end of 2006. The mobile telephony market continued to grow significantly during the same period, with the number of mobile lines increasing at an average annual rate of 21 per cent, so that in 2006 the mobile teledensity index had reached 54 per cent.³⁸¹ In 2006, there were 19.5 Internet users per 100 inhabitants and 2.9 broadband connections per 100 inhabitants, the second lowest broadband penetration index among the OECD countries.³⁸² In this connection, the authorities have indicated that they are expecting an increase in broadband access as a result of the introduction of new technology, as well as greater participation by the cable television service providers.

288. Between 2001 and 2006, the average tariff for the local residential service decreased by a total of 20 per cent, while the average tariff per minute of mobile telephony service decreased by approximately 60 per cent during the same period.³⁸³ However, in 2006 the tariffs charged in Mexico to residential and business customers for fixed and mobile telephony and Internet access services were among the highest in the OECD; in particular, the cost of a monthly subscription for broadband services was the highest among the OECD countries.³⁸⁴

289. As described in Mexico's previous report, the privatization of Teléfonos de Mexico (TELMEX) in 1990 was accompanied by a concession that will expire in 2026. Under this concession TELMEX was granted exclusivity with respect to certain services until the end of 1996, whereas with respect to other services the entry of new operators was authorized with immediate effect. Moreover, TELMEX was required to review its tariffs to eliminate cross subsidies between local and long-distance services and regulations governing interconnection agreements were established (see below).

³⁷⁹ Information consulted at: http://www.cft.gob.mx/wb2/COFETEL/COFE_Estadisticas_de_telecomunicaciones_2.

³⁸⁰ OECD (2007b).

³⁸¹ Information consulted at: http://www.cft.gob.mx/wb2/COFETEL/COFE_Estadisticas_de_telecomunicaciones_2.

³⁸² OECD (2007b).

³⁸³ Information consulted at: http://www.cft.gob.mx/wb2/COFETEL/COFE_Diagnosticos_e_indices_de_produccion_del_sec2.

³⁸⁴ OECD (2007b).

290. The granting of 23 concessions for local telephony, 46 for long distance (LD), 25 for mobile local telephony and 22 for satellite services resulted in the gradual opening up of the telecommunications sector. However, the level of competition in the sector is still low, with TELMEX controlling approximately 92 per cent of fixed lines, 80 per cent of LD calls, and 77 per cent of the mobile telephony market through América Móvil, and over 60 per cent of the Internet access market.³⁸⁵ In addition to América Móvil, Grupo Telefónica and Grupo TV Azteca participate in the mobile telephony market, through their two companies Iusacell and Unefon.

291. The open television market is a de facto duopoly between Grupo Televisa and Grupo TV Azteca. Grupo Televisa also controls two of the main Mexican restricted cable and satellite television companies, and new acquisitions will significantly increase its market share. The CFC is promoting measures to ensure nondiscriminatory access to the content distributed by Grupo Televisa as a condition of authorizing these acquisitions.

(b) Institutional and regulatory framework

292. Within the framework of its specific GATS commitments, Mexico has adopted commitments with respect to practically all the telecommunications services specified in the GATS, with the exception of radio broadcasting, cable television, DHT and DBS satellite transmission, and digital audio services. In general terms, in relation to market access Mexico has bound the basic principles of the Federal Telecommunications Law of 1995 (see below). With regard to national treatment, Mexico has bound without restriction all the services in all modes of supply, with the exception of the presence of natural persons.³⁸⁶ Mexico has adopted the Fourth Protocol annexed to the GATS, as well as the Reference Paper annexed to the Telecommunications Protocol.

293. The regulation of the telecommunications sector is divided between two entities: the Federal Telecommunications Commission (COFETEL) and the SCT. COFETEL is a decentralized administrative agency of the SCT, with technical, operational and budgetary autonomy; its budget is subject to the measures applicable and to the regulations issued by the Ministry of Finance and Public Credit. COFETEL's main functions include issuing administrative telecommunications regulations; giving opinions on the granting, amendment, extension and assignment of concession titles and permits; submitting the frequency band allocation programme for approval by the SCT; coordinating the bidding procedures for the exploitation of geostationary orbital positions and satellite orbits allocated to Mexico; maintaining the telecommunications register (concession titles, tariffs, etc.); promoting and overseeing interconnection agreements and the provisions of concession titles; and proposing to the SCT the imposition of sanctions on those found to be in breach of the law or administrative regulations.³⁸⁷

294. The SCT is responsible for formulating general policy for the telecommunications sector; issuing the sector's regulations; proposing draft legislation for the sector; granting, amending and suspending concessions and permits for the provision of telecommunication and broadcasting services; and imposing on infringing enterprises the sanctions proposed by COFETEL. It has been argued that the apparent duplication in the performance of certain functions by COFETEL and the SCT has delayed the implementation of certain procedures, weakened COFETEL's autonomy and made the regulation of the sector less efficient.³⁸⁸ The authorities consider that there is no duplication

³⁸⁵ Economist Intelligence Unit (2006).

³⁸⁶ WTO document GATS/SC/56 of 15 April 1994, and its supplements.

³⁸⁷ Article 9 of the Federal Telecommunications Law, added in the latest amendment published in the Official Journal on 11 April 2006.

³⁸⁸ OECD (2004) and Garcia-Murillo (2002).

of functions and that the sector is efficiently regulated. They have noted that the recent reform of the legislation will ensure better international practices, autonomy and transparency for COFETEL.

295. The main law regulating the telecommunications sector in Mexico is the Federal Telecommunications Law (LFT) of 1995.³⁸⁹ The 1960 Federal Radio and Television Law regulates the broadcasting service.³⁹⁰ Other laws and regulations include the 1940 General Means of Communications Law, the 1990 Telecommunications Regulations and the regulations and resolutions issued by the SCT and COFETEL.³⁹¹ The latter include, for example, the 1997 Satellite Communications Regulations and the rules for international (2004), long distance (1996) and local (1997) telecommunications services.³⁹²

296. According to the LFT, a concession is required in order use a frequency band; operate public telecommunications networks; make commercial use of radio and television channels; provide satellite services (including through ground stations); occupy geostationary orbital positions and satellite orbits allocated to Mexico; and exploit signal transmission and reception rights for frequency bands associated with foreign satellite systems that may cover or provide services in Mexican territory. Concessions can only be granted to natural or legal persons of Mexican nationality and foreign equity participation is limited to 49 per cent, with the exception of mobile telephony services where foreign investors may acquire a higher percentage of the equity by obtaining a favourable resolution of the National Foreign Investments Commission (see Chapter II (4)).

297. The reform of the LFT eliminated the permit requirement and the nationality restriction for the installation and provision of special telecommunications services, such as value added services; since 2006 it has only been necessary to register with the SCT. A permit is also required to establish and operate ground transmitting stations, as well as telecommunications services marketing companies not of a public network nature.

298. Frequency bands are awarded under a public competitive bidding procedure and for a term of 20 years, which can be extended for equal periods at the discretion of the SCT. Public telecommunications networks are awarded on the basis of an analysis of interested party applications and for a term of up to 30 years, which may be extended for periods equal to those originally established.

299. Private telecommunications networks do not require a concession or permit to operate, unless they use radio spectrum frequency bands.

300. In May 2007, for the purpose of increasing competition, COFETEL issued a resolution making numbers portable, which will enable users of both fixed and mobile telephony to keep their telephone numbers if they decide to change service provider.³⁹³ A timetable which looks forward to the implementation of portability during the first half of 2008 has been established.

³⁸⁹ The most recent amendment of the LFT was published in the Official Journal on 11 April 2006.

³⁹⁰ The most recent amendment of the Federal Radio and television Law was published in the Official Journal on 11 April 2006.

³⁹¹ The most recent amendment of the general means of Communications Law was published in the Official Journal on 25 October 2005. The Telecommunications Regulations were published in the Official Journal on 29 October 1990.

³⁹² Information consulted at: http://www.cofetel.gob.mx/wb2/COFETEL/COFE_Reglamento_reglas_y_planes_1.

³⁹³ COFETEL Press Release No. 22 of 30 May 2007.

301. The LFT stipulates that concessionaires may freely determine the rates for telecommunications services. As distinct from other concessionaires, TELMEX is subject to a tariff regulation system established in its concession title. Every four years, COFETEL determines what will be the ceiling prices applicable to the basket of controlled services (basic local telephony, national and international LD) based on a cost study submitted by TELMEX (which must not include the cost of non-controlled services). At the same time, TELMEX may not offer these services for less than it costs to supply them (tariff floor).

302. As the prices of Internet access services are not regulated by COFETEL and the Mexican legislation does not require subscriber loop unbundling (see below), a company with market power in local telephony could offer Internet services at lower prices than its competitors. Nevertheless, the authorities have pointed out that the CFC oversees the market to prevent this situation from arising.

303. The LFT also stipulates that COFETEL has the right to impose certain obligations with respect to the prices established by concessionaires who, in the opinion of the CFC, have considerable power in a particular market. However, the opinion issued by the CFC classifying TELMEX as a company with a dominant position in certain telecommunications markets was annulled by the Judiciary in February 2007. In this connection, the authorities have noted that the CFC is initiating a new procedure to determine whether any public network concessionaire has substantial power in the relevant markets.

304. The provisions regulating interconnection in Mexico are contained in the LFT, the concession titles and various regulations issued by the SCT and COFETEL. The LFT establishes that public telecommunications network concessionaires must adopt architecture designs that provide for network interconnection and interoperability. Public network concessionaires are required to negotiate interconnection agreements within a period of not more than 60 days from the time at which one of them so requests. If an agreement cannot be reached, the parties can appeal to COFETEL to rule on the outstanding issues, including, if necessary, interconnection rates, within the next 60 days. In recent years, COFETEL has intervened on average eight times a year to establish interconnection conditions that could not be agreed between concessionaires.

305. Discriminatory practices in the application of tariffs or any other interconnection conditions are prohibited. Interconnection agreements do not require COFETEL's approval, but must be registered with COFETEL. In mid-2007, a reform of the rules on interconnection (the Basic Technical Interconnection and Interoperability Plan) was in the public consultation phase.

306. The Mexican legislation does not require operators with a dominant position to unbundle the subscriber loop for another concessionaire seeking access.³⁹⁴

307. In April 2006, the Mexican Congress approved reforms of the Federal Radio and Television Law and the LFT. In particular, changes were made to Article 28 of the Law for the purpose of allowing broadcasting concessionaires to provide telecommunications services by making an administrative application to the SCT. However, in May 2007, the Supreme Court of Justice declared that article unconstitutional because it was discriminatory and thus eliminated the possibility of broadcasting concessionaires providing additional services using previously allocated frequency bands.³⁹⁵ As a result of this, at the end of 2007 Congress was in process of revising the legal framework.

³⁹⁴ OECD (2007b).

³⁹⁵ Unconstitutionality Proceeding 26/2006 of the Supreme Court of Justice of the Nation.

308. In April 2006, COFETEL published an amendment to the rules of the LD service introducing the so-called "caller pays national" mobile telephony tariff scheme. This scheme requires mobile telephony concessionaires to incorporate in the interconnection contracts they sign with LD concessionaires the necessary provisions for the charge for national and international public LD traffic destined for mobile phones to be paid by the one who generates the call.³⁹⁶

309. In August 2000, the United States sought consultations with Mexico, alleging that Mexico had adopted anti-competitive and discriminatory regulatory measures, had tolerated certain privately-established market access barriers and had failed to take needed regulatory action in its basic and value-added telecommunications sectors.³⁹⁷ In April 2002 a panel was established to settle the dispute.³⁹⁸ In June 2004, the WTO's Dispute Settlement Body adopted the panel's report, which concluded, inter alia, that Mexico: (i) had failed to ensure the application of cost-oriented international interconnection rates; (ii) had failed to impose regulatory measures to prevent anti-competitive practices on the part of the main telecommunications operator; and (iii) had failed to ensure access to and use of public telecommunications networks on reasonable and non-discriminatory terms.³⁹⁹

310. In June 2004, Mexico and the United States agreed that Mexico would implement the recommendations made in the panel's report, such as repealing the legal provisions establishing that the operator with the majority of outgoing international long distance (ILD) traffic should be the only one to negotiate international interconnection contracts. In 2005, Mexico began allowing the marketing (resale) of the ILD service. However, it still does not allow marketers to provide the service through the leasing of private networks in such a way that the traffic is not routed through authorized international gateways (international simple resale); neither does it allow the deliberate reversal of the direction of ILD traffic (known as call-back).⁴⁰⁰

(iii) Financial services

(a) Overview

311. The Ministry of Finance and Public Credit (SHCP) has the primary responsibility for the regulation and supervision of the financial sector, as well as for setting the capital requirements of most of its participants. There are three specific regulatory agencies operating under the SHCP – the National Banking and Securities Commission (CNBV), which oversees the banking sector, securities market, and other credit agencies; the National Insurance and Bonding Commission (CNSF), which oversees insurance companies; and the National Pension Fund Commission (CONSAR), which oversees privately managed pension funds (AFOREs).

312. The Mexican Central Bank regulates financial operations, the foreign exchange and derivative markets, and the payment system and serves as a reserve bank and lender of last resort to financial institutions (see also Chapter I (2)(iii)).

³⁹⁶ Resolution amending the rules of the LD service published in the Official Journal on 13 April 2006.

³⁹⁷ WTO document WT/DS204/1 of 29 August 2000.

³⁹⁸ WTO document WT/DS204/3 of 18 February 2002. Some claims, such as those relating to value added telecommunications, were withdrawn from the request submitted by the United States.

³⁹⁹ WTO document WT/DS204/R of 2 April 2004.

⁴⁰⁰ COFETEL Resolution amending the rules on international telecommunications, published in the Official Journal on 5 April 2005.

313. Mexico's GATS commitments cover banking, insurance, and other financial services, and mostly pertain to commercial presence (mode 3).⁴⁰¹ Among other things, foreign investment in the market for services relating to the acceptance of deposits and lending of all types is limited to 40 per cent of common capital stock, while individual holdings are bound at 5 per cent of the capital stock, or at 20 per cent with SHCP authorization. In insurance, Mexico's schedule of commitments was bound at 40 per cent of paid-up capital, while the limit on individual holdings by foreign investors was bound at 10 per cent or 20 per cent with due authorization from the SHCP. The schedule does not permit foreign investment in credit unions, savings and loan companies or development banks, but it does allow foreign financial institutions to establish representative offices with the SHCP's authorization.

314. The provisions for access to the financial services market in Mexican law are considerably more favourable than the country's GATS commitments. Legal reforms in 1999 allowed the participation of foreign investment for up to 100 per cent of the capital of commercial banks, financial groups, securities brokerage firms, and securities market specialists. However, participation of foreign investment in other financial institutions – such as general deposit warehouses, financial leasing companies, currency exchange houses, and insurance and bonding institutions – remains capped at 49 per cent of paid-up capital.

315. Mexico has also incorporated a chapter on financial services in eight free trade agreements, namely: the North American Free Trade Agreement (which has served as a blueprint for other FTAs), and its agreements with Bolivia, Colombia and Venezuela⁴⁰², Nicaragua, Northern Triangle (El Salvador, Honduras, Guatemala), Japan, European Union, and European Free Trade Association.

316. The financial sector legislation includes: (i) General Law on Auxiliary Credit Organizations and Activities; (ii) Investment Company Law; (iii) Credit Institutions Law; (iv) Law Regulating Financial Groups; (v) Central Bank Law; (vi) Rules for the Establishment of Subsidiaries of Foreign Financial Institutions; (vii) Law on Savings Systems for Retirement; (viii) General Law on Insurance Companies and Mutual Institutions; (ix) National Insurance and Bonding Commission Regulations on Inspection and Oversight; (x) People's Savings and Credit Law; (xi) National Banking and Securities Commission Law; (xii) Stock Market Law; (xiii) Law for the Protection of Bank Savings; (xiv) Federal Law on Bonding Institutions; and (xv) Law for the Protection of Financial Services Users.⁴⁰³

317. According to several observers, various reforms have transformed the Mexican financial system by improving transparency and market discipline. The following reforms deserve to be highlighted: in 2005, deposit insurance provided by the Institute for the Protection of Bank Savings was reduced to 400,000 units of investment (US\$110,000), permission was given for up to 15 per cent of the assets of privately administered pension funds to be invested in equities, and a new and more far-reaching Stock Market Law (Box IV.1) entered into force; in 2006, the Credit Institutions Law and the General Law on Auxiliary Credit Organizations and Activities were reformed, the limited-scope financial company (SOFOL) market was liberalized through multipurpose financial

⁴⁰¹ WTO document GATS/SC/56/Suppl.3 of 26 February 1998.

⁴⁰² Venezuela has denounced the Free Trade Agreement it signed with Mexico and Colombia (see Chapter II (5)(ii)).

⁴⁰³ The latest dates of publication and amendment of the legislation listed are as follows: (i) 14 January 1985, 18 July 2006; (ii) 4 June 2001, 28 January 2004; (iii) 18 July 1990, 18 July 2006; (iv) 18 July 1990, 18 July 2006; (v) 23 December 1993, 31 December 2000; (vi) 21 April 1994; (vii) 23 May 1996, 15 June 2007; (viii) 31 August 1935, 18 July 2006; (ix) 26 January 2004; (x) 4 June 2001, 31 August 2007; (xi) 28 April 1995, 20 June 2005; (xii) 30 December 2005; (xiii) 19 January 1999, 6 July 2006; (xiv) 29 December 1950, 18 July 2006; and (xv) 18 January 1999, 15 June 2007.

companies (SOFOMES⁴⁰⁴), a regime for enabling timely intervention by the authorities in commercial banking institutions was adopted; and in 2007, amendments to the Credit Institutions Law updated the transparency legislation, while other reforms made activities related to the financing of terrorism a criminal offence.

Box IV.1 The Stock Exchange and the New Stock Market Law

The Bolsa Mexicana de Valores is Mexico's single stock exchange and Latin America's second-largest. The market has performed well in recent years, with the index surging by more than 40 per cent in dollar terms in 2005 and even further in 2006. However, the Bolsa remains small by international standards, with market capitalization of 25 per cent of Mexico's GDP in 2005. It is also highly concentrated: only four stocks in the general equities index account for nearly 50 per cent of the index – telecommunications companies Teléfonos de México (Telmex) and AMX, the supermarket chain Walmex (owned by Wal-Mart of the United States) and Cemex, the Mexican cement company. Foreign investment is a major source of capital.

Private firms and public issuers have since 2001 been able to access the certificado bursátil (stock-market certificate), which features a relatively simple issuing process while also restricting a guaranteed return of the bondholders' initial investment. State and municipal governments, along with State-owned companies such as Pemex, have issued these certificates since December 2001.

The new Stock Market Law came into effect on June 2006. Its main objective is to expand and modernize the Mexican securities market. The law seeks to promote medium-sized companies' access to the stock market, strengthen corporate governance standards, consolidate the regulations applicable to publicly held companies, bolster financial authorities' regulatory and oversight capacities, update the regulatory framework including for sanctioning inappropriate market behaviour and practices.

The Stock Market Law also creates a new type of listed company, the Sociedad Anónima Promotora de Inversion (SAPI), which exempts medium-sized firms from the fees required for listing on the stock exchange. According to some estimates, this provision could lift the number of companies to above 1,400 companies over 2007-2012 from only 140 in 2006. In addition, the Law strengthens the rights of minority shareholders, and redefines the role and authority of the National Banking and Securities Commission. As such, it is viewed as bringing Mexico into line with the Basel Accords on banking supervision and regulation.

Source: IMF (2005), Economist Intelligence Unit (2006) and Banco de México (2005).

(b) Banking sector

318. The Mexican banking sector is composed of commercial banks, development banks, and limited-scope financial companies. In March 2007, the assets of the commercial banks accounted for 45.5 per cent of the total for the domestic financial system, an increase of around 10 percentage points since 2003. As of June 2007, four foreign-owned banks – BBVA Bancomer, Banamex-Citigroup, Banco Santander Mexicano, and HSBC – controlled 69.4 per cent of all bank assets.⁴⁰⁵ Overall, foreign control of assets in the financial system is above 80 per cent, which makes Mexico the country with the largest ratio of foreign bank ownership in Latin America.⁴⁰⁶

319. The sectoral distribution of credit granted by commercial banks during 2002-2006 was, on average, as follows (percentage of total credit in brackets): agriculture, forestry and fishing (2 per

⁴⁰⁴ SOFOMES are financial entities established in order to carry out financial leasing and/or financial factoring and/or credit operations for any purpose, without the need for SHCP authorization.

⁴⁰⁵ National Banking and Securities Commission, Boletín Estadístico: Banca Múltiple (Statistical Bulletin: Commercial Banking), March 2007, page 39.

⁴⁰⁶ Economist Intelligence Unit (2006), page 42.

cent); mining (0.2 per cent); manufacturing (12.4 per cent); construction (3.1 per cent); services and other activities (19.8 per cent); housing (0.1 per cent); consumption (17.5 per cent); domestic financial sector (4.5 per cent), government and public administration (8.4 per cent); Institute for the Protection of Bank Savings (IPAB) (11.5 per cent); and other (2.7 per cent).⁴⁰⁷

320. From December 2000 to June 2007, total credit granted by commercial banks to the private sector rose by 102.7 per cent in real terms. The overall robust performance is attributed to the recapitalization and reprivatization of banks, the consolidation of the banking system after the 1994 financial crisis and the inflow of foreign investment, as well as to improved financial regulation, economic expansion and increased consumer confidence.

321. Overall, in Mexico, the figure for credit channelled through the banking system as a proportion of GDP is only 15.6 per cent (June 2007).⁴⁰⁸ This suggests the need for reforms additional to those already implemented to recapitalize banks through the IPAB (the successor to the Banking Fund for the Protection of Savings). A large part of the commercial banks profits still come from commissions paid by account holders, rather than from interest paid on loans. Additional reforms designed to facilitate access to credit for small and medium-sized enterprises, make the regulations relating to small banks more flexible, and promote the transparency of the financial system are under consideration.

322. The financial indicators for the Mexican banking system have improved in recent years. Loans past due as a percentage of total loans dropped from 4.6 per cent in 2002 to 2.3 per cent in 2007.⁴⁰⁹ Capital adequacy, measured as net capital relative to total risk assets, was 15.9 per cent in June 2007 as compared with 15.5 per cent at the end of 2002. Mexico has also made progress with the modernization of its banking regulatory system, among other things by adopting the Basel Core Principles for effective and transparent banking supervision. According to the International Monetary Fund, at the end of 2005 Mexico had fully complied with 19 of the 25 Core Principles and largely complied with five, while failing to meet one.⁴¹⁰

323. Development banks figure prominently in the Mexican financial system. There are seven existing institutions listed as national credit companies: Nacional Financiera (NAFIN, see Chapter III (4)(iii)), Banco Nacional de Comercio Exterior (BANCOMEXT, see Chapter III (3)(v)), Banco Nacional de Obras y Servicios Públicos, Sociedad Hipotecaria Federal, Banco de Ahorro Nacional y Servicios Financieros, Banco Nacional del Ejército, Fuerza Aérea y Armada, and Financiera Rural. Measured by the percentage of assets owned relative to total assets, NAFIN is the most important player in the development banking sector, controlling 40 per cent of total development bank assets.⁴¹¹

324. Banking licences are granted with SHCP approval based on the requirements listed in Article 9 of the Credit Institutions Law. Minor distinctions are made with regard to ownership structure between domestic and foreign capital.

⁴⁰⁷ Total credit includes the current, past due and discounted portfolios, the interest paid on loans, active and due. WTO Secretariat estimates based on Ejecutivo Federal (2006), page 332.

⁴⁰⁸ By comparison, this figure is 60 per cent in Chile and over 40 per cent in the United States. Ejecutivo Federal (2007), page 100. Consulted at: <http://www.presidencia.gob.mx>.

⁴⁰⁹ National Banking and Securities Commission, *Information Histórica de los Boletines Estadísticos de Banca Múltiple (Historical Information from Statistical Bulletins on Commercial Banking)*. Consulted at: <http://www.cnbv.gob.mx>.

⁴¹⁰ IMF (2007).

⁴¹¹ National Banking and Securities Commission (2007a), page 34.

325. Foreign capital may participate in the provision of banking services through subsidiaries of foreign financial institutions in countries with which Mexico has signed a free trade agreement that includes a financial services chapter. The establishment of subsidiaries is governed by the Credit Institutions Law and the Rules for the Establishment of Subsidiaries and depends on SHCP approval. Subsidiaries can offer the same services as commercial banks, subject to the provisions of free trade agreements, and provided that the sponsoring foreign financial institution offers similar services in the country of origin.

326. At the same time, foreign investors from any country may hold up to 100 per cent of the shares representing the capital of a banking institution, on the understanding that these operations require the prior authorization of the SHCP (in consultation with the CNBV) if they exceed 5 per cent of the capital. Nevertheless, foreign legal persons that exercise functions of authority may not participate in the capital of banking institutions in any way.

327. There are no additional restrictions on domestic banks or corporations or retail consumers for cross-border borrowing or deposits from/with foreign banks.

328. The Bank of Mexico has the authority to issue general criteria regulating interest rates, payments and commissions charged to customers and other financial and credit institutions. Moreover, commercial banks need to comply with a series of requirements relating to the commissions that they charge to their customers to ensure that the latter are duly informed. There are no provisions in the Mexican legislation that would require commercial banks to provide credit to a particular sector of the economy.

(c) Insurance

329. Mexico's insurance sector comprises insurance companies and mutual institutions. Although insurance penetration⁴¹² is only 1.9 per cent of GDP (beginning of 2007), Mexico is the second largest insurance market in Latin America, with 25 per cent of total premiums.

330. Over the period 2002-06, the value of direct premiums averaged some 137,238 billion pesos, life insurance accounting for 38.9 per cent of this figure, pensions for 4.0 per cent, accidents and illness for 13.2 per cent, and damages for 43.9 per cent; in the meantime, the value of reinsurance premiums averaged about 2,933 billion pesos.⁴¹³ Key emerging niches include educational, transportation, and natural hazard products.

331. As of December 2006, there were 91 insurance companies in Mexico; of the total, one was a mutual insurance company and one a State-owned company, while the remaining 89 were private insurance companies. Three foreign and two Mexican insurance companies comprise nearly 60 per cent of the market.

332. The insurance industry is governed by the General Law on Insurance Institutions and Mutual Societies (LGISMS) of 1935 and amendments thereto. The SHCP is mainly in charge of granting authorizations to insurance companies to operate in the country, while the CNSF is a supervisory body.

⁴¹² Total value of insurance premiums as a percentage of GDP.

⁴¹³ Figures for 2006 reported as of September. National Insurance and Bonding Commission (several years); National Insurance and Bonding Commission (2007a); and National Insurance and Bonding Commission (2007b).

333. Companies seeking to obtain an insurance licence must meet the requirements set forth in the LGISMS. This Law states that, depending on the origin of the shareholders who subscribe their capital, insurance institutions may be either wholly or majority Mexican-owned or wholly or majority foreign-owned, in which case they are treated as a subsidiary of a financial institution from abroad.

334. In the case of institutions the majority of whose capital is Mexican-owned, foreign natural and legal persons may (with some exceptions) acquire shares representing the insurers' capital but the Mexican investment must retain the power to determine the management and effective control of the institution. According to the Law, effective control may be obtained by acquiring 30 per cent or more of the shares representing the paid-up capital of an institution, controlling the annual meeting, being able to appoint a majority of the members of the board of directors, or by exercising some other means of control.

335. In the case of insurers the majority of whose capital is foreign-owned, the foreign institution must come from a country with which Mexico has signed a free trade agreement that includes a financial services chapter. These foreign institutions must establish themselves in Mexico through subsidiaries.

336. In addition to meeting the above requirements, subsidiaries must also comply with the Rules for the Establishment of Subsidiaries of Financial Institutions from Abroad. These requirements include the ownership structure, operating and internal controls, financial projections and fitness of directors and senior management.

337. The LGISMS forbids hiring insurance services from companies established abroad when the risk is located in Mexico. Exceptions are granted when the insurable risk is not insured by companies operating in the country, and the insured has received due authorization from SHCP to hire a foreign company to provide the service directly or through an insurance company established in Mexico. Transfer of non-life or life insurance portfolios between insurance companies requires SHCP approval, which is given when the requirements are met.

338. Where the hiring of reinsurance services is concerned, the LGISM allows an insurer established in Mexico to sign a contract with reinsurers from abroad provided that the latter are enrolled in the General Register of Foreign Reinsurers; enrolment depends on the discretionary approval of the SHCP.

339. Insurance companies do not require approval for the premiums they charge. However, they must provide the CNSF with technical reports that lay out the criteria on which their premium calculations are based.

(iv) Air transport and airports

(a) Main features

340. In 2006, Mexico's airport network comprised 1,259 airfields and 59 international and 26 domestic airports. Between 2002 and 2006, the number of passengers carried on domestic and international flights increased by slightly more than 37 per cent, reaching some 45.4 million in 2006, while the volume of freight transported rose by 40 per cent, reaching approximately 544,000 tonnes in

2006. It is estimated that physical investment, both public and private, in air transport infrastructure averaged 3,106 billion pesos (US\$296 million) per annum between 2002 and 2006.⁴¹⁴

341. In 1998, the Government granted concessions on 35 airports organized in four regional airport groups in the form of limited companies: Centre North (13 airports), Pacific (12 airports), South-East (nine airports), and Mexico City (one airport). Mexico City International Airport is a semi-public company with majority Federal Government participation. The other three groups are controlled by domestic and foreign private investors. The government agency Airports and Auxiliary Services (ASA) is a decentralized Federal Government body with legal personality and its own assets. ASA operates a network of 20 airports and participates in five other airports in partnership with governments of federative entities and the private sector.⁴¹⁵

342. There are 18 airlines established in Mexico that provide regular air transport services; of these, 14 carry passengers on domestic routes and seven on international routes, while 11 carry freight. In November 2005, Consorcio Internacional de Aviación (Cintra Group) sold Mexicana de Aviación and its subsidiary Click, thereby complying with a resolution of the Federal Competition Commission (CFC) which sought to dilute the market concentration that had resulted from the merger of Aeroméxico and Mexicana de Aviación in 1995. At the end of 2007, the Government was in the process of selling its approximately 66 per cent holding in the Cintra Group and thus completing the privatization of Aeroméxico.

343. During the period 1995-2005 the Mexican aviation market was dominated by the duopoly of Aeroméxico and Mexicana de Aviación⁴¹⁶; these two companies were part of the same corporate structure controlled by the State through the Cintra Group, and together with their subsidiaries held 77 per cent of the Mexican passenger transport market in 2000.⁴¹⁷ The level of competition in that market appears to have increased considerably in recent years. At the end of 2006, Aeroméxico, the leading company, controlled 27.4 per cent of the market, followed by Mexicana de Aviación with 20.6 per cent, Aviaca with 14 per cent, and six low-cost airlines (five of which entered the market in 2005-06) with 19.2 per cent.⁴¹⁸

(b) Regulatory framework

344. The Ministry of Communications and Transport (SCT) is the main regulatory entity for the air transport sector, with responsibility for planning and implementing policies and programmes for domestic airport development, granting concessions for operating air transport and airport services, its Directorate General of Civil Aviation being in charge of processing applications for concessions, issuing air transport and civil airfield permits and authorizations and proposing official standards. Other state agencies concerned with the sector include Mexican Air Space Navigation Services (SENEAM), which provides air control and navigation services, and ASA, which is responsible for operating, managing and maintaining State-controlled airports.

⁴¹⁴ Statistical Annex to First Government Report of 1 September 2007, based on data from the Ministry of Communications and Transport. Consulted at: <http://www.informe.gob.mx/informe/>.

⁴¹⁵ Information consulted at: http://www.asa.gob.mx/wb/webasa/red_de_servicios.

⁴¹⁶ CFC Resolution on the Cintra Case, 2000. Information consulted at: http://www.cfc.gob.mx/index.php?option=com_content&task=view&id=3677&Itemid=183.

⁴¹⁷ WTO Secretariat estimates based on SCT statistics, consulted at: <http://dgac.sct.gob.mx/index.php?id=477>.

⁴¹⁸ Ministry of Communications and Transport. Information consulted at: <http://dgac.sct.gob.mx/index.php?id=467>.

345. Mexico's commitments with respect to air transport services under the GATS were limited to certain air transport support services (see Table AIV.1).

346. The air transport sector is mainly regulated by the Civil Aviation Law of 1995 and its Regulations of 1998, and by the Airports Law of 1995 and its Regulations of 2000. Since Mexico's previous Review, this legislation has been amended with a view, *inter alia*, to optimizing the sector's activities and complying with the International Civil Aviation Convention.⁴¹⁹

347. The Airports Law and its Regulations establish the general regime applicable to Mexican airport concessions. This Law paved the way for the modernization and development of Mexican airport infrastructure by permitting the transfer of the administration, operation and management of existing airports to the private sector and allowing it to build new ones, through concessions. The concessions are for a term of 50 years and can be extended on one or more occasions for a period of not more than 50 additional years, for which the concessionaires must comply with certain security, investment and other requirements.

348. The legislation allows concessionaires to provide, or hire third parties to provide, airport, auxiliary and commercial services, it being mandatory that these third parties be Mexican trading companies. Under the Constitution, air navigation services must be provided solely and exclusively by the State, through SENEAM.

349. Under the Foreign Investment Law, the participation of foreign investors in concession-holding companies is restricted to a maximum of 49 per cent; the foreign investor may acquire a larger percentage of the capital by obtaining a favourable resolution from the National Foreign Investments Commission (see Chapter II (4)). At the end of 2007 no authorization to invest more than 49 per cent had been granted.

350. The Airports Law distinguishes three categories of services offered in airports: airport services, auxiliary services, and commercial services.⁴²⁰ Concessionaires must apply to the SCT for registration of the tariffs corresponding to airport and auxiliary services 30 days in advance of their application; the SCT then has ten working days to request additional information or return the application unregistered, or 15 days to accept registration. Concessionaires are free to set different tariff levels, provided that the tariffs do not exceed those registered. The SCT is authorized to regulate the tariffs for airport and auxiliary services after previously obtaining the opinion of the CFC, which must determine whether or not the conditions of reasonable competition in the provision of these services are fulfilled. The SCT acts either *ex officio* or at the request of the party concerned.

351. The Civil Aviation Law and its Regulations regulate the exploitation of the air space and the provision of air transport services. According to this Law, in order to provide scheduled domestic air transport services (cabotage) it is necessary to obtain a concession from the SCT that will only be granted to Mexican companies. The concession serves as a basis for seeking permission to provide scheduled international services. Foreign participation in domestic air transport companies is limited to 25 per cent of the capital (see Chapter II (4)).⁴²¹

⁴¹⁹ The most recent amendments to the Civil Aviation Law and its Regulations were published in the Official Journal on 6 June 2006 and 24 June 2004, respectively. The most recent amendments to the Airports Law and its Regulations were published in the Official Journal on 5 July 2006 and 9 September 2003, respectively.

⁴²⁰ The various definitions are given in Article 48 of the 1995 Airports Law.

⁴²¹ Article 7 (II) of the Foreign Investment Law, the latest amendment to which was published in the Official Journal of 18 July 2006.

352. Other air transport services are subject to the obtaining of a permit that is available to: only Mexican companies in the case of unscheduled domestic services; to foreign companies in the case of scheduled international services under international treaty provisions; to foreign and Mexican companies in the case of unscheduled international services; and to Mexican or foreign individuals or companies in the case of private commercial air transport services.

353. The Civil Aviation Law stipulates that operators may freely determine the rates for their air transport services, subject to satisfactory conditions of quality, competitiveness, safety and permanence. However, rates for international routes must be approved by the SCT in accordance with the various treaty provisions. All rates must be registered with the SCT before being applied. The SCT may refuse to register these rates or may establish minimum or maximum tariff levels in order to promote competition.

354. Mexico has signed 39 bilateral civil aviation agreements: nine with Asian countries, 16 with Caribbean and Central and South American countries, 14 with European countries and two with North American countries. As of mid-2007, Mexico had not signed any open skies agreement. The SCT considers that the domestic air sector is still not prepared for the borders to be thrown wide open, and accordingly is seeking to sign agreements that allow for a gradual and balanced opening, while exhausting the opportunities offered by bilateral relations.

(v) Maritime transport

(a) Main features

355. Maritime transport moves approximately 70 per cent of the total volume of Mexico's international trade. In 2006, the total volume of international freight was equivalent to some 213 million tonnes, 68 per cent of which represented exports and the rest imports. Mexico has 95 maritime and 18 river ports; of these, 66 are authorized for high-seas traffic. In terms of their principal activity, 37 ports are commercial. Moreover, there 43 fishing ports, 22 that support tourism, and 11 that handle petroleum.⁴²² Excluding petroleum transport, Manzanillo, Lázaro Cárdenas, Veracruz, Altamira and Tampico are Mexico's main commercial ports with 75 per cent of the freight volume moved. In 2006, four ports in the Gulf of Mexico (Puertos Dos Bocas, Pajaritos, Veracruz and Cayo Arcas) were responsible for approximately 77 per cent of foreign trade freight volume, mainly exports of petroleum and petroleum derivatives.⁴²³

356. In mid-2007, the 66 ports capable of handling high-seas freight were grouped into Integral Port Administrations (APIs), of which 16 are administered by the Federal Government and another five by state governments, while one API is in private hands. The APIs are trading companies with autonomy in their operational and financial management of the ports' goods and services. All the country's ports are owned by the State. The authorities have noted that there are no plans to transfer other APIs to the private sector. In practice, many of the principal activities within the APIs are performed by the private sector through concessions.

357. Between 2001 and 2006, public and private investment in port infrastructure increased irregularly, averaging 6,132 billion pesos per annum (US\$568 million), 70 per cent of which was private investment. During the same period, the movement of containers through the national port

⁴²² Some ports handle two or more activities.

⁴²³ Statistical Annex to Sixth Government Report of 1 September 2006, based on Ministry of Communications and Transport data. Consulted at: <http://sexto.informe.fox.presidencia.gob.mx/index.php?dseccion=4>.

system increased at an average rate of 14.6 per cent per annum, and the freight transiting through the ports grew on average by 3.7 per cent per annum, reaching 287.5 million tonnes in 2006. Of this freight, 73 per cent was high-seas and the rest cabotage.⁴²⁴

358. The Mexican Government's National Infrastructure Programme 2007-2012 notes that in terms of port infrastructure Mexico ranks 64th out of 125 countries, according to a 2006 study by the World Economic Forum. This Programme also estimates that a little over 10 billion pesos a year in port infrastructure investment will be needed to implement the necessary reforms.⁴²⁵ For the development of new port projects within the National Infrastructure Programme it is proposed to invite bids for a concession to operate specialized container handling terminals in the port of Bahía Colonet. Moreover, the authorities have noted that the National Competitiveness Agreement calls on the land and maritime transport operators and the SCT to undertake to solve the problems of multimodal transport bottlenecks.

359. In 2006, there were five domestic shipping lines and 75 foreign lines offering high-seas maritime transport services from Mexican ports. The merchant marine, which in 2006 consisted of 239 vessels with a capacity of more than 1,000 GRT, is relatively small. In 2006, vessels belonging to foreign merchant fleets were responsible for transporting 31 per cent of cabotage and practically all of high-seas cargo.⁴²⁶

(b) Regulatory framework

360. The main legal provisions governing maritime transport are contained in several articles of the Constitution, the Port Law of 1993, its Regulations of 1994, the new Shipping and Maritime Trade Law of 2006 and its Regulations.⁴²⁷ The SCT, through the General Coordinating Office for Ports and the Merchant Marine and its directorates general, is the main agency responsible for regulation, as well as for policy formulation and implementation in the maritime transport sector. Moreover, the SCT has responsibility for granting concessions for APIs and the provision of services in terminals, marinas and port facilities.

361. The main changes introduced by the 2006 Shipping and Maritime Trade Law relate to foreign participation in cabotage shipping. The new Law continues to reserve cabotage for Mexican ship-owners, but stipulates that if there are no Mexican vessels available under similar technical conditions, the SCT may only grant temporary permits to Mexican ship-owners with a foreign vessel under bare-boat charter, or to a Mexican ship-owner with a foreign vessel under some leasing agreement. The new Law no longer permits the SCT to grant permits to foreign shipping companies. The period of validity of the temporary permits was reduced to three months and no permit for the same vessel may be renewed more than seven times. Furthermore, a Mexican ship-owner holding a temporary permit for a foreign vessel must register it under the Mexican flag if it is going to stay in Mexican waters for more than two years.

⁴²⁴ Statistical Annex to Sixth Government Report of 1 September 2006, based on Ministry of Communications and Transport data. Consulted at: <http://sexto.informe.fox.presidencia.gob.mx/index.php?dseccion=4>.

⁴²⁵ National Infrastructure Programme 2007-2012. Consulted at: www.infraestructura.gob.mx.

⁴²⁶ Information provided by the authorities.

⁴²⁷ The Port Law and the latest amendment to its Regulations were published in the Official Journal of 19 July 1993 and 8 August 2000, respectively. The Shipping and Maritime Trade Law was published in the Official Journal of 1 July 2006, and the latest amendment to the Regulations of the Shipping Law was published in the Official Journal of 19 April 2005.

362. Under the Foreign Investment Law (see Chapter II (4)), foreign investment in the maritime transport sector is limited to a maximum of 49 per cent of total capital in APIs and in shipping companies that commercially exploit vessels for inland and coastal navigation, with the exception of tourism cruise ships, and certain port operations such as dredging. The Foreign Investment Commission may authorize foreign participation above 49 per cent in port services for inland waterway navigation operations, as well as in shipping companies engaged exclusively in high-seas traffic. The authorities have noted that in recent years authorizations to exceed the permitted percentage of 49 per cent have been granted.

363. Foreign shipping companies and vessels from any country may participate in international maritime (high-seas) transport activities provided their country of origin extends reciprocal treatment to Mexico. The Shipping and Maritime Trade Law of 2006 provides for the possibility of reserving all or part of certain international transport activities for Mexican shipping companies if the CFC rules, in an opinion, that in that particular market competition is lacking.

364. The freight rates for regular high-seas shipping services and port service charges are fixed freely by the service providers, except in the absence of reasonable competition, when the SCT establishes the basis for tariff regulation and fixes the levels of payment and rules of application. This is the case with the tariffs for the use of port infrastructure applied by the APIs, and for some services such as pilotage, towing and ferrying. The concession titles of the APIs have maximum tariff levels established for certain services. The tariffs for tourism activities are deregulated but must be registered with the SCT.

365. In mid-2006, the Federal Government created the Mexican Merchant Marine Development Fund (Fondemar) with a view to helping Mexican shipping companies to obtain financing for buying, building or modernizing vessels for maritime traffic. In each case the SCT must determine Fondemar's level of participation in the credit risk through guarantees. According to information provided by the authorities, the resources allocated to Fondemar amounted to 117 million pesos (US\$10.7 million).

366. Mexico has signed up to the International Maritime Organization's International Ship and Port Facility Security (ISPS) Code. The authorities have indicated that the ISPS Code is in force in all the country's high-seas ports.

367. Mexico has not assumed any specific commitments within the framework of the GATS with regard to maritime transport services (see Table AIV.1). This sector has been included in most of the free trade agreements signed by Mexico.

(vi) Professional services

368. Within the framework of the GATS, Mexico assumed specific commitments under four professional services headings: accounting, auditing and bookkeeping; consultancy and technical studies for architecture, consultancy and technical services for engineering, and medical and dental services, for which free cross-border supply and consumption abroad are allowed. With regard to commercial presence, foreign investment up to 100 per cent in architectural and engineering services and up to 49 per cent in medical and dental services and accounting services was bound; foreign accounting companies must use the name of their Mexican partners.⁴²⁸ Mexico did not assume any commitments in the area of legal services.

⁴²⁸ WTO document GATS/SC/56 of 15 April 1994.

369. Under Article V, Mexico has notified its preferential agreements relating to services that contain provisions concerning the negotiation of agreements on the mutual recognition of certificates of competency and licences for the provision of professional services. Nevertheless, no notifications have been received under Article VII.4 concerning mutual recognition agreements that Mexico has signed.

370. In October 2007, within the NAFTA framework Mexico had signed mutual recognition agreements for the professions of accountancy, engineering and architecture which are in process of implementation. Moreover, Mexico had concluded an agreement on the mutual recognition of higher education certificates and degrees with Colombia⁴²⁹ and formed part of the Regional Agreement on the Accreditation of Higher Education Studies, Degrees and Diplomas in Latin America and the Caribbean (1975).⁴³⁰ In addition, in May 2006, Mexico and Uruguay signed an Agreement on the Mutual Recognition of Study Certificates, Degrees and Academic Qualifications.⁴³¹

371. In Mexico, the practice of professions is regulated at federal and state levels. An indispensable requirement for practising a regulated profession is to be the holder of a *cédula profesional* (licence) issued by the SEP.⁴³² To obtain a licence it is necessary, among other things, to possess a diploma recognized by the SEP and to have completed a "social service".

372. Under Article 5 of the Constitution, each State in the Federation has discretion to determine the professions that require a diploma, together with the conditions that must be fulfilled to obtain such a diploma and the authorities responsible for issuing it. In the Federal District, the exercise of professions is governed by the Law Regulating Article 5 of the Constitution passed by the Congress of the Union.⁴³³ In practice, the professions that require a diploma vary from one federative entity to another. The main professions subject to this requirement include: law, architecture, medicine, nursing, chemistry, bacteriology, biology, social and political sciences, anthropology, journalism, accountancy, teaching, economics, computer science, engineering, mathematics, and the professions of aircraft pilot and social worker.

373. At national level, the following professional and technical services are reserved for Mexican citizens: aircraft pilot, ship's captain, first mate, naval architect, ship's engineer; crews of Mexican flag ships and aircraft; airport manager, harbour pilot, customs broker, and train crews.⁴³⁴

374. The diplomas issued by institutions authorized by state and federal laws must be registered in order to obtain a licence to practice. Article 13 of the Law Regulating Article 5 of the Constitution stipulates that the Federal Executive may conclude agreements with the States in order to harmonize professional registration. The Mexican authorities have noted that as a result of the signature of such agreements the Directorate General of Professions of the SEP has been given the exclusive authority to issue licences with nationwide validity.

⁴²⁹ Published in the Official Journal on 22 April 2002.

⁴³⁰ In addition to Mexico, the following countries are party to this Agreement: Bolivia, Colombia, Cuba, El Salvador, Former Yugoslav Republic of Macedonia, the Holy See, Netherlands, Nicaragua, Panama, Peru, Serbia and Montenegro, Slovenia, Suriname, and Venezuela.

⁴³¹ Published in the Official Journal on 2 June 2006.

⁴³² The licence is a personal document authorizing the holder to practise a profession.

⁴³³ Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District, published in the Official Journal on 26 May 1945 (latest amendment published on 22 December 1993).

⁴³⁴ Article 32 of the Constitution and Article 25 of the Shipping and Maritime Trade Law, published in the Official Journal on 1 June 2006.

375. Provided there is reciprocity in the country of origin of the applicant, the requirements for the registration of diplomas and the issuing of licences for foreigners who have studied abroad include, *inter alia*, the production of a document proving their right of stay and, in the case of residents, a notarized copy of a valid immigration document. In addition, the following documents must be produced: an official letter confirming the revalidation of the professional studies issued by the SEP; a diploma certified by the country of origin and by the Mexican consulate in the issuing country; and a certificate of exemption from social service or an equivalent letter issued in the country where the studies were pursued.⁴³⁵

376. The social service requirement is intended to provide an opportunity for students to pay back part of the cost of their education to society and to contribute to the academic training and professional skills development of the social service provider. This requirement also applies to foreigners and Mexicans who studied abroad. Within the context of the present Review, the authorities have noted that, in accordance with the legislation in force, alternatives are being sought to make this requirement more flexible; for example, it has been established that if in the foreigner's country of origin or in that in which he/she received his/her higher education social service is not required, it will not be required in Mexico. Moreover, if in the foreigner's country of origin the social service system exists and its requirements were satisfied, the requirements will also be considered to have been satisfied in Mexico.⁴³⁶ Where the health care professions are concerned, before a licence can be granted to foreigners, the Directorate General of Professions of the SEP must ask the Ministry of Health to confirm the social service rendered by the foreigner and, where appropriate, determine the place and the form in which this service was performed.

377. Foreigners and Mexicans who studied abroad must also revalidate their diplomas with the SEP in order to obtain a licence.⁴³⁷ SEP Decision No. 286 establishes the criteria for the revalidation of studies completed abroad. To qualify for revalidation, courses of higher education must be at least 75 per cent equivalent to existing courses in the Mexican education system. In the case of foreigners, the reciprocity granted by the country in which the studies were completed to studies completed in Mexico and the international accreditation of the educational institution attended will also be taken into account.⁴³⁸

378. Foreigners may practise a profession in Mexico provided that they satisfy the conditions specified in the Law Regulating Article 5 of the Constitution and subject to the international treaties to which Mexico is party.⁴³⁹ Apart from the FTA with Israel, Mexico's free trade agreements incorporate provisions on cross-border trade in services and subject the provision of professional services to the principle of reciprocity. Apart from those with Israel, United States and EFTA, all the FTAs contain provisions for eliminating nationality or permanent residence requirements for the granting of licences and certificates to professional service providers of the other Party, as well as for negotiating agreements on the mutual recognition of licences and certificates for the provision of such services.

⁴³⁵ The requirements can be consulted on the SEP's web site: <http://www.sep.gob.mx>.

⁴³⁶ Article 3 of the Regulations on the rendering of the Social Service of students of the institutions of higher education in the Mexican Republic, published in the Official Journal on 30 March 1981.

⁴³⁷ Article 9 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District, published in the Official Journal on 26 May 1945 (latest amendment published on 22 December 1993).

⁴³⁸ Points 25 and 35 of SEP Decision 286, published in the Official Journal on 30 October 2000.

⁴³⁹ Article 15 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District. A similar provision can be found in most state laws.

379. If there is no relevant agreement, the practice of professions by foreigners is subject to the principle of reciprocity in the country from which the applicant comes and compliance with the Mexican legislation.⁴⁴⁰ The authorities have noted that the countries granting Mexico reciprocity in the practice of professions are: Argentina, Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Guatemala, Nicaragua, and Peru. Reciprocity means that the country from which the applicant comes does not impose greater requirements on Mexicans than on its own citizens.

380. Foreign lawyers can obtain licences to practise in Mexico provided there is a relevant agreement between Mexico and their country of origin. If there is no such agreement, the foreigner must revalidate his/her studies, meet the requirements laid down by Mexican law and show that the principle of reciprocity applies. If a foreign lawyer obtains revalidation of his/her studies and is authorized to practise in Mexico, he/she may only advise on Mexican or international law.

381. In general, only lawyers with a licence to practise in Mexico may participate in a law office established on Mexican territory. Nevertheless, provided it is stipulated in the professional services provisions of an FTA, and subject to the principle of reciprocity, lawyers of the country with which the agreement has been signed who have a licence to practise in that country may enter into partnerships with lawyers with a Mexican licence to practise in the national territory. A favourable resolution from the National Foreign Investment Commission is required for a foreign investment in legal services of more than 49 per cent.

382. Some FTAs signed by Mexico provide for the role of a legal consultant through whom lawyers of the country with which an agreement has been signed may provide consultancy services with respect to the laws of their own country, or international law, or the law of a third country; however, foreign legal consultants may not advise on Mexican law.

383. According to information provided by Mexico to the WTO Working Group on Professional Services, to practise accountancy in Mexico, as in the case of other professions, foreign accountants must revalidate their studies and obtain a licence issued by the SEP. In regulated areas of accountancy, such as the auditing of financial statements for tax purposes, foreign professionals may practise in the national territory on condition that this possibility is provided for in an international treaty.⁴⁴¹ There are no restrictions on the mode of establishment or direct foreign ownership of a company providing accountancy services in Mexico.⁴⁴²

384. With regard to engineering services, Mexico is participating in the development of regional-level professional qualification accreditation schemes that facilitate the provision of these services by foreign engineers. For example, within the NAFTA framework, procedures have been agreed for granting temporary licences that allow engineers accredited in any of the three countries party to the Agreement to practise in Canada (all provinces), Mexico (all states) and the United States (state of Texas). Moreover, Mexico is a signatory to the Declaration of Montebán, in which several Latin American countries and Spain undertook to establish systems for the accreditation of engineers with a view to mutual recognition that allow for labour mobility between the countries concerned.⁴⁴³

⁴⁴⁰ Article 15 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District. A similar provision can be found in most state laws.

⁴⁴¹ Article 52, I(b) of the Fiscal Code of the Federation.

⁴⁴² WTO document S/WPPS/W/7/Add.20 of 16 October 1996.

⁴⁴³ The Declaration of Montebán was signed at the First Latin American Meeting on the Accreditation of Engineering Programmes, in Oaxaca, Mexico, on 6 September 2001, by representatives of universities and professional societies of Argentina, Bolivia, Chile, Colombia, Costa Rica, El Salvador, Mexico, Paraguay and Spain.

385. There are no restrictions on the participation of foreigners in engineering consultancy partnerships established as Mexican enterprises in accordance with the national legislation, except for those engineering activities that are regulated by Articles 7 and 8 of the Foreign Investment Law (see Chapter II (4)(ii)).

386. In Mexico it is not necessary to belong to a professional society to be allowed to practise a profession. In their capacity of advisory bodies and guarantors of high standards of practice within a particular profession, the professional societies and associations give opinions on laws and regulations relating to the practice of their profession and help to design the curricula of the institutions of higher education.⁴⁴⁴ They also actively participate in the work of the Mexican Committees for International Practice of the Professions (COMPIs), created to negotiate agreements on the mutual recognition of licences and certificates for the practice of professions under NAFTA.

⁴⁴⁴ Article 50 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District.

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