
II. TRADE AND INVESTMENT REGIME

(i) OVERVIEW

1. 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.

2. 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.

3. 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.

4. 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 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.

5. 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

6. Mexico is a Federal Republic governed by three powers of State: the Executive, the Legislature and the Judiciary.¹ 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;

¹ 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.

signing, denouncing, suspending and amending international treaties; lifting reservations and issuing interpretative statements thereon, and submitting these for Senate approval.²

7. 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.

8. 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.³ 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.

9. 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.⁴ 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.⁵

10. The Senate has the constitutional power to approve international treaties signed by the Government, as well as any decision to denounce or amend them.⁶ 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 2004⁷ 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.

11. Since 2002, Mexico has persevered with and consolidated its regulatory reform programme, with the aim of enhancing competitiveness and reducing business transaction costs.⁸ 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

² Article 89 of the Political Constitution of the United Mexican States.

³ *Idem*, Article 94.

⁴ *Idem*, Article 133.

⁵ Judicial Seminar of the Federation, National Supreme Court of Justice, Ninth Period, Thesis P.IX/2007, April 2007.

⁶ Article 76 of the Political Constitution of the United Mexican States.

⁷ Published in the D.O.F. on 2 September 2004.

⁸ 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.

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.⁹ 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.

12. 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.¹⁰ 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

13. The Foreign Trade and Investment Promotion Programme (PCEPI)¹¹ 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 open trade practices need to be supported by other policies that promote competitiveness, such as unilateral tariff reductions (Chapter III(2)(iv)).¹²

14. 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 Law¹³, 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.

15. 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.¹⁴ 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

⁹ The RFTS can be accessed from the COFEMER web site: <http://www.cofemer.gob.mx>.

¹⁰ Published in the D.O.F. on 11 June 2002.

¹¹ D.O.F. of 14 April 2004.

¹² Ministry of the Economy (2007).

¹³ 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.

¹⁴ 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.

business chambers, industrial, commercial and agricultural associations and other stakeholders, giving them a 30-day period to comment on the proposed measures.

16. 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

17. 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).

18. The main instruments in the domestic legal framework for foreign investment are Article 73 of the Constitution, and the Foreign Investment Law (LIE)¹⁵ together with its Implementing Regulations.¹⁶

19. 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).

20. 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.

21. The *Comisión Nacional de Inversiones Extranjeras* – CNIE (National Foreign Investment Commission), consisting of ten Ministers and chaired by the Minister of the Economy¹⁷, 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

¹⁵ 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.

¹⁶ Implementing Regulations for the Foreign Investment Law and the National Foreign Investment Register were published in the D.O.F. on 8 September 1998.

¹⁷ 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.

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.¹⁸ All requests submitted to the CNIE but not resolved within 45 working days must be considered approved under the terms presented.

22. 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 APPRIs signed by Mexico foresee the possibility of temporarily restricting transfers in the event of balance-of-payments difficulties.

(ii) Restrictions on foreign investment

23. 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 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.¹⁹

24. 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.²⁰ 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.

25. 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)).

¹⁸ 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.

¹⁹ Article 2 of the Implementing Regulations for the LIE.

²⁰ Article 2 of the LIE.

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 12 <i>bis</i> 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).

26. 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 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.²¹ In 2007, this amount was Mex\$2.392 billion (about US\$218 million).²²

27. 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.²³

²¹ Article 9 of the LIE.

²² CNIE General Resolution No. 8, published in the D.O.F. on 29 May 2007. Average exchange rate for the first half of 2007.

²³ Articles 18, 19 and 20 of the LIE.

28. 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.²⁴ 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

29. 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).

30. 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.²⁵ Ten of these agreements have been signed since 2002.²⁶ The country was also in negotiations with Russia, Ukraine, Belarus, Saudi Arabia and China. In general, the APPRI cover the following disciplines: definition of investment; scope; promotion and admission; treatment of investment; expropriation; transfers; dispute settlement (both investor-State and State-State).

31. In June 2004, the Investment Promotion Agreement signed between Mexico and the United States entered into force.²⁷ 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.

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

²⁴ Article 27, fraction I.

²⁵ 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.

²⁶ With Australia, the Czech Republic, Cuba, Iceland, India, Panama, the Republic of Korea, Slovakia, the United Kingdom and Trinidad and Tobago.

²⁷ 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.

33. 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.

34. 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.

35. According to an OECD study²⁸, 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

36. 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.²⁹ 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.

37. 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 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.³⁰ Mexico demonstrated its support for the multilateral trading system by hosting the Fifth WTO Ministerial Conference in Cancún in September 2003.

38. 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.

39. 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

²⁸ OECD (2006b).

²⁹ WTO documents WT/LET/213 of 30 January 1998 and WT/LET/288 of 18 February 1999.

³⁰ WTO document TN/C/W/39 of 24 April 2006. See also Ministry of the Economy (2007).

agriculture (as a member of the G-20)³¹, market access for non-agricultural products, trade facilitation, trade rules, services and intellectual property (geographical indications).

40. 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).

41. 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 cases³² (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)

42. 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

| 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)

³¹ 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.

³² 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 |
|--|--|---|---|
| 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 Association FTA (with Iceland, Liechtenstein, Norway and Switzerland) | 1 July 2001 (29 June 2001) | WT/REG126/N/1 (22.08.2001) S/C/N/166 (22.08.2001) | Market access for goods; rules of origin; services and investment; competition; anti-dumping and subsidies; 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)

| Agreement | Entry into force (publication in the D.O.F.) | Notification to the WTO | Areas covered |
|--|--|--|---|
| 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/sneci/negociaciones/ficha_publica_tlcs.htm.

43. 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.

44. 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.

45. 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.³³ 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 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.

46. 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)).

³³ 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.

North American Free Trade Agreement (NAFTA)

47. 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 2008.³⁴ 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)).

48. 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.³⁵ 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.³⁶ As of March 2007, an arbitral award had been made in just two of them, both of which were favourable to Mexico.³⁷

49. 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.³⁸

FTAs with Latin American countries

50. 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.

³⁴ In the case of Mexico-Canada trade, dairy and poultry products were excluded from the agreement.

³⁵ 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.

³⁶ 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.

³⁷ 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/.

³⁸ Ministry of the Economy (2006a).

51. 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.³⁹ In November 2006, the "plant requirement" for granting health registration to medicines from El Salvador was eliminated.

52. 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.

53. 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.⁴⁰ 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.

54. 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.

55. As a LAIA member country⁴¹, Mexico has partial scope and economic complementarity agreements (ECAs) in force with various member countries of that Association.⁴² During the review 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).⁴³

56. 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

³⁹ El Salvador vs. Mexico - Current measures for granting health registration and access to medicines. Final Report of the Arbitral Panel, 14 August 2006.

⁴⁰ 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.

⁴¹ LAIA member countries are Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

⁴² 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).

⁴³ 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).

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.

57. 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.

58. 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 products⁴⁴, 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.

59. 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

60. 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*.⁴⁵

61. 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

62. 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

⁴⁴ 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.

⁴⁵ Ministry of the Economy (2007).

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.

63. 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.

64. 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

65. 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.

66. 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.

67. 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.