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 PITEX, 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 PITEX.

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 Law[1] and its Implementing Regulations[2], as well as on the General Foreign Trade Regulations[3] 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.[4] 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.[5] 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.[6] 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.[7] 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.[8] Customs agents are jointly responsible for the payment of import taxes and for the exactitude of the information declared. The requirements for obtaining a

[1] 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.

[2] Published in the Official Journal of the Federation of 6 June 1996.

[3] 2007 General Foreign Trade Regulations for 2007, Official Journal of the Federation of 27 April 2007.

[4] Article 59, Section IV, of the Customs Law.

[5] 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.

[6] 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).

[7] Article 40 of the Customs Law.

[8] 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.

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.[9]

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).[10]

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.[11]

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.[12] 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.[13]

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).

[9] Articles 159 and 168 of the Customs Law.

[10] Article 36 of the Customs Law.

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

[12] Articles 43 and 44 of the Customs Law.

[13] 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).[14]

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.[15]

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.[16] 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.[17] 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.

[14] 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).

[15] See: http://www.comfin.com.mx/comunicados/otros/07/mar/planmodernizaciónaduanera.htm.

[16] The declaration may be consulted at: http://www.milenio.com/index.php/2007/06/08/78323.

[17] 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.[18] 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.[19]

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.[20] 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.[21] According to the Mexican authorities, in over 90 per cent of import transactions the value is determined according to the transaction value.[22]

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).

[18] Article 203 of the Customs Law.
[19] WTO document G/VAL/N/2/MEX/1 of 2 July 2004.
[20] Article 64 of the Customs Law.
[21] Articles 77 and 71 of the Customs Law.
[22] 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.[23] 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.[24]

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.[25] 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.[26] At its meeting on 25 April 2006, the Committee concluded its examination of Mexico's relevant rules and legislation.[27]

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

[23] 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.

[24] 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.

[25] *Mexico – Certain Pricing Measures for Customs Valuation and Other Purposes* (WT/DS298).

[26] 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.

[27] 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.[28]

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.[29]

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.

[28] 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.

[29] 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 companies[30], 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.[31] 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.[32] If such imports come from specified countries[33], 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.[34]

(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.[35] Mexico grants MFN treatment as a minimum to all countries, whether or not they are Members of the WTO.

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

[31] 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.

[32] These special certificates are known as "hard" certificates of country of origin.

[33] 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.

[34] 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.

[35] 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).[36] 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).[37] 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).[38] 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.

[36] 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.
[37] This figure includes banned headings (22 lines).
[38] *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.[39]

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.[40] 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 tarification 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.[41] The consolidated schedule used for this report is based on the HS 1996 nomenclature[42], 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.[43]

(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)).

[39] Ministry of the Economy (2004), pages 108-115 and 200. See also CIDE (2005), pages 7-12 and IDB (2006), pages 5 and 13.
[40] Mexico's Schedule of Commitments (LXXVII).
[41] WTO document WT/L/638 of 6 December 2005.
[42] Available in the WTO Consolidated Tariff Schedules Database.
[43] 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.[44] 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.[45]

(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).

[44] Article 104 of the Customs Law.

[45] 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.[46]

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*).[47]

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 GATT[48]; the Appellate Body confirmed these findings.[49] 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

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

[47] 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.

[48] WTO document WT/DS308/R of 7 October 2005.

[49] 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.[50]

(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.[51]

82. Goods that are prohibited are listed in the tariff in the TIGIE, published in the Official Journal of the Federation.[52] Mexico imposes import prohibitions on a small number of tariff headings for reasons of public safety, health or public morals and child protection.[53]

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.[54] Some products require import licences issued by other ministries, including the Ministries of the Environment and Natural Resources; Public Health; and Defence.

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

[51] Articles 16 to 20 of the Foreign Trade Law (1993).

[52] Consulted at: http://www.siicex.gob.mx.

[53] 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.

[54] 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 agreements[55] 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.[56]

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.[57] 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.[58]

[55] 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).

[56] 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.

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

[58] 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.[59] 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 Regulations[60]; 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.[61] 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.[62]

91. The LCE and its amendments were notified to the WTO by Mexico[63] and were discussed in the Committee on Anti-Dumping Practices, the Committee on Subsidies and Countervailing Measures, and the Committee on Safeguards.[64] Among the main issues discussed were those relating

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

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

[61] 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.

[62] WTO documents WT/DS295/R of 6 June 2005 and WT/DS295/AB/R of 29 November 2005.

[63] 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.).

[64] 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/Q/1/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

to the 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.[65] 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.[66]

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.

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

[66] 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.[67] 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.

[67] 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.[68] 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.[69]

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.[70] 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 WTO[71], and in August that year the administrative provisions required to implement the said mechanism were issued.[72] 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

[68] WTO documents WT/DS295/R of 6 June 2005 and WT/DS295/AB/R of 29 November 2005.
[69] WTO document WT/DS331/R of 8 June 2007.
[70] Amendments to the LCE published in the Official Journal of the Federation of 13 March 2003.
[71] Agreement published in the Official Journal of the Federation of 21 April 2005.
[72] 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.[73] 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.[74]

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.[75] The investigation concluded without any measures being imposed because the complainant withdrew.[76]

(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 1992[77] and its Implementing Regulations of 1999.[78] 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.[79] 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.[80]

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 sphere[81], 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.[82] 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.[83]

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

[73] WTO document G/AG/N/MEX/12 of 25 April 2006.

[74] 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.

[75] WTO document G/SG/N/6/MEX./1 of 29 August 2002.

[76] The final resolution was published in the Official Journal of the Federation of 2 July 2005.

[77] 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).

[78] Published in the Official Journal of the Federation of 14 January 1999.

[79] WTO document G/TBT/2/Add.14 of 19 July 1996.

[80] Ibid.

[81] 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.

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

[83] 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.[84]

(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.[85]

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.[86] 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.[87]

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.

[84] The catalogue of standards may be consulted at: http://www.economia_noms-gob.mx and at: http://www.economia-nmx.gob.mx/.

[85] Information on the MIRs can be consulted at: http://www.cofemer.gob.mx.

[86] Article 45 of the Federal Law on Metrology and Standardization.

[87] 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.[88] 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

[88] Catalogue of Mexican Standards, consulted at: http://www.economia-noms.gob.mx.

set in the ISO's international standards.[89] 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.[90] 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.[91]

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.[92] Moreover, establishments wishing to import or market medicines and other health-related inputs must have a "sanitary registration".[93] 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.[94] 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

[89] WTO documents G/TBT/M/33 of 31 August 2004 and G/TBT/M/34 of 5 January 2005.
[90] WTO document G/TBT/M/34 of 5 January 2005.
[91] WTO document G/TBT/M/35 of 24 May 2005.
[92] Articles 295 and 285 of the General Law on Health.
[93] 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).
[94] 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.[95]

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.[96] 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.[97] 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

[95] 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.

[96] 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.

[97] 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.[98]

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-2004[99], which lays down general requirements for packaging and labelling; NOM-051-SCFI-1994[100], which contains labelling requirements for pre-packaged foodstuffs and non-alcoholic beverages; and NOM-004-SCFI-2006[101], covering the labelling of textile products and clothing. The draft for the

[98] 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.
[99] Published in the Official Journal of the Federation of 1 June 2004.
[100] Published in the Official Journal of the Federation of 24 January 1996.
[101] 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.[102]

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.[103] 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.[104] 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)[105]; the Federal Plant Health Law (1994)[106]; the

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

[103] 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.

[104] Catalogue of Mexican Standards, consulted at: http://www.economia-noms.gob.mx.

[105] 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 Health[107], the Regulations on Sanitary Control of Products and Services of 1999[108], the Regulations of the Federal Commission for Protection against Sanitary Risks[109], 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.[110]

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.[111] Agreements were also being drawn up with five other countries.[112] 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.

[106] Published in the Official Journal of the Federation of 5 January 1994 (latest revision published on 26 July 2007).
[107] Published in the Official Journal of the Federation of 7 May 1997 (latest amendment published on 6 June 2006).
[108] Published in the Official Journal of the Federation of 9 August 1999 (not revised).
[109] Published in the Official Journal of the Federation of 13 April 2004 (not revised).
[110] WTO documents G/SPS/ENQ/19/Add.2 and G/SPS/NNA/9/Add.2, both of 26 June 2006.
[111] Algeria, Argentina, Bulgaria, Canada, Chile, China, Cuba, Ecuador, Guatemala, India, the Netherlands, New Zealand, Peru, the United States and Uruguay.
[112] 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.[113] The standards on health control and food safety issued by the COFEPRIS can be found on the Internet site of the Ministry of Health.[114]

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)

[113] See: http://senasicaw.senasica.SAGARPA.gob.mx/portal/html/senasica_principal/normalización.
[114] 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.[115] Two of these were resolved in 2006.[116] 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.[117]

149. The Agreement on the Classification and Codification of Imported Goods (hereinafter the SAGARPA Agreement)[118] 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 NOMs[119], or the phytosanitary requirement sheets (HRFs)[120] or animal health requirement sheets (HRZs)[121], 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.

[115] 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).

[116] 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.

[117] WTO documents in the WT/DS284 series.

[118] 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 June2007.

[119] 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.

[120] The HRF may be consulted at: http://senasicaw.senasica.sagarpa.gob.mx/requisitosfito/Inicio.aspx.

[121] 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.[122] 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.[123] 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.[124] 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

[122] 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.

[123] Published in the Official Journal of the Federation of 30 June 2007.

[124] 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.[125] 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.[126] Importers of these products must be domiciled in Mexico[127] 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.[128]

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)[129] is responsible for coordinating government policy on the production, consumption,

[125] Articles 284 and 298 of the General Law on Health.
[126] Published in the Official Journal of the Federation of 1 November 2004.
[127] Article 285 of the General Law on Health.
[128] Article 286 bis of the General Law on Health.
[129] 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.[130]

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.[131] 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.[132] 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.[133] 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

[130] The list of biotechnological products approved for sale may be consulted at: http://www.salud.gob.mx.

[131] Published in the Official Journal of the Federation of 12 July 2004.

[132] 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.

[133] 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.[134] 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	Heparionoid	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.[135]

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

[134] 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.

[135] 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 WTO[136] 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.[137]

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.[138]

[136] *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.

[137] The corresponding headings are: 2523.1001, 2523.2999 and 2523.9099.

[138] 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 PITEX, 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 PITEX 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.[139]

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 PITEX.[140] 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.[141] 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.[142] Mexico has replied to these comments.[143]

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.

(a) The Maquila and PITEX programmes and the new IMMEX programme

180. Until November 2006, the Maquila[144] and PITEX[145] programmes remained in effect; even though, over the period 2000 to 2003, both these programmes were the subject of several amendments[146] in order to adapt them to the commitments undertaken under the NAFTA and the

[139] 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.

[140] 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.

[141] 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.

[142] WTO document G/SCM/Q2/MEX/16 of 8 June 2001.

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

[144] 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.

[145] 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.

[146] The amendments to the Decrees on the Maquila and PITEX 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.[147] 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.[148]

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.[149] 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.[150] The provisions on the application of MFN or preferential tariffs on inputs contained in FTAs signed by Mexico, where applicable, still apply.

[147] 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.

[148] For further details, see: WTO (2002), Chapter III(3)(vii).

[149] 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.

[150] 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 cent[151], 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.[152]

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.[153]

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).[154]

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.[155]

[151] Article 25 of the Law on the Value-Added Tax.

[152] 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.

[153] Article 2 of the Income Tax Law.

[154] Article 24 of the IMMEX Decree.

[155] 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 Exporters[156] 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 Programme[157] 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 Programme[158] 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 andUS$3 million for consolidators during the first fiscal year following their

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

[156] 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.

[157] 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.

[158] 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

Tale 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).[159]

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.[160]

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.[161] 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.[162] In December 2005, the Federal

[159] Data provided by BANCOMEXT.
[160] Ibid.
[161] World Bank (2006), pages 28-31; IMF (2006a), pages 16-18.
[162] 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.[163]

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 Ministries[164], 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.[165]

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).[166]

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

[163] *Idem*, page 255.
[164] 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.
[165] Ministry of the Economy (2006c), page 105.
[166] 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.[167] 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 agencies[168] 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

220. The establishment, operation and liquidation of commercial corporations are governed by the 1934 General Law on Commercial Corporations and the 1993 Foreign Investment Law.[169] 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.

221. 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

[167] 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.

[168] 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.

[169] 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.

222. 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 latters' 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.[170]

223. 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.[171] 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.[172]

224. 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).[173] 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.

225. 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

[170] General Law on Commercial Corporations of 4 August 1934.

[171] 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.

[172] 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.

[173] 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.[174]

226. 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

227. 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.[175]

228. In order to avoid double taxation, Mexico has signed tax agreements with 34 countries, including its principal trade partners.[176] 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),

[174] COFEMER (2007).

[175] 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.

[176] 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

229. 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.

230. 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.[177]

231. 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.

232. 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.[178] By mid-2007, however, the CFC had not issued any binding opinion.

233. 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

[177] Information from the CFC online. Consulted at: http://www.cfc.gob.mx.
[178] 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.

234. 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.[179] 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.

235. 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* process[180]), added to the decline in the CFC's budget and staffing levels, constrained its ability to remedy anti-competitive conduct.[181] Other issues considered problematic by the OECD have been overcome by reforming the LFCE.

236. In 2006, Congress approved a series of reforms of the LFCE.[182] 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.

237. 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.

238. 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.

[179] OECD (2004).
[180] In an *amparo* process, it is decided whether an unconstitutional statute has been applied or the regulatory procedure has not been followed.
[181] OECD (2004).
[182] Decree published in the Official Journal of the Federation of 28 June 2006.

239. District courts have frequently granted motions to stay the CFC resolutions (including fines) during the review of the sentence's legality.[183] 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.

240. 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).

241. 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.[184]

(b) Price controls

242. 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.

243. 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.[185] 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.

244. 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.[186]

245. 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.[187] 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

[183] OECD (2004).
[184] CFC information online. Consulted at: http://www.cfc.gob.mx/index.php?option=com_content&task=view&id=1063&Itemid=138.
[185] 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.
[186] PROFECO information online. Consulted at: http://www.profeco.gob.mx/encuesta/brujula/bruj_2006/ bol08_preciomax1.asp.
[187] Information from the SE online. Consulted at: http://www.economia.gob.mx/.

possible monopolistic practices in the maize-tortilla chain and, if necessary, to adopt public policy measures to boost competition in this chain.

(iii) Incentives

(a) Overview

246. 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)).

247. 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.188

248. The CIPI keeps an inventory of the Mexican Government's industrial promotion programmes and instruments and this may be consulted on the Internet.[189] 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).

249. 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).[190] 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.[191]

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)

[188] 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.

[189] The inventory appears on http://www.cipi.gob.mx.

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

[191] CIPI (2003), pages 55-57.

Programme	Number
Ministry of Tourism	8
National Foreign Trade Bank (BANCOMEXT)	8
National Finance Company, S.N.C. (NAFIN)	8
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].

250. 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.[192]

(b) Tax incentives

251. In August 2002, the Decree establishing Various Sectoral Promotion Programmes (PROSECs) was issued[193] 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.

252. 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.

253. 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.

254. According to the directory kept by the SE, in October 2007, 4,142 companies had an authorized PROSEC.[194] 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.

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

[193] 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.

[194] The directory may be consulted at: http://www.economia.gob.mx/?P=760.

255. 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 *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.[195]

256. 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)

[195] 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
	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 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).

257. 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)

Item[a]	Mex$ millions	Percentage of GDP[b]
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.

258. 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)[196] 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

259. 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)

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

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.
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).

260. 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.[197] 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.[198]

261. 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.

262. 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 banks[199] 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

[197] Office of the President of the Republic, Sixth Report of the Government, 2006.
[198] National Banking and Securities Commission (2006a).
[199] 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.

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.[200]

263. 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.[201]

264. 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.[202] 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.[203]

(d) Trade-related investment measures

265. 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).[204] 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.[205] The extension was granted until 31 December 2003.[206] In January 2004, Mexico notified the WTO that it had eliminated the measures in question.[207]

(iv) State-trading enterprises and privatization

266. 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.[208]

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

268. State involvement in the economy diminished substantially between 1982 and 2000 when a wide-ranging privatization programme was implemented, including liquidation, merger of State-

[200] World Bank (2006), pages 28-31; IMF (2006a), pages 16-18.
[201] The CIPI publishes information about these programmes online. Consulted at: http://www.cipi.gob.mx/html/body_programas_de_apoyo.htm.
[202] CIPI, Description of the Federal Government's business support programmes [online]. Consulted at: http://www.cipi.gob.mx/ desc_prog_apoyo.pdf.
[203] Ibid.
[204] WTO document G/TRIMS/N/1/MEX/1 of 12 April 1995.
[205] WTO documents G/C/W/171 of 23 December 1999 and G/C/W/293 of 31 August 2001.
[206] WTO documents G/L/463 of 31 July 2001 and G/L/500 of 9 November 2001.
[207] WTO document G/C/42 of 16 January 2004.
[208] The most recent notification is contained in WTO document G/STR/N/6/MEX of 31 July 2004.

owned companies and regulatory reforms.[209] 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.

269. 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

270. 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.

271. 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.[210]

272. 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).[211]

273. 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.

274. 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.[212]

275. 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.

[209] IDB (2004).
[210] Information from the SE online. Consulted at: http://www.economia-paasop.gob.mx/comonew. shtml.
[211] Ibid.
[212] The PAAAS and the PAOP may be consulted at: http://www.economia-paasop.gob.mx/.

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* – LOPSRM (Law on Public Works and Related Services), and their respective Implementing Regulations.[213]

276. 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.

277. 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.

278. 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).[214]

279. 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.

280. 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 LAASP 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,

[213] 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 LAAASP 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.

[214] 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.[215]

281. 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.[216] The publication of invitation and direct award procedures is not compulsory.

282. 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.

283. 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.

284. 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.[217]

285. The principles governing procurement of public works, laid down in the LOPSRM, are similar to those in the LAASSP.

286. 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.[218]

287. Government procurement in the state sphere is subject to special state provisions. Nevertheless, very few of these differ significantly from the LAASP. 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.[219] 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.[220]

[215] Information provided by the authorities.
[216] Consulted at: http://www.compranet.gob.mx/.
[217] The most recent revision of the Federal Law on Administrative Procedures was published in the Official Journal of the Federation of 30 May 2000.
[218] Article 1 of the LAASSP and Article 1 of the LOPSRM of 2005.
[219] Law on Procurement by the Federal District, published in the Official Gazette of the Federal District of 28 September 1998.
[220] 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.

288. 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.[221]

(vi) Protection of intellectual property

289. 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.[222] Mexico has notified several legal provisions that subsequently amended its legislation on intellectual property rights.[223] It has also provided information on its national enforcement system.[224]

290. 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)

[221] 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).

[222] 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

[223] 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.

[224] 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.

291. 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.

292. 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.

293. 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.[225] In 1997, the Directorate-General of Copyright was replaced by the *Instituto Nacional de Derecho de Autor* – INDAUTOR (National Copyright Institute).

294. 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.[226] 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.[227] 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.

295. Mexico's legislation covers all the major aspects mentioned in the TRIPS Agreement

[225] WTO document IP/N/3/Rev.9 of 8 November 2005.
[226] Information from the IMPI online. Consulted at: http://www.impi.gob.mx.
[227] 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.	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.
		Moral rights are imprescriptible.	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.

296. 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.

297. 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.

298. Mexico has not granted any compulsory licences or public utility licences pursuant to Articles 70 and 77 of the Industrial Property Law.

299. 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.[228] 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.[229]

300. 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

[228] 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.

[229] 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.[230]

301. 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.

302. 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.[231]

[230] Information provided by the authorities (IMPI).
[231] Ibid.