

## **IV. TRADE POLICIES BY SECTOR**

### **(1) OVERVIEW**

1. During the review period, Mexico continued to pursue the reform process aimed at linking the agricultural sector more closely to the market. There were fewer trade-distorting interventions and transfers to producers were made more efficient, but price support and production-related payments continue to account for more than half the aid provided for producers. According to the OECD, the producer support estimate (PSE) has increased considerably since 2004 but remains relatively low when compared with the average for the OECD countries. Nevertheless, further reforms appear to be needed in order to facilitate the reallocation of resources and bring about a sustainable increase in the sector's productivity.

2. Mexico undertook to grant tariff quotas under the WTO for various agricultural products, although most were reserved for specific countries. For a large proportion of products, WTO quota allocation procedures were not defined in 2007. In practice, the products concerned are imported in larger quantities and under better access conditions, albeit under unilateral quotas or preferential agreements. Partly due to the coexistence of different kinds of quotas, their administration is complicated and not very transparent. Moreover, in the allocation of the WTO quota for powdered milk and the unilateral quotas for yellow and white maize domestic purchase and consumption requirements are imposed. Mexico sent the WTO its last quota notification, covering the period 1996-1999, in January 2001.

3. The manufacturing sector has played a key role in Mexico's development and in its integration into the world economy thanks, in particular, to its incorporation into the North American production networks. In recent years, the sector has lost some of its former momentum, due both to cyclical factors and to increasing competitive pressures in the world economy. Aware of these challenges, the authorities are contemplating structural reforms that would make it possible, among other things, to improve the competitiveness of the productive chains, particularly those with greater value added. Given the large scale and diversification of the Mexican manufacturing sector, horizontal measures to increase productivity and minimize the distortions created by incentives would be more appropriate than sectoral approaches.

4. The energy sector has increased its contribution to exports and is of crucial importance for the public finances (see Chapter I). Under the Constitution, it is the State that must exploit hydrocarbons, as well as generate and distribute electrical energy for public use. A heavy tax burden and consumer subsidies have resulted in both the State oil company, PEMEX, and the State companies in the electrical sector finding it increasingly difficult to finance the necessary investment. It would therefore seem essential to carry out structural reforms in both the hydrocarbon and electricity sectors to ensure their financial viability and increase operator efficiency, as well as to improve Mexico's supply of energy resources.

5. In the services sector, Mexico has adopted specific commitments in 11 of the 12 GATS sectors. It has also participated in the post-Uruguay Round negotiations on basic telecommunications and financial services, undertaking to abide by the reference paper on telecommunications. Within the framework of the Doha Round negotiations Mexico submitted an initial offer in 2003 and a revised offer in 2005. In many cases, the provisions of the Mexican legislation relating to access to the services market are considerably more favourable than the commitments made by Mexico under the GATS. Accordingly, Mexico could increase the predictability of its investment regime by eliminating these differences, which would also result in a more uniform treatment as between preferential partners and other WTO Members.

6. The telecommunications sector has grown faster than the rest of the economy. At the same time, the level of competition in the sector continues to be limited and, consequently, services are expensive. The historical operator, TELMEX, continues to occupy a dominant position in key markets and there are still difficulties with interconnection between operators. The participation of foreign capital in telecommunications concessionaires is restricted to 49 per cent, except in mobile telephony where it may exceed that limit subject to authorization. The elimination of these restrictions on investment could usefully complement other efforts made by the authorities to improve the competitive environment.

7. In recent years, various reforms have transformed the Mexican financial system by improving its regulation and supervision. There has also been a notable process of internationalization of commercial banking. There are no restrictions on the participation of foreign capital from a signatory to a free trade agreement that includes a financial services chapter in either banks or insurance companies. Foreign capital from other countries may not effectively control an insurance company. In general, the law prohibits contracting for insurance services with foreign insurers if the risk can be covered by a Mexican insurer.

8. The Mexican air transport market has been dominated by a State duopoly, but the level of competition has increased enormously as a result of the process of privatization of the airlines that formed this duopoly and the penetration of the market by low-cost airlines. The provision of scheduled domestic air transport services continues to be restricted to Mexican enterprises with not more than 25 per cent of foreign capital. Foreign investment in public service airport concessionaires is also restricted by the establishment of a maximum of 49 per cent of the capital, except in cases of prior authorization. The authorities consider that the Mexican air transport sector is not yet ready for an open skies policy.

9. There has been considerable investment in the modernization of Mexico's ports, but the authorities are aware that further progress is needed to improve port infrastructure and remove bottlenecks in multimodal transport. Although almost all port administrations are State-owned, in practice many port services are provided by the private sector through concessions. Foreign investment is restricted to a maximum of 49 per cent of the capital of shipping companies that commercially operate vessels intended for inland waterway navigation and cabotage. Although almost all international maritime transport is handled by foreign shipping companies, their participation is only allowed if the company's country of origin grants Mexico reciprocity.

10. To practise a profession in Mexico it is indispensable to hold a licence, which has national validity and, among other things, requires the holder to be in possession of a recognized diploma and to have completed "social service". At national level, there are certain professional and technical services reserved for Mexican citizens. In any event, the practice of a profession by foreigners is subject to the principle of reciprocity.

## **(2) AGRICULTURE**

### **(i) General features**

11. Between 2001 and 2006, Mexican agricultural sector GDP (including the activities of agriculture, livestock farming, forestry and fishing) grew at a real average rate of 2.1 per cent a year. The contribution of the agricultural sector to total GDP fell from 5.2 per cent in 2001 to 5.0 per cent in 2006.<sup>1</sup> The structure by activity of agricultural production has remained relatively stable: in 2006, agriculture accounted for 64.2 per cent of agricultural GDP (62.6 per cent in 2001); livestock farming

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<sup>1</sup> Bank of Mexico and National Institute for Statistics, Geography and Data Processing.

accounted for 26.9 per cent (28.8 per cent in 2001); forestry for 5.3 per cent (5.5 per cent in 2001), and fishing for 3.6 per cent (3.1 per cent in 2001).<sup>2</sup>

12. From 2001 to 2006, employment in the sector declined from 17.5 per cent of the total gainfully employed population to 14.3 per cent, mainly as a result of the rural exodus and the growth of non-agricultural activities in rural communities.<sup>3</sup>

13. In 2006, the value of agricultural production was estimated at some 216.77 billion pesos (about US\$20 billion); grain and oilseed production accounted for about 30 per cent of the total, followed by vegetables (20.4 per cent) and fruit (16.7 per cent). Maize for human consumption continues to be the main staple product, accounting for 18.9 per cent of the total value of agricultural production, followed by sugar cane (8.0 per cent), fodder (5.8 per cent), tomatoes (5.3 per cent) and avocados (3.9 per cent).<sup>4</sup> In 2006, the value of livestock production amounted to 192.014 billion pesos (about US\$18 billion).<sup>5</sup>

14. In 2006, Mexican exports of agricultural products (WTO definition) amounted to US\$13.362 billion (a 76 per cent increase over 2001).<sup>6</sup> The main export products include fresh fruit and vegetables, food preparations and beverages, especially beer, tequila and canned products. Mexico is a net importer of agricultural products; the total values of imports of these products amounted to US\$16.261 billion in 2006. The main agricultural imports include maize, soya, beef, wheat, cotton, oilseeds, pork, and milk in powder.

## (ii) Policy objectives

15. From 2001 to 2006, Mexico's agricultural policy, overseen by SAGARPA, pursued the objectives of the Sectoral Programme for Agriculture, Livestock, Rural Development, Fishing and Food (2001-06), namely, to produce food that is healthy for the consumer and profitable for the producer; to produce quality non-food goods for the end markets; to step up the development of the rural communities; and to preserve and improve the environment.<sup>7</sup> The National Development Plan for 2007-12 establishes similar objectives, including improving the income of agricultural producers through increased exports, value-added processes and the production of bio-energy crops. In October 2007, the corresponding sectoral programme had not yet been published.

16. In April 2003, the Federal Government concluded with various farmers' organizations the *Acuerdo Nacional para el Campo – ANC* (National Agreement for the Countryside) for the purpose of introducing a series of measures to promote agricultural development.<sup>8</sup> The Agreement was also intended as a response to the concerns of some groups of producers regarding the liberalization of trade in most agricultural products within the NAFTA framework. In this Agreement, the Government undertook, among other things, to: ensure the effective implementation of the trade remedies established in the Mexican legislation and the trade treaties signed by Mexico, reinforce

<sup>2</sup> Ejecutivo Federal (2007), p. 11.

<sup>3</sup> Ejecutivo Federal (2007), p. 101.

<sup>4</sup> SAGARPA, *Sistema de Información Agroalimentaria y Pesquera (SIAP). Estadísticas básicas* (Agri-food and Fishing Information System. Basic Statistics). Consulted at: <http://www.siap.gob.mx/>.

<sup>5</sup> Ejecutivo Federal (2007).

<sup>6</sup> Calculated by the WTO Secretariat on the basis of United Nations Statistical Division Comtrade data.

<sup>7</sup> SAGARPA, *Informe de Rendición de Cuentas de la Administración Pública Federal 2000-2006* (Report on Federal Public Administration Reporting). Part 1. See also *Programa Sectorial de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación 2001-2006* (Sectoral Programme for Agriculture, Livestock, Rural Development, Fishing and Food 2001-2006).

<sup>8</sup> National Agreement for the Countryside, published in the Official Journal on 28 April 2003. For an account of the negotiations leading to the Agreement see Morales-Moreno, I. (2004).

sanitary and phytosanitary measures in order to guarantee the quality and safety of agricultural products, and strengthen the development bank Financiera Rural to facilitate access to credit in the agricultural sector.

### (iii) Agricultural support indicators

17. The OECD's estimates indicate that, during the review period, aid for Mexican agricultural producers associated with government programmes (Producer Support Estimate – PSE) increased considerably in 2002, declined in 2003 and 2004, but increased again in subsequent years, reaching some 78,028 billion pesos (some US\$7,171 billion) in 2006 (Table IV.1). As a percentage of farm income, the PSE followed a similar trend, reaching 17.4 per cent in 2006; the latter figure is a little more than half the average for the OECD countries (29 per cent for 2004-2006). In 2006, price support (measured as the difference between domestic and international prices) constituted 49.3 per cent of the PSE, input-related payments accounted for 25.3 per cent and payments for historical entitlements that do not establish production requirements accounted for about 16 per cent.

18. The figure for the Total Support Estimate (TSE), which includes transfers from consumers and taxpayers and net fiscal revenue, increased significantly in 2002 and 2003, decreased in 2004 but, like the PSE, subsequently rose to 86,569 billion pesos (some US\$7,955 billion) in 2006, which represented 0.93 per cent of GDP. In this latter year, transfers from consumers and taxpayers were equivalent to 52 and 54 per cent of the TSE, respectively. The increase in support via prices largely explains the more than doubling of transfers from consumers between 2004 and 2006.

19. In a recent study, the OECD pointed out that Mexico had made good progress towards achieving a better linkage between its agricultural sector and the market.<sup>9</sup> The study notes that interventions that generate major distortions have been reduced by improving the efficiency of transfers of income to producers and increasing transparency through decentralization, while support for producers continues to be relatively low compared with the average for OECD members. However, the study also mentions that price support and production-related payments continue to account for more than half the support provided for producers. Moreover, delays in applying such concepts as the "polluter pays" and "user pays" principles have postponed the benefits for the environment and allowed the depletion of resources to continue; though reduced, subsidies for water use are still being granted.

**Table IV.1**  
**Agricultural support estimates, 2001-06**  
(in billions of pesos)

Item	2001	2002	2003	2004	2005	2006 <sup>a</sup>
Total value of production	305,838	305,380	336,553	377,470	380,768	408,784
Proportion of basic products subject to price support (%) <sup>b</sup>	65.8	67.2	66.5	69.4	67.6	66.6
Total value of consumption	310,546	314,825	346,777	373,715	374,201	426,365
Producer Support Estimates (PSE)	48,903	74,006	68,506	44,348	59,608	78,028
Percentage PSE (%)	15.3	23.1	18.5	10.8	14.3	17.4
General Services Support Estimates (GSSE)	6,062	6,074	9,474	9,285	10,718	9,889
Consumer Support Estimates (CSE)	-44,975	-69,105	-45,465	-20,582	-30,593	-45,485

Table IV.1 (cont'd)

<sup>9</sup> OECD (2007a), p. 189.

Item	2001	2002	2003	2004	2005	2006 <sup>a</sup>
Total Support Estimates (TSE)	51,886	77,228	74,658	51,476	67,559	86,569
Transfers from consumers	42,248	67,948	42,340	19,202	27,895	44,875
Transfers from taxpayers	17,412	15,747	39,044	38,310	46,062	47,095
Tax revenue	-7,774	-6,466	-6,726	-6,036	-6,397	-5,402
Percentage TSE (share of GDP, %)	0.9	1.2	1.1	0.67	0.81	0.93

a Preliminary figures.

b The basic products subject to price support are: wheat, maize, other grain, coffee, tomatoes, rice, oilseeds, sugar, milk, beef, pork, poultry, eggs and beans.

Source: OECD, PSE/CSE database, 2007, consulted at: <http://www.oecd.org/dataoecd/13/16/39579404.xls>.

20. The same study notes that the increased support for the agricultural sector recorded in 2006 was the result of an increase in price support for maize, and that the increase in domestic prices exceeded the growth of world prices, adversely affecting Mexican consumers. The study concluded that further reforms are needed in the Mexican agricultural sector to remove the trade barriers that still prevail and replace the more distorting subsidies with better targeted measures.

#### (iv) Policy instruments

##### (a) Border measures

21. In 2007, the average MFN tariff for agricultural products (WTO definition) was 23 per cent<sup>10</sup> a figure considerably higher than the average tariff applied to non-agricultural products, which was 9.9 per cent in the same year (Chapter III (2)(iv)).

22. As part of the commitments assumed in the Uruguay Round, Mexico agreed to grant tariff quotas for various agricultural products, including poultry meat, animal fats, milk in powder, cheese, kidney beans, potatoes, coffee, wheat, barley, maize, and sugar and products with a high sugar content. For these products a bound in-quota tariff, initial and final, of 50 per cent was established, except for milk in powder for which the tariff was set at 0 per cent. The ex-quota tariffs were bound at considerably higher rates that had to be progressively reduced; the transition period stipulated was 1995-04 (Table IV.2). Mexico did not undertake to increase the quota volume, except in the case of coffee and sugar products.<sup>11</sup>

**Table IV.2**  
Multilateral tariff quotas and import volume, 2006  
(US\$)

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) <sup>a</sup>
	In-quota	Ex-quota	In-quota	Ex-quota		
<b>Powdered milk</b>					<b>120,000</b>	<b>138,727</b>
04021001	0%	125.1%	0%	US\$ 1.044/ton but not<125.1%		
04022101	0%	125.1%	0%	US\$ 1.044/ton but not<125.1%		

Table IV.2 (cont'd)

<sup>10</sup> In the case of products subject to tariff quotas, only ex-quota tariffs were used to calculate the average tariff.

<sup>11</sup> Mexico's Schedule of Concessions (Schedule LXXVII-Mexico, Sections 1A1 and 1B1).

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) <sup>a</sup>
	In-quota	Ex-quota	In-quota	Ex-quota		
<b>Cheese, hard and semi-hard</b>					<b>9,385</b>	<b>31,802</b>
04061001	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04063001	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04063099	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04069003	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04069005	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
04069099	50%	125%	50%	US\$ 1,044/ton but not<125.1%		
<b>Coffee; coffee extracts, essences and concentrates</b>					<b>20,800</b>	<b>2,170</b>
09012101	50%	72%	50%	72%		
09012201	50%	72%	50%	72%		
09019001	50%	72%	50%	72%		
09019099	50%	72%	50%	72%		
21011101	50%	140.4%	50%	US\$ 0.32/kg. but not<140.4%		
<b>Meat and edible offal</b>					<b>40,543</b>	<b>255,014</b>
02071403	50%	234%	50%	US\$ 1,512/ton but not<234%		
02071404	50%	234%	50%	US\$ 1,512/ton but not<234%		
02071499	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072601	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072602	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072699	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072703	50%	234%	50%	US\$ 1,512/ton but not<234%		
02072799	50%	234%	50%	US\$ 1,512/ton but not<234%		
02073599	50%	234%	50%	US\$ 1,512/ton but not<234%		
02073699	50%	234%	50%	US\$ 1,512/ton but not<234%		
<b>Animal fats</b>					<b>39,623</b>	<b>70,232</b>
02090001	50%	254%	50%	US\$ 837/ton but not<254%		
02090099	50%	254%	50%	US\$ 837/ton but not<254%		
15010001	50%	254%	50%	US\$ 837/ton but not<254%		
15161001	50%	254%	50%	US\$ 837/ton but not<254%		
<b>Potatoes, fresh or frozen</b>					<b>8,340</b>	<b>52,973</b>
07019099	50%	254%	50%	US\$ 318/ton but not<245%		

Table IV.2 (cont'd)

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) <sup>a</sup>
	In-quota	Ex-quota	In-quota	Ex-quota		
<b>Beans, except for seed</b>					<b>56,500</b>	<b>129,085</b>
07133302	50%	125.1%	50%	US\$ 360/ton but not<125.1%		
07133303	50%	125.1%	US\$ 360/ton but not<125.1%	US\$ 360/ton but not<125.1%		
07133399	50%	125.1%	US\$ 360/ton but not<125.1%	US\$ 360/ton but not<125.1%		
<b>Wheat</b>					<b>604,612</b>	<b>3,446,634</b>
10011001	50%	67%	50%	US\$ 90/ton but not<67%		
10019001	50%	67%	US\$ 90/ton but not<67%	US\$ 90/ton but not<67%		
10019099	50%	67%	50%	US\$ 90/ton but not<67%		
<b>Barley</b>					<b>4,742</b>	<b>77,751</b>
10030002	50%	115%	50%	US\$ 144/ton but not<115.2%		
10030099	50%	155%	50%	US\$ 144/ton but not<115.2%		
<b>Maize</b>					<b>2,501,000</b>	<b>7,567,058</b>
10059003	50%	194%	50%	US\$ 185/ton but not<194%		
10059004	50%	194%	50%	US\$ 185/ton but not<194%		
10059099	50%	194%	50%	US\$ 185/ton but not<194%		
<b>Sugar and products with a high sugar content</b>					<b>183,800</b>	<b>430,242</b>
17022001	15%	15%	50%	0.18 dol/kg. but not<78.3%		
17023001	15%	15%	50%	0.29 dol/kg. but not<117%		
04029901	50%	15% + US\$ 0.36/kg.	50%	0.18 dol/kg. but not<78.3%		
04029999	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.18/kg. but not<78.3%		
18062099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.216/kg. but not<94%		
18063201	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.216/kg. but not<94%		
18069001	50%	20% + US\$ 0.36/kg.	US\$0.252/kg. but not<94%	US\$ 0.252/kg. but not<94%		
18069002	50%	20% + US\$ 0.36/kg.	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
18069099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.216/kg. but not<94%		
19019003	50%	10%	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
19019004	50%	10%	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
19019005	50%	109%	US\$ 0.252/kg. but not<109%	US\$ 0.252/kg. but not<109%		
19019099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.252/kg. but not<109%		

Table IV.2 (cont'd)

Description (HS)	Applied tariff		Bound tariff		Bound quota volume (tonnes)	Total import volume 2006 (tonnes) <sup>a</sup>
	In-quota	Ex-quota	In-quota	Ex-quota		
21011101	50%	104%	50%	US\$ 0.32/kg. but not<140.4%		
21012001	50%	20%	50%	US\$ 0.32/kg. but not<140.4%		
21039099	20%	20%	50%	US\$ 0.27/kg. but not<117%		
21069001	15%	15%	50%	22.5%		
21069002	50%	15% + US\$ 0.36/kg.	50%	US\$ 0.165/kg. but not<71%		
22029001	10%	10%	50%	US\$ 0.108/kg. but not<47%		
22029002	20%	20%	US\$ 0.108/kg. but not<47%	US\$ 0.108/kg. but not<47%		
22029003	50%	20%	US\$ 0.108/kg. but not<47%	US\$ 0.108/kg. but not<47%		
22029004	50%	20%	US\$ 0.108/kg. but not<47%	US\$ 0.108/kg. but not<47%		
22029099	50%	20% + US\$ 0.36/kg.	50%	US\$ 0.108/kg. but not<47%		

a The total import volume includes imports under both unilateral and preferential quotas.

*Source:* Compiled by the WTO on the basis of information provided by the Mexican Ministry of the Economy and Schedule LXXVII-Mexico.

23. In accordance with Mexico's Schedule of Concessions, most tariff quotas include access rights reserved for particular countries. For example, the United States has been allocated 99.9 per cent of the total quota for maize; 97 per cent of that for poultry meat; 94 per cent of that for animal fats; 88 per cent of that for beans; and 75 per cent of that for cheese. Canada has received a substantial share of the quotas for barley (49 per cent) and wheat (28 per cent). The balance has been granted to other countries. The only products for which reserved access rights were not stipulated in Mexico's Schedule are coffee and sugar products.

24. Mexico's last WTO notification concerning tariff quota administration and imports, covering the period 1996-99, was submitted in January 2001.<sup>12</sup>

25. The Ministry of the Economy administers import quotas under a certification system, in accordance with Article 24 of the Foreign Trade Law (1993) which lays down the following allocation procedures: competitive bidding; procedures in accordance with the international treaties signed by Mexico; or any other justified procedure established by the Ministry after consulting the Foreign Trade Commission. On the basis of this provision, the Ministry of the Economy has opted for direct allocation in accordance with the "first come, first served" principle for allocating WTO tariff quotas. In the case of milk in powder, up to 2005, a combined mechanism of direct allocation and competitive bidding was used, whereas since 2006 only direct allocation has been employed (see below). Quota certificates are nominative and non-transferable.

26. The requirements and procedures for allocating quotas are published annually in the Official Journal. The Decision announcing the mechanism for allocating tariff quotas established within the

<sup>12</sup> WTO document G/AG/N/MEX/11/Rev.1 of 25 January 2001.



framework of Mexico's WTO commitments for 2007 was published in January of that year.<sup>13</sup> However, as distinct from the similar instrument that established the quota allocation procedure for 2006, the 2007 Decision only establishes tariff quotas for coffee and cheese. The Decision stipulates that, in accordance with the Foreign Trade Law, allocations will be made on a "first come, first served" basis.

27. Apart from the case of coffee and cheese, in October 2007 the WTO quota allocation procedures for that year had not yet been established.

28. In practice, the WTO quotas have not been used since the products concerned can be imported on better conditions of access under bilateral agreements; this applies, *inter alia*, to barley, maize and wheat. In other cases, the ex-quota applied tariff is less than or equal to the in-quota applied tariff, which makes the administration of these quotas unnecessary.

29. The authorities have also pointed out that in order to supplement the domestic supply and avoid adverse effects on the agri-food chain, unilateral quotas with tariffs lower than those established in Mexico's WTO Schedule of Concessions have been opened. According to the data provided by the Mexican authorities, in 2006 total imports (including under preferential and unilateral quotas) of products subject to tariff quotas within the framework of the WTO substantially exceeded the quantities specified in Mexico's commitments (Table IV.2)

30. With regard to milk in powder, quota allocation is governed by specific provisions, the latest updating of which was circulated in a 2007 Decision.<sup>14</sup> In accordance with this Decision and the Federal Revenue Law<sup>15</sup>, in 2007, the tariff quotas for milk in powder bound in the WTO were allocated as follows: 50 per cent was granted directly to the State-owned enterprise LICONSA for its programme for supplying milk at preferential prices to lower-income groups, and the remaining 50 per cent was allocated directly to private enterprises that use powdered milk in their production processes.

31. Altogether, 81 per cent of the powdered milk quota reserved for the private sector was subject to the satisfaction of domestic purchase and consumption requirements. To obtain duty-free quotas enterprises had to show, through an audit of their dairy material consumption (liquid milk, powdered milk and other milk solids), that the proportion of imported powdered milk did not exceed 30 per cent of total consumption in 2006. Moreover, applicants had to make domestic milk purchase commitments for 2007 and register them with the Ministry of the Economy. The rest of the tariff quota (19 per cent) was allocated to enterprises that had not satisfied the above-mentioned consumption requirement. Apparently, these arrangements were made in response to difficulties in marketing and placing surplus domestic liquid milk experienced in recent years.

32. In this connection, the authorities have noted that the purchase commitments are buying intentions for the year, which each enterprise establishes in accordance with its supply requirements and strategic planning. They have also pointed out that these commitments, like the consumption

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<sup>13</sup> Decision announcing the tariff quota allocation mechanism for imports in 2007, with the preferential tariffs established within the framework of Mexico's WTO commitments, published in the Official Journal on 1 January 2007.

<sup>14</sup> Decision announcing the minimum quota for importing, in 2007, duty-free, powdered milk originating in Members of the WTO, published in the Official Journal on 23 January 2007 and amended on 11 May 2007.

<sup>15</sup> Transitional Article 10 (IV) of the Federation Revenue Law for Fiscal Year 2007, published in the Official Journal on 27 December 2006.

requirements, are only used as a reference for making the corresponding estimates and do not constitute a condition for the allocation of quotas.

33. In the case of yellow maize, if satisfying the domestic demand means importing quantities that exceed the minimum duty-free quotas specified in the FTAs signed by Mexico, the Ministry of the Economy and SAGARPA establish additional import quotas and determine the tariff applicable. The additional quotas are allocated through a mechanism based on domestic grain purchase commitments as a function of previous consumption and vary depending on whether the applicant is an industrial consumer or belongs to the livestock and balanced feed sector.

34. With respect to white maize, the Federal Executive establishes a tariff of not less than 18.2 per cent for those imports that exceed the NAFTA minimum quota. In 2007, import quotas were authorized in certain states of the Republic in which a domestic shortage was shown to exist. The prerequisite for the authorization of minimum import quotas for the second half of 2007 was the conclusion of a purchase or agriculture contract per domestic crop contract from the previous cycle.

35. Mexico also applies tariff quotas for imports of certain agricultural products from countries with which it maintains free trade agreements, with the exception of imports from Bolivia, Colombia, El Salvador and the EFTA countries. The products included in these quotas vary from one preferential regime to another. Within the NAFTA framework, all tariff quotas and tariffs on agricultural products relating to imports from the United States will be abolished as from 2008.

(b) Domestic support measures

36. One of the most important means of providing domestic support for agriculture continues to be the Programme of Direct Support for the Countryside (PROCAMPO), instituted in 1994. The programme provides for direct payments per hectare to producers who during a base period prior to the implementation of the programme grew maize, beans, wheat, rice, sorghum, soybeans, cotton, safflower, or barley, on condition that the land continues to be used for agricultural production or for an environmental protection programme. Payment is based on the area planted during the base period rather than on the marketing of the product, which enables subsistence farmers to benefit from this support.

37. Since 2001, in order to grant preferential treatment to lower-income producers, holdings with an area of less than one hectare receive PROCAMPO support corresponding to a full hectare and, since 2002, farmers have been able to receive in a single advance payment the corresponding payments up to 2008, provided that they develop a viable project for investment in agricultural, forestry or fishing activities. Initially, PROCAMPO was to have ended in January 2008, but the National Development Plan for 2007-12 provides for it to continue until 2012.

38. During the period 2002 to 2006, the area cultivated and the number of farmers benefiting from PROCAMPO remained relatively stable, on average 13.0 million hectares and 2.6 million farmers. Total PROCAMPO payments increased from 11.85 billion pesos (some US\$1,149 billion) in 2002 to a little over 15 billion pesos (some US\$1,379 billion) in 2006.<sup>16</sup>

39. The *Alianza para el Campo* (Alliance for the Countryside), established in 1996 for the purpose of promoting technological development and agricultural productivity, was redesigned in 2003 to give rise to the *Alianza Contigo* (Alliance With You), which packages together numerous programmes, including investment subsidies, agricultural services and rural development programmes. The *Alianza* promotes the development of agro-businesses through capitalization, the

<sup>16</sup> Ejecutivo Federal (2007), p. 143.

strengthening of product-systems and technology transfer, with a view to boosting farmers' incomes and diversifying the sources of rural employment.

40. Preliminary data for 2007 indicate that federal resources destined for *Alianza Contigo* programmes amounted to 8,852 billion pesos (some US\$823 million), a figure in excess of the 6,438 million pesos (some US\$624 million) allocated to this programme in 2002.<sup>17</sup> Total budgetary resources (federal and state) allocated to the main *Alianza Contigo* programmes and subprogrammes for 2006 amounted to 8,365 billion pesos (some US\$778 million), distributed as follows (percentage of total budget in brackets): crop farming (28.8), livestock farming (14.1), rural development (33.1), health and agri-food safety (14.5), and fishing and other (9.6).<sup>18</sup> Out of the total for crop farming, 63.4 per cent corresponded to investment promotion and capitalization, 17.9 per cent to research and technology transfer, 2.6 per cent to the strengthening of product-systems, and 16.0 per cent to other programmes. Out of the total for livestock farming, 83.1 per cent corresponded to livestock development, 11.9 per cent to the development of integrated agricultural projects, and 4.9 per cent to other programmes.

41. *Apoyos y Servicios a la Comercialización Agropecuaria – ASERCA* (Agricultural Marketing Support and Services) is the Federal Government agency responsible for supporting the marketing of agricultural products, as well as for operating the PROCAMPO programme. Since 2001, ASERCA has provided support for producers through direct payments per ton marketed. In 2003, Mexico implemented the Programme of Direct Marketing Surpluses Support for the Producer for the Reorganization of Production, Integration of Agri-food Chains and Critical Factor Management, composed of various subprogrammes intended to promote marketing and integration into the market. The main measures include support for risk management, crop conversion and pledge schemes.

42. As part of this programme the Supplementary Support for Target Income subprogramme was introduced. This involves making a direct transfer to the producer in order to guarantee him a minimum income per ton marketed. The "supplementary support" granted is equal to the difference between the market price and the target income, if the former is lower than the minimum target income. This programme provides national coverage and the eligible crops are maize, wheat, sorghum, triticale, rice, soybeans, safflower, canola, and cotton.

43. Between 2001 and 2006, the total support granted by ASERCA for agricultural marketing averaged 5,607 billion pesos a year, reaching a maximum of 6,961 billion pesos (some US\$657 million) in 2006. This support was distributed as follows (percentages in brackets): Supplementary Support for Target Income (64.5), financial coverage (13.0) and other marketing schemes (22.5).<sup>19</sup>

44. The livestock programme PROGAN, introduced in 2003, grants direct payments to producers (depending on the head of cattle) to fund the profitability of beef cattle farms and promote improvements in infrastructure and the purchase of modern equipment and technology. For 2006, the programme received a budget appropriation of approximately 2 billion pesos (some US\$189 million).<sup>20</sup>

<sup>17</sup> Ejecutivo Federal (2007), p. 146.

<sup>18</sup> Ejecutivo Federal (2007), p. 147.

<sup>19</sup> Ejecutivo Federal (2007), p. 144.

<sup>20</sup> SAGARPA, *Estado del Ejercicio Presupuestal al 31 de diciembre de 2006* (Statement for the Budgetary Year, 31 December 2006); consulted at: <http://www.sagarpa.gob.mx>.

45. Under the Rural Energy Law (2002), low-income agricultural producers benefited from a special electricity subsidy and preferential prices for diesel used in crop and livestock farming machinery and equipment.

46. Historically, Mexican farmers have had difficulty obtaining access to credit due, among other things, to the underdevelopment of the agricultural financing system.<sup>21</sup> During the review period, institutional changes have been introduced and new financing arrangements designed to overcome these difficulties have been promoted. At the beginning of 2000, the main financial institutions serving this market included *Banco de Desarrollo Rural (Banrural)* and the *Fideicomisos Instituidos en relación con la Agricultura – FIRA* (Trust Fund for Agriculture). Banrural offered loans to producers at below-market rates; in 2003, after experiencing serious financial difficulties, it was replaced by *Financiera Rural*, which also grants direct loans to producers, but at market rates, and provides other financial services.<sup>22</sup> In 2005, the financing granted by *Financiera Rural* amounted to 12,669 billion pesos (US\$1,176 billion).<sup>23</sup>

47. FIRA continues operating and channelling resources through the commercial banking system and the development banks and, more recently, through rural financial intermediaries, the creation of which has been encouraged for the purpose of extending the coverage of the financial system to the less developed rural areas. FIRA grants partially subsidized loans and guarantees.<sup>24</sup> During 2005, FIRA channelled resources totalling 49,646 billion pesos (US\$4.61 billion).<sup>25</sup>

48. In order to make credit more accessible for small farmers, in 2003 SAGARPA instituted the Programme of Support for Access to the Rural Financial System (PAASFIR) which extends guarantees to producer organizations that participate in Investment and Contingency Funds for Development (FINCAS), established with public and private resources. In 2005, the loans granted by FIRA and *Financiera Rural* under the FINCAS programme amounted to 5,896 billion pesos (US\$547 million). At the end of 2005, the total loans granted to the agricultural and fishing sectors amounted to 82,335 billion pesos (US\$7,645 billion), an amount similar to that recorded in 2001.<sup>26</sup>

49. AGROASEMEX is the Federal Government agency responsible for developing an insurance system for the rural sector by encouraging private sector participation. Up until 2001, it was issuing insurance at subsidized rates directly to the farmers; since then it has operated as a reinsurer and channels the agricultural insurance subsidy through private insurers and insurance funds. Since 2003, it has offered protection against catastrophic weather events to strata of the rural population without access to commercial insurance schemes. In 2006, current subsidies granted by AGROASEMEX amounted to 520 million pesos (some US\$49 million).<sup>27</sup>

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<sup>21</sup> OECD (2006a), p. 62.

<sup>22</sup> World Bank (2006), p. 29.

<sup>23</sup> Loan granted by *Financiera Rural*, Statistical Annex to Sixth Government Report 2006.

<sup>24</sup> World Bank (2006), p. 29.

<sup>25</sup> Ejecutivo Federal (2006).

<sup>26</sup> OECD (2006a), p. 78.

<sup>27</sup> SHCP, *Cuenta de la Hacienda Pública Federal (2006), Estado Analítico del Capítulo 4000 correspondiente a la SHCP* (Federal Public Treasury Report (2006), Analytical Statement on Chapter 4000 corresponding to the SHCP).

### (3) MANUFACTURING

#### (i) Main features

50. Mexico's manufacturing sector is large and diversified, accounting for nearly a fifth of the country's GDP. Manufactures have been a key engine behind Mexico's insertion into the global economy, manufacturing exports (WTO classification) having made up 75 per cent of Mexico's total exports in 2006; the main exports are metal products, machinery and equipment (see Chapter I (3)).

51. A key factor fuelling Mexican manufacturing exports has been the growth of the in-bond *maquiladora* industry, with *maquiladora* exports rising from 19 to 44 per cent of total exports between 1985 and 2006.<sup>28</sup> The sizable inflows of FDI have also been a significant factor (see Chapter I (3)). It has also been argued that Mexico's extensive network of free trade agreements has played an important role in boosting Mexican exports. The Mexican export basket has acquired higher value added, with some 72 per cent of the country's exports in 2005 classified as high or medium-high by technological sophistication, up from 69 per cent in 1992.<sup>29</sup>

52. The main drivers of the export boom are large and medium-sized firms mostly located in the northern and central parts of the country. According to IADB estimates, only four states – Baja California, Coahuila, Chihuahua and Nuevo Leon – made up some 60 per cent of the country's export growth in 1993-2003.<sup>30</sup> In stark contrast, 16 southern states contributed only one per cent to export growth during the period.

53. Notwithstanding its export successes of the 1990s, the growth of Mexico's manufacturing sector has been relatively lackluster since 2001. Over the period 2001-2006, manufacturing GDP grew at an annual average of 0.5 per cent, below the growth of the overall economy. The lack of dynamism in the manufacturing industry can be explained to a large extent by the overall slowdown in exports. While Mexican manufacture sales to the US market rose from 5.9 per cent of all US imports in 1991 to 11.2 per cent in 2001, the figure dropped to 10.3 per cent in 2006.

54. Mexico's share of global manufacture markets went from 2.93 per cent of total global exports in 2001 to 2.39 per cent in 2006.<sup>31</sup> On average, during the period 2004-2006 Mexican exports of manufactured goods increased by about 13 per cent. However, this performance is less than that recorded by the growing international competition. In this connection, the authorities have noted that Mexico is in the process of discussing structural reforms that should, among other things, help to make manufacturing more competitive and promote productivity and conversion to sectors with higher value added.

55. Mexico's uneven export performance can be explained both by cyclical factors and by the growing competitive pressures in the global economy. First, the economic downturn at the beginning of this decade in the United States had a negative impact on Mexican sales. Second, Asian countries' and, in particular, China's strong expansion in the global and US markets has arguably eroded Mexican share of the US market.<sup>32</sup> The global competitive pressures appear to have more than offset the decline in real unit labour cost and recent productivity gains in Mexico's manufacturing sector, as evinced by a growth in productivity per worker and hours worked (Table IV.3).

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<sup>28</sup> IADB (2006), Mexico: Sectoral Note on Trade and Integration, page 13; and WTO Secretariat estimates based on INEGI, *Banco de Información Económica*, consulted at [www.inegi.gob.mx](http://www.inegi.gob.mx)

<sup>29</sup> IADB (2006), Mexico: Sectoral Note on Trade and Integration, page 12.

<sup>30</sup> IADB (2006), Mexico: Sectoral Note on Trade and Integration, pp. 14-15.

<sup>31</sup> WTO Secretariat estimates based on the UN Statistical Division's Comtrade database.

<sup>32</sup> See IADB (2006), Mexico: Sectoral Note on Trade and Integration.

Table IV.3

Productivity in the manufacturing sector in real terms (percent), 2001-06<sup>a</sup>

Year	Personnel employed	Average real salary per person	Average productivity per worker	Average productivity per hour worked	Real unit cost of labour
2001	-4.4	6.7	0.4	0.8	6
2002	-4.9	1.8	4.5	4.9	-2.7
2003	-3.4	1.3	3.1	3.3	-2
2004	-3.3	0.3	7	5.6	-6
2005	-0.82	-0.1	1.3	0.83	-1.4
2006 <sup>b</sup>	0.23	-2.7	3.3	4.3	-5.9

a Percentage changes reflect variations in salaries, productivity and labour costs after taking account of inflation.

b Average for first half of year.

Source: WTO Secretariat estimates based on Ejecutivo Federal (2006), *Sexto Informe de Gobierno*, September, pp. 376-377; and INEGI, *Banco de Información Económica*, consulted at: [www.inegi.gob.mx](http://www.inegi.gob.mx).

56. The Mexican manufacturing sector is diverse. As shown in Table IV.4, in 2006 the largest manufacturing industries by value added were metal products, machinery, and equipment (31.8 per cent of total manufacturing); food products, beverages, and tobacco (26.3 per cent); and chemicals and plastics (14.2 per cent). Between 2000 and 2006, value added expanded most rapidly in food products, beverages, and tobacco (by a total of 15.2 per cent); non-metallic mineral products, except petroleum-derived (14 per cent); and basic metal industries (8.5 per cent). In the meantime, three subsectors contracted: textiles, clothing, and leather (21.3 per cent); wood and wood products (14.5 per cent); and paper, paper products, and publishing (3.2 per cent).

Table IV.4

Manufacturing industry's share of GDP, 2001-06

(Mex\$ billion, constant 1993 prices and percent)

	2001	2002	2003	2004 <sup>a</sup>	2005 <sup>a</sup>	2006 <sup>b</sup>
(Mex\$ billion, constant 1993 prices)						
Food products, beverages, and tobacco	77	78.5	79.9	82.5	84.3	86.8
Textiles, clothing and leather	24	22.6	21.1	21.7	21.1	20.7
Wood and wood products	7.8	7.4	7.2	7.4	7.4	7.1
Paper, paper products, printing and publishing	13.4	13.2	13.0	13.4	13.5	13.6
Chemicals and plastics	44.1	44.0	44.6	46.0	46.7	46.8
Non-metallic mineral products, except petroleum derived	20.3	21.0	21.1	22.0	22.5	23.5
Basic metal industries	14.1	14.3	14.9	16.0	16.0	16.5
Metal products, machinery and equipment	94.9	93	88.4	93.0	94.1	105
Other manufacturing industries	9.2	8.9	8.7	9.0	9.0	9.7
All manufacturing	304.8	302.9	298.9	311.0	314.6	329.7
(Index, real GDP (1993 prices), 2000=100)						
Food products, beverages, and tobacco	102	104	106	110	112	115
Textiles, clothing and leather	91	85	80	83	80	79
Wood and wood products	93	89	86	89	89	86
Paper, paper products, printing and publishing	95	93	92	95	96	97
Chemicals and plastics	96	96	97	100	102	102
Non-metallic mineral products, except petroleum derived	98	101	102	107	109	114
Basic metal industries	92	94	98	105	105	109
Metal products, machinery and equipment	93	91	87	91	92	103

Table IV.4 (cont'd)

	2001	2002	2003	2004 <sup>a</sup>	2005 <sup>a</sup>	2006 <sup>b</sup>
Other manufacturing industries	97	94	93	96	96	103
All manufacturing	96	95	94	98	99	104

a Preliminary estimates.

b Annualized estimates based on first half.

Source: WTO Secretariat estimates based on WTO (2002), page 99; and Ejecutivo Federal (2006), *Sexto Informe de Gobierno*, September, p. 375.

57. Mexico's manufacturing sector is highly integrated into the North American production networks and global supply chains. Inter-industry trade's share of total trade between Mexico and the United States is high. For instance, in 2006, office machinery and telecommunications equipment accounted for 24.6 per cent of Mexico's manufacturing exports (WTO product definition), while also accounting for 20.1 per cent of its manufacturing imports.<sup>33</sup>

(a) The in-bond *maquiladora* industry

58. The *maquiladora* industry plays a major role in the Mexican economy (for a description of the *maquiladora* programme see Chapter III (3)(iv)). *Maquiladora* exports accounted for US\$97.4 billion in 2005 and an estimated US\$53.9 billion in 2006, or some 55 per cent of total manufacturing exports; the industry employed 1,166,250 workers, or nearly one third of total manufacturing employment (Table IV.5).

**Table IV.5**  
**Structural indicators, *maquiladora* industry, 2001-2006**  
(US\$ million, nominal prices<sup>a</sup>)

	Value of output (US\$ million) <sup>b</sup>	Value added (% of GDP)	Exports (US\$ million)	Imports (US\$ million)	Exports (% of total)	Imports (% of total)	Inputs (US\$ million)	Domestic inputs (% of total)	Wages (US\$ million)	Establishments (number)	Persons employed	Maquiladora empl./manuf. empl.
2001	65,888	3.1	76,881	57,599	48.4	34.2	42,006	3.8	8,158	3,630	1,198,942	30.8
2002	69,351	2.9	78,098	59,296	48.5	35.2	44,603	4.1	8,113	3,003	1,071,209	29.5
2003	76,865	2.9	77,467	59,057	47	34.6	51,717	3.5	8,404	2,860	1,062,105	30.1
2004	90,116	2.8	88,952	67,742	46.3	34.4	62,592	3.3	9,221	2,810	1,115,230	31.8
2005	..	2.8 <sup>c</sup>	97,401	75,679	45.5 <sup>c</sup>	34.1 <sup>c</sup>	66,770	3.7	10,060	2,816	1,166,250	..
2006	..	..	52,888	41,219	43.1 <sup>c</sup>	33.8 <sup>c</sup>	29,352	3.9	4,408	2,817	1,191,554	..

.. Not available.

a Estimates in US dollars made using a nominal exchange rate of 10.9 pesos to 1 US dollar.

b Value of output includes value of inputs and value added by capital and labour.

c Preliminary data.

Source: WTO Secretariat estimates based on Ejecutivo Federal (2006), *Sexto Informe de Gobierno*, September, pp. 379 and 380; and INEGI, *Banco de Información Económica*, consulted at: [www.inegi.gob.mx](http://www.inegi.gob.mx).

59. Contrary to the late-1990s period when the *maquiladora* industry's growth was exponential, output growth has been less striking in the past few years. Value added in the industry grew by 7.7 per cent in 2000-2006, below the 33 per cent in the 1996-2000 period. These trends are also reflected in export growth. While *maquiladora* exports grew at a nearly 21 per cent per annum during 1996-2000, the figure was only 4.2 per cent in 2000-2006. Export expansion was more marked, however, in 2004 and 2005.

<sup>33</sup> WTO Secretariat estimates based on data from the UN Statistical Division's Comtrade database.

60. Some structural changes have taken place in the *maquiladora* industry in recent years. The industry has concentrated somewhat, to 2,817 establishments from the peak level of 3,630 in 2001. In the meantime, it has dispersed geographically to regions outside the border zone. In part as a result, 43 per cent of the industry's value added arose from such regions in 2005, a clear hike from 39.8 per cent and 28.6 per cent in 2000 and 1995, respectively. One constant in the industry is the share of domestic inputs in production, which was 3.7 per cent of all inputs used in the industry in 2005, up only slightly from 3.5 per cent in 2000. This indicates slow momentum toward establishing backward linkages with domestic industries, but is also indicative of Mexico's heavy integration into North American and global production networks.

(b) Policy objectives and instruments

61. Given that Mexico already enjoys preferential access to most of the main global markets and an unrivalled proximity to the largest market in the world, the country's means of gaining a greater foothold in international trade centre on domestic, supply-side factors. Accordingly, the authorities have developed and sought to improve a number of programmes aimed at improving the competitiveness of strategic manufacturing activities, for example, through PROSECs (see Chapter III(4)(iii)).<sup>34</sup>

62. The *ITA Plus* programme was adopted in 2003, with the aim of abolishing the tariffs on all of the inputs used in the electronics and high-tech industry. Since Mexico's last Review, tariffs on certain fibres, threads, textiles and other products have been reduced in efforts to foster the competitiveness of the textile and clothing industry; the government has also explored the possibility of incorporating several products under zero tariff in the shoe industry's PROSEC but, because of opposition from the related domestic industry, was able to incorporate only the products of subheading 3901.30 of the Harmonized System (ethylene-vinyl acetate copolymers) under a 5 per cent tariff.<sup>35</sup>

63. In 2006, the Ministry of the Economy introduced the Decree for the Promotion of the Manufacturing Industry, Maquiladora and Export Services (IMMEX Decree), which combines the Maquila and PITEC programmes in a single legal instrument (see Chapter III (3)(iv)). The Government has also sought to enhance Mexico's export promotion by creating ProMexico (see Chapter III (3)(vi)).

(4) ENERGY

(i) Main features

64. In 2006, the energy sector contributed approximately 2.6 per cent to Mexico's GDP and 15.5 per cent to total merchandise exports.<sup>36</sup> Between 2001 and 2006 primary energy production grew at an annual rate of 1.7 per cent. In 2006, it amounted to 10,619 petajoules, of which

<sup>34</sup> The Government report of October 2004 evaluating the effect of these programmes focuses on five sectors: automotive industry, electronics and high-tech products, textiles and clothing, footwear, and exports of manufactured products in general. Ministry of the Economy (2004).

<sup>35</sup> Ministry of the Economy (2004), pages 82 and 86.

<sup>36</sup> The data for the energy sector include the production of petroleum and its derivatives, the basic petrochemicals industry and the distribution of gas and electricity. Ejecutivo Federal (2007). Consulted at: [http://www.informe.gob.mx/ESTADISTICAS\\_NACIONALES/](http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/).



hydrocarbons accounted for 90 per cent, primary electricity for 5 per cent, biomass for 3 per cent and coal for the remaining 2 per cent.<sup>37</sup>

65. Between 2001 and 2006, total investment in the energy sector grew at an average annual rate of 12 per cent, reaching a value of 192 billion pesos (US\$18 billion) in 2006. Of the investment made in 2006, 78 per cent was destined for the petroleum industry and the rest for the electricity industry. The Government estimates that during 2007-2012 an annual investment of about 264 billion pesos will be needed to ensure a reliable energy supply, an increase of 38 per cent on 2006.<sup>38</sup>

66. The Ministry of Energy (SENER) is responsible, among other things, for managing energy policy and the activities of the sector's State-owned enterprises, granting energy-related concessions, authorizations and permits, and issuing official standards within its area of responsibility.<sup>39</sup> It is also responsible for implementing government policy on attracting private capital into the sector. In addition, it serves as chairman of the boards of the State-owned companies *Petróleos Mexicanos* (PEMEX) in the hydrocarbons sector and *Comisión Federal de Electricidad* (CFE) and *Luz y Fuerza del Centro* (LFC) in the electricity sector.

67. The task of the Regulatory Commission for Energy (CRE), a decentralized SENER agency, is to regulate activities in the natural gas, liquefied petroleum gas (LPG), and electricity sectors. The Ministry of Finance and Public Credit (SHCP) incorporates the PEMEX, CFE and LFC annual budget and financing programme in the consolidated annual budget, which it submits to Congress for approval. Moreover, subject to seeking the opinion of the Ministry of the Economy, SHCP is responsible for regulating and establishing prices and tariffs policy for crude petroleum and its derivatives and for electricity.

## (ii) Hydrocarbons

68. In 2006, Mexico was the world's sixth largest crude petroleum producer. In that year, production of both crude petroleum and petroleum derivatives was 4.5 per cent higher than in 2001, but 3.3 per cent below the levels for 2004.<sup>40</sup> In 2006, PEMEX produced an average of 3.3 million barrels of crude petroleum per day and almost 5,400 million cubic feet of natural gas per day.<sup>41</sup> PEMEX is Latin America's largest enterprise in terms of sales, which amounted to 1,062 billion pesos in 2006 (about US\$97 billion).

69. On 1 January 2007, proven reserves of crude petroleum stood at 11,048 million barrels of crude oil equivalent (Mbco), while reserves of natural gas (including condensates and liquid gas obtained in processing plants) were 4,467 Mbco. Both figures were a little over 50 per cent lower than in 2001, which is partly the result of the adoption of US Securities and Exchange Commission criteria in 2002. Although the rate of decline of hydrocarbon reserves has been reduced in recent years, the ratio of proven reserves to production fell from 20.6 to 9.6 years between 2001 and 2006.<sup>42</sup>

<sup>37</sup> Energy Information System (SIE) of the Ministry of Energy. Consulted at: <http://sie.energia.gob.mx/>.

<sup>38</sup> National Infrastructure Programme 2007-2012. Consulted at: [www.infraestructura.gob.mx](http://www.infraestructura.gob.mx).

<sup>39</sup> Article 33 of the Law on the Organization of the Federal Public Administration of 29 December 1976.

<sup>40</sup> First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/2.14\\_ENERGIA\\_HIDROCARBUROS\\_Y\\_ELECTRICIDAD/?contenido=226](http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226).

<sup>41</sup> PEMEX information, consulted at: <http://www.pemex.com/index.cfm?action=content&sectionID=2&catID=160&contentID=181>.

<sup>42</sup> First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/2.14\\_ENERGIA\\_HIDROCARBUROS\\_Y\\_ELECTRICIDAD/?contenido=226](http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226).

70. The decline in reserves and production levels is mainly a consequence of the depletion of Mexico's principal oil field (Cantarell), PEMEX's lack of the financial and technological means to develop the majority of its potential resources (in very deep waters), and the restrictions that the current regulatory framework imposes on the incorporation of new sources of investment.

71. Mexico has six refineries with a total installed capacity of 1.54 million barrels per day, but is a net importer of refined petroleum products. PEMEX is seeking to modernize its refineries and plans to increase their capacity by almost 50 per cent between 2007 and 2015, which will involve carrying out several projects and making the corresponding investments.<sup>43</sup>

72. The Mexican petrochemical industry, which is divided into basic and secondary petrochemicals, has not succeeded in developing its full potential. As mentioned in Mexico's previous Review, despite the availability of petroleum inputs, the lack of integration and the failure to incorporate new technology has limited development. In order to boost investment in the secondary petrochemical industry (open to private investment) and revitalize the operation of the PEMEX-owned petrochemical installations, the National Development Plan 2007-12 and the National Infrastructure Programme are promoting strategic alliances with the private sector, both domestic and foreign, to attract investment additional to that provided by the State.

73. PEMEX's financial situation is paradoxical. In recent years, mainly as a consequence of high oil prices, PEMEX has obtained its best financial results ever, reporting record figures for total sales and tax payments (see Chapter I (2)(ii)); in 2006, gross profits<sup>44</sup> amounted to a little over US\$57 billion.<sup>45</sup> At the same time, PEMEX's total liabilities have increased, reaching 1,165 billion pesos in 2006 (US\$108 billion).<sup>46</sup> The combination of increasing liabilities, a heavy fiscal burden and accumulated net losses has led to a steady deterioration of the enterprise's assets. At the end of 2005, PEMEX's assets, which had been some 123 billion pesos (approximately US\$13 billion) in 2001, turned negative for the first time in its history, with only a slight improvement in 2006.<sup>47</sup>

74. In 2005 and 2007 the authorities reformed PEMEX's fiscal regime with a view to reducing the tax burden on its profits.<sup>48</sup> In particular, it was decided gradually to reduce the payment that PEMEX has to make with respect to ordinary hydrocarbon duty. However, further reforms appear to be urgently needed to alleviate PEMEX's lack of resources and executive capabilities, modernize its management, and prevent it from internalizing subsidies. Moreover, new forms of financing need to be developed to accommodate the higher levels of investment that PEMEX requires and/or more should be done to reform its fiscal regime.

75. The main legislation regulating the hydrocarbon sector consists of Articles 25, 27 and 28 of the Constitution, the Law Regulating Article 27 of the Constitution in the Petroleum Sector and its

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<sup>43</sup> Ministry of Energy (2006b).

<sup>44</sup> Return before interest, taxes and use.

<sup>45</sup> Gross profits are those before interest, taxes, depreciation and amortization.

<sup>46</sup> The total is composed of debt (570 billion pesos), unfunded labour reserves (454 billion pesos), and other short-term liabilities (150 billion pesos) (approximately US\$52, 42 and 14 million, respectively). Information consulted at: <http://www.pemex.com.mx/index.cfm?action=content&sectionID=2&catid=159&contentID=166>.

<sup>47</sup> Figures in current pesos. Consulted at: <http://www.pemex.com.mx/index.cfm?action=content&sectionID=2&catid=159&contentID=166>.

<sup>48</sup> PEMEX Financial Performance Report 2005. Consulted at: <http://www.pemex.com.mx/index.cfm?action=content&sectionID=2&catid=159&contentID=166>; and SHCP Press Release No. 081 of 16 September 2007. Consulted at: <http://www.shcp.gob.mx/>.

regulations, the Basic Mexican Petroleum Law and its regulations, the Law on the Regulatory Commission for Energy, the Natural Gas Regulations and the Liquefied Petroleum Gas Regulations.<sup>49</sup>

76. Under Article 27 of the Constitution, concessions and contracts may not be granted for the exploitation of hydrocarbons, which must be exploited by the State in accordance with the terms of the Law regulating that article. The Law Regulating Article 27 of the Constitution in the Petroleum Sector, amended in 2006, and its regulations establish the petroleum industry activities for which the State has exclusive responsibility, through PEMEX (see Table IV.6).

**Table IV.6**  
**Private participation in the hydrocarbon sector**

Activity	Crude oil	Natural gas	Liquefied Petroleum Gas	Petrol and other petroleum derivatives	Basic petrochemicals
Exploration	No	No	n.a.	n.a.	n.a.
Exploitation	No	No	n.a.	n.a.	n.a.
Production/Refining	No	n.a.	No	No	No <sup>g</sup>
Storage in oil fields and refineries	No	No	No	No	No
Storage (other)	Yes <sup>a</sup>	Yes <sup>b</sup>	Yes <sup>b</sup>	Yes <sup>a</sup>	No
Transport by pipeline	No	Yes <sup>b</sup>	Yes <sup>b</sup>	No	No
Transport (other means)	Yes <sup>a</sup>	n.a.	Yes <sup>b</sup>	Yes <sup>a</sup>	No
Distribution	No	Yes <sup>b</sup>	Yes <sup>b, c</sup>	Yes	No
Marketing	No	Yes <sup>b</sup>	Yes <sup>b</sup>	Yes <sup>c, d</sup>	No
Import/Export	No <sup>e</sup>	Yes <sup>f</sup>	Yes <sup>f</sup>	Yes <sup>f</sup>	Yes <sup>f</sup>

n.a. Not applicable.

a Private participation in storage and transport by means other than pipelines is permitted after first-hand sale.

b Private participation under a system for granting permits.

c Activities reserved for Mexican nationals.

d Through the system of PEMEX franchises which can only purchase PEMEX-refined products.

e The legislation does not specifically restrict the import and export of crude petroleum, but in practice these activities are carried on exclusively by PEMEX.

f Private participation under the system for granting permits.

g If in secondary petrochemical production basic petrochemicals are obtained as by-products, they may be used in the same plant or delivered to PEMEX.

Note: "Yes" or "No" signifies whether or not permitted by the legislation.

Source: WTO Secretariat, based on the Mexican legislation.

77. The private sector can play a supporting role through works and services contracts which PEMEX signs with providers of goods and services, leaving hydrocarbons in the exclusive ownership and control of the State. These contracts must always be remunerated in cash and neither a percentage of the products nor a share in the profits may be offered as a form of payment.

78. There are no restrictions on the participation of foreign enterprises in works and services contracts concluded with PEMEX. As an exception, under the relevant legislation<sup>50</sup>, in international competitive bidding PEMEX may refuse to allow foreign firms to participate if a government

<sup>49</sup> The most recent amendments to this legislation were published in the Official Journal on 26 June 2006, 8 January 1990, 12 January 2006, 30 April 2001, 23 January 1998, 8 November 1995, and 28 June 1999, respectively.

<sup>50</sup> Law on Public Sector Procurement, Leases and Services and Law on Public Works and Related Services (see Chapter III (4)(v)).

procurement treaty has not been concluded with the country of origin of the international bidder or if that country does not grant reciprocal treatment to Mexican bidders and contractors.

79. The works and services contracts that PEMEX has most frequently concluded with the private sector are those under the scheme for Projects with Deferred Impact in the Recording of Costs (PIDIREGAS). These contracts resulted in a total of 49 billion dollars of investment during 2001-2006, and accounted for 80 per cent of total PEMEX investment during that period.<sup>51</sup> Moreover, under the PIDIREGAS scheme, the costs do not impact on public finances during construction, due to the fact that PEMEX undertakes to purchase the earning assets built by the private enterprises at the end of the project.<sup>52</sup> Thus, for PEMEX this scheme represents a form of indirect borrowing.

80. PEMEX has exclusive control of the initial phases of exploration and exploitation of natural gas, but transport, storage and distribution are open to domestic and foreign private participation through the granting of permits. As of mid-2007, the CRE had granted private consortia, with domestic and foreign participation, 22 permits for the distribution of natural gas, as well as five storage permits and 21 transport permits for serving the public.<sup>53</sup> The private sector can also participate in the development of the industry by concluding Investment Agreements under Article 65 of the Natural Gas Regulations. Under this scheme an investor undertakes to build and commission the infrastructure for developing a natural gas transport system, and the cost of the investment can be recouped by collecting from users the tariffs approved by the CRE.

81. The retail trade in petrol and other petroleum derivatives, which can be carried on through PEMEX franchises, and the distribution of LPG are reserved for Mexican natural persons and companies, with an exclusion clause for foreigners.

82. The production of basic petrochemical products<sup>54</sup> is reserved for PEMEX<sup>55</sup>, whereas the production of other petrochemicals is not subject to restrictions on private investment, domestic or foreign.

83. The legislation gives the SHCP exclusive authority to set hydrocarbon prices, establishing various procedures and schedules for this purpose. In general, the producer price must reflect the opportunity cost with reference to international market prices, and the consumer price must be administered on the basis of criteria designed to ensure economic efficiency or prevent supply shortfalls. The prices of natural gas, LPG, petrol and diesel are set using methodologies that have resulted in subsidies for consumers of these products. It is estimated that in 2005 subsidies cost PEMEX approximately 33.5 billion pesos (US\$3.1 billion).<sup>56</sup>

84. In practice, crude petroleum is imported and exported exclusively by PEMEX. By way of exception, hydrocarbons owned by third parties may be imported for processing in PEMEX refineries,

<sup>51</sup> First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/2.14\\_ENERGIA\\_HIDROCARBUROS\\_Y\\_ELECTRICIDAD/?contenido=226](http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226).

<sup>52</sup> Presentation of the Ministry of Finance and Public Credit 2005: "*Proyectos de participación pública y privada en México*" (Public and private participation projects in Mexico). Consulted at: <http://portal.sre.gob.mx/ppp/pdf/panelvunidadinvers.pdf>.

<sup>53</sup> Ministry of Energy (2006a).

<sup>54</sup> Methane, ethane, propane, butane, pentane, hexane, heptane, naphtha and raw material for carbon black.

<sup>55</sup> If in secondary petrochemical production basic petrochemicals are obtained as by-products, they may be used in the same plant or delivered to PEMEX.

<sup>56</sup> The breakdown of the total cost by product is as follows (billions of pesos in brackets): LPG (4.7), natural gas (4.5), petrol (10.3), and diesel (13.8). PEMEX Financial Performance Report 2005. Consulted at: <http://www.pemex.com.mx/index.cfm?action=content&sectionID=2&catid=159&contentID=166>.

but the refined products must subsequently be exported. Prior authorization is required for the importation of refined petroleum products (see Chapter III (2)(vi)); in practice, such permits are not being granted.

85. The private sector may import and export natural gas and LPG, but to import LPG a permit must first be obtained from the ME.<sup>57</sup> In practice, only PEMEX, through its subsidiary PMI Comercio Internacional, is authorized to import LPG. Where foreign trade in natural gas is concerned, no permit is required; the authorities have noted that, at the end of 2007, the private sector was importing natural gas, mainly for delivery to power stations.

### (iii) Electricity

86. Mexico's electricity generating capacity rose from 42.5 to 56.4 GW. between 2001 and 2006, which represents an average annual increase of 5.9 per cent. In 2006, 86.6 per cent of total installed capacity corresponded to public service generators, including the CFE, the LFC and independent producers, and the rest to generators with permits for other uses. By type of plant, public utility capacity can be broken down into: thermal (including coal-fired) plants, with 73 per cent, and hydroelectric plants, with 22 per cent, with other types of plants accounting for the rest. The use of natural gas has increased considerably in recent years, having contributed 42.6 per cent to electricity generation in 2006. This partly reflects the policy of replacing fuel oil with natural gas in power plants, followed by the authorities up to 2005.<sup>58</sup>

87. According to the data supplied by the authorities, in 2006, electricity sales amounted to some 175,372 GWh., of which 58 per cent was consumed by industry, 25 per cent by households, 8 per cent by commercial establishments, 5 per cent by agriculture, and 4 per cent by services. As the demand for electrical energy did not develop as expected, in July 2007 the system had a reserve margin of 50 per cent which, according to the authorities, represents an underutilization of generating capacity and additional costs for the CFE and LFC.<sup>59</sup>

88. In practice, the Mexican electricity sector is organized in two subsectors, sales to the public and private consumption. The public electricity system is dominated by the CFE, a decentralized State-owned entity which operates most of the generating plants and all the transmission and distribution network jointly with LFC. In 2006, the CFE purchased 26 per cent of the energy it distributed from the Independent Power Producers (IPPs), which almost tripled their generating capacity between 2002 and 2006. At the same time, the private sector owns the means of generating electrical energy for self-consumption and foreign trade.<sup>60</sup>

89. Under Article 27 of the Constitution, the State has exclusive responsibility for generating, transporting, transforming, distributing and supplying electrical energy as a public service. The legislation governing the sector includes the Law of the Public Electrical Energy Service (LSPEE) and its regulations and the Law on the Regulatory Commission for Energy (LCRE).<sup>61</sup>

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<sup>57</sup> Natural Gas Regulations 1995 and Liquefied Petroleum Gas Regulations 1999.

<sup>58</sup> Statistical Annex to First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/ESTADISTICAS\\_NACIONALES/](http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/).

<sup>59</sup> First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/2.14\\_ENERGIA\\_HIDROCARBUROS\\_Y\\_ELECTRICIDAD/?contenido=226](http://www.informe.gob.mx/2.14_ENERGIA_HIDROCARBUROS_Y_ELECTRICIDAD/?contenido=226).

<sup>60</sup> Ministry of Energy (2006c).

<sup>61</sup> The latest amendments to this legislation were published in the Official Journal on 22 December 1993, 24 May 2003 and 23 January 1998, respectively.

90. Faced with the need to promote new investment and strengthen legal certainty for the investment already in place, in 2002 the Executive put forward a reform initiative for restructuring the electricity sector. The initiative proposed amendments to the Constitution as far as it concerns electricity, together with a package of reforms of the LSPEE, the LCRE and other laws. Among other things, it proposed: (i) vesting the CFE with managerial autonomy to make it financially viable; (ii) strengthening the CRE and giving it new functions, such as approving the tariff regime and imposing penalties for non-compliance with the legal framework, in order to give participants in the electricity sector greater legal certainty; and (iii) converting the National Energy Control Centre into a decentralized entity responsible for the dispatch and exchange of electricity, capable of guaranteeing market participants nondiscriminatory access to the distribution networks.<sup>62</sup> This proposal for the reform of the electricity sector's legal framework was not adopted by Congress.

91. Under the LSPEE and its regulations, by obtaining permits issued by the CRE, the private sector can invest in generating plants for self-supply, cogeneration or small-scale production (up to 30 MW.) or under the IPP scheme. The latter makes it possible for the private sector to invest in generating plants with a capacity of more than 30 MW. provided that the output is sold exclusively to CFE or exported. Moreover, the CRE may grant permits for generation for export and for the importation of electricity for own use. With the exception of permits under the IPP scheme, which are reserved for Mexicans and Mexican enterprises, there are no restrictions on the obtaining of these permits by foreign companies or individuals.

92. In 2006, the subsidies granted by Mexico for electricity consumption amounted to 96.8 billion pesos (US\$8.9 billion), of which 67 per cent was destined for the domestic consumer, 15 per cent for industry, 8 per cent for the agricultural sector, and the rest for the commercial and services sectors. The data for 2006 indicate that, on average for all types of consumer, consumer tariffs covered only 75 per cent of the cost of the electricity supplied by the CFE and 53 per cent of the cost of that supplied by the LFC.<sup>63</sup>

93. In 2006, the average tariff for the country as a whole was 1.14 pesos per kWh. (about US\$0.10 per kWh.), while, in particular, the large industries paid an average of 0.89 pesos per kWh. (about US\$0.8 per kWh.).<sup>64</sup> The authorities have pointed out that electricity costs in Mexico are relatively high as compared with other countries because in Mexico most generating plants use natural gas or fuel oil, whose prices on the international markets have risen sharply in recent years.

94. There is foreign trade in electrical energy with the United States and Belize. With the former, trade is carried on both through public system interconnections and through private lines owned by permit holders. In the case of Belize, Mexico essentially exports electricity through a single public system interconnection. The amount of electricity traded, primarily with the United States, has increased since 2001 and Mexico recorded a positive net balance in 2006; in the same year, in value terms, exports and imports were estimated at US\$255 million and US\$46 million, respectively.<sup>65</sup>

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<sup>62</sup> CRE, InfoCRE, July-August 2002, 5, No. 4. Consulted at: <http://www.cre.gob.mx/publica/infoCRE/2002/infocre0708-02.pdf>.

<sup>63</sup> Statistical Annex to First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/ESTADISTICAS\\_NACIONALES/](http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/).

<sup>64</sup> Statistical Annex to First Government Report of 1 September 2007. Consulted at: [http://www.informe.gob.mx/ESTADISTICAS\\_NACIONALES/](http://www.informe.gob.mx/ESTADISTICAS_NACIONALES/).

<sup>65</sup> INEGI Statistical Yearbook of Foreign Trade 2006. Consulted at: <http://www.inegi.gob.mx/inegi/default.aspx>.

**(5) SERVICES**

**(i) Multilateral commitments**

95. Mexico adopted specific commitments in ten of the 12 GATS sectors, the exceptions being environmental services and recreational, cultural and sporting services (Table AIV.1).<sup>66</sup> Nevertheless, among the ten sectors, Mexico only adopted commitments in two thirds of the subsectors, not adopting any in subsectors such as legal services, social services and maritime transport services. Mexico participated in the negotiations on basic telecommunications and financial services that followed the Uruguay Round, and the corresponding commitments feature in the Fourth and Fifth GATS Protocols.<sup>67</sup> Mexico also undertook to abide by the Reference Paper on telecommunications.

96. Within the framework of the GATS, Mexico maintains horizontal commitments relating to the movement of natural persons. In the natural persons category, it guarantees temporary entry for up to 90 days for those directly responsible for the sale of a service, and the entry of executives, managers and specialists transferred within the same enterprise for an extendable period of one year.

97. The schedule of exemptions from MFN treatment contains two specific exemptions relating to the tourism sector: (i) the supply by foreign suppliers of passenger road transport services is limited to vehicles registered in the United States; and (ii) United States individuals attending business conventions receive a tax deduction for expenses incurred in Mexico.<sup>68</sup> These exemptions from the MFN principle are of indefinite duration.

98. Within the framework of the Doha Round negotiations on services, Mexico submitted an initial offer in 2003 and a revised offer in 2005.<sup>69</sup>

**(ii) Telecommunications**

**(a) Main features and structure**

99. In 2001-2006, total income from telecommunications services (excluding unrestricted television broadcasting) grew at a nominal average rate of 13 per cent, reaching a total value of 277,697 billion pesos (US\$25,479 billion) in 2006.<sup>70</sup> According to the authorities, the contribution of the telecommunications sector to GDP increased from 3.1 per cent in 2001 to 5.5 per cent in 2006. The authorities have also noted the dynamism of the sector, which recorded 18.3 per cent real growth in 2006.

100. In nominal terms, total investment in the telecommunications sector decreased by 32 per cent in 2006 as compared with 2001, the year in which investment reached a maximum of US\$5.75 billion.<sup>71</sup> The OECD's comparative indicators for 2005 (latest year available) indicate that Mexico has the OECD's second lowest level of per capita investment, and a level of investment in terms of public network access points below the OECD average.<sup>72</sup> The authorities have pointed out

<sup>66</sup> WTO document GATS/SC/56 of 15 April 1994.

<sup>67</sup> WTO documents WT/LET/213 of 30 January 1998 and WT/LET/288 of 18 February 1999.

<sup>68</sup> WTO document GATS/EL/56 of 15 April 1994.

<sup>69</sup> WTO information. Consulted at: [http://www.wto.org/english/tratop\\_e/serv\\_e/s\\_negs\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/s_negs_e.htm).

<sup>70</sup> Information consulted at: [http://www.cft.gob.mx/wb2/COFETEL/COFE\\_Estadisticas\\_de\\_telecommunications\\_2](http://www.cft.gob.mx/wb2/COFETEL/COFE_Estadisticas_de_telecommunications_2).

<sup>71</sup> Information consulted at: [http://www.cft.gob.mx/wb2/COFETEL/COFE\\_Estadisticas\\_de\\_telecommunications\\_2](http://www.cft.gob.mx/wb2/COFETEL/COFE_Estadisticas_de_telecommunications_2).

<sup>72</sup> OECD (2007b).

that there was a recovery in investment during the period 2003-2006, when it grew at a rate of 44.7 per cent.

101. The reduction in investment levels could also reflect the limited competition in the sector, a situation that could discourage investment in new enterprises. From the viewpoint of the Federal Telecommunications Commission (COFETEL), the slowdown in investment in the Mexican telecommunications sector is part of a global phenomenon. For its part, the Ministry of Communications and Transport (SCT) considers that the main factors that have led to low levels of investment relate to the conditions of interconnection between operators, and the delay in establishing a procedure for enabling the public telecommunications networks that provide restricted television services to also offer telephony services and vice versa. The authorities have also pointed out that the foreign investment regime has favoured mobile telephony, where there are no limits on foreign participation, whereas in fixed telephony there is a 49 per cent limit (see below).

102. In 2001-06, the total number of fixed telephone lines in service per 100 inhabitants (teledensity) increased at an average annual rate of 6.6 per cent, which resulted in a fixed teledensity index of 18.9 per cent by the end of 2006. The mobile telephony market continued to grow significantly during the same period, with the number of mobile lines increasing at an average annual rate of 21 per cent, so that in 2006 the mobile teledensity index had reached 54 per cent.<sup>73</sup> In 2006, there were 19.5 Internet users per 100 inhabitants and 2.9 broadband connections per 100 inhabitants, the second lowest broadband penetration index among the OECD countries.<sup>74</sup> In this connection, the authorities have indicated that they are expecting an increase in broadband access as a result of the introduction of new technology, as well as greater participation by the cable television service providers.

103. Between 2001 and 2006, the average tariff for the local residential service decreased by a total of 20 per cent, while the average tariff per minute of mobile telephony service decreased by approximately 60 per cent during the same period.<sup>75</sup> However, in 2006 the tariffs charged in Mexico to residential and business customers for fixed and mobile telephony and Internet access services were among the highest in the OECD; in particular, the cost of a monthly subscription for broadband services was the highest among the OECD countries.<sup>76</sup>

104. As described in Mexico's previous report, the privatization of Teléfonos de Mexico (TELMEX) in 1990 was accompanied by a concession that will expire in 2026. Under this concession TELMEX was granted exclusivity with respect to certain services until the end of 1996, whereas with respect to other services the entry of new operators was authorized with immediate effect. Moreover, TELMEX was required to review its tariffs to eliminate cross subsidies between local and long-distance services and regulations governing interconnection agreements were established (see below).

105. The granting of 23 concessions for local telephony, 46 for long distance (LD), 25 for mobile local telephony and 22 for satellite services resulted in the gradual opening up of the telecommunications sector. However, the level of competition in the sector is still low, with TELMEX controlling approximately 92 per cent of fixed lines, 80 per cent of LD calls, and 77 per cent of the mobile telephony market through América Móvil, and over 60 per cent of the Internet

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<sup>73</sup> Information consulted at: [http://www.cft.gob.mx/wb2/COFETEL/COFE\\_Estadisticas\\_de\\_telecommunications\\_2](http://www.cft.gob.mx/wb2/COFETEL/COFE_Estadisticas_de_telecommunications_2).

<sup>74</sup> OECD (2007b).

<sup>75</sup> Information consulted at: [http://www.cft.gob.mx/wb2/COFETEL/COFE\\_Diagnosticos\\_e\\_indices\\_de\\_produccion\\_del\\_sec2](http://www.cft.gob.mx/wb2/COFETEL/COFE_Diagnosticos_e_indices_de_produccion_del_sec2).

<sup>76</sup> OECD (2007b).



access market.<sup>77</sup> In addition to América Móvil, Grupo Telefónica and Grupo TV Azteca participate in the mobile telephony market, through their two companies Iusacell and Unefon.

106. The open television market is a de facto duopoly between Grupo Televisa and Grupo TV Azteca. Grupo Televisa also controls two of the main Mexican restricted cable and satellite television companies, and new acquisitions will significantly increase its market share. The CFC is promoting measures to ensure nondiscriminatory access to the content distributed by Grupo Televisa as a condition of authorizing these acquisitions.

(b) Institutional and regulatory framework

107. Within the framework of its specific GATS commitments, Mexico has adopted commitments with respect to practically all the telecommunications services specified in the GATS, with the exception of radio broadcasting, cable television, DHT and DBS satellite transmission, and digital audio services. In general terms, in relation to market access Mexico has bound the basic principles of the Federal Telecommunications Law of 1995 (see below). With regard to national treatment, Mexico has bound without restriction all the services in all modes of supply, with the exception of the presence of natural persons.<sup>78</sup> Mexico has adopted the Fourth Protocol annexed to the GATS, as well as the Reference Paper annexed to the Telecommunications Protocol.

108. The regulation of the telecommunications sector is divided between two entities: the Federal Telecommunications Commission (COFETEL) and the SCT. COFETEL is a decentralized administrative agency of the SCT, with technical, operational and budgetary autonomy; its budget is subject to the measures applicable and to the regulations issued by the Ministry of Finance and Public Credit. COFETEL's main functions include issuing administrative telecommunications regulations; giving opinions on the granting, amendment, extension and assignment of concession titles and permits; submitting the frequency band allocation programme for approval by the SCT; coordinating the bidding procedures for the exploitation of geostationary orbital positions and satellite orbits allocated to Mexico; maintaining the telecommunications register (concession titles, tariffs, etc.); promoting and overseeing interconnection agreements and the provisions of concession titles; and proposing to the SCT the imposition of sanctions on those found to be in breach of the law or administrative regulations.<sup>79</sup>

109. The SCT is responsible for formulating general policy for the telecommunications sector; issuing the sector's regulations; proposing draft legislation for the sector; granting, amending and suspending concessions and permits for the provision of telecommunication and broadcasting services; and imposing on infringing enterprises the sanctions proposed by COFETEL. It has been argued that the apparent duplication in the performance of certain functions by COFETEL and the SCT has delayed the implementation of certain procedures, weakened COFETEL's autonomy and made the regulation of the sector less efficient.<sup>80</sup> The authorities consider that there is no duplication of functions and that the sector is efficiently regulated. They have noted that the recent reform of the legislation will ensure better international practices, autonomy and transparency for COFETEL.

110. The main law regulating the telecommunications sector in Mexico is the Federal Telecommunications Law (LFT) of 1995.<sup>81</sup> The 1960 Federal Radio and Television Law regulates

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<sup>77</sup> Economist Intelligence Unit (2006).

<sup>78</sup> WTO document GATS/SC/56 of 15 April 1994, and its supplements.

<sup>79</sup> Article 9 of the Federal Telecommunications Law, added in the latest amendment published in the Official Journal on 11 April 2006.

<sup>80</sup> OECD (2004) and Garcia-Murillo (2002).

<sup>81</sup> The most recent amendment of the LFT was published in the Official Journal on 11 April 2006.

the broadcasting service.<sup>82</sup> Other laws and regulations include the 1940 General Means of Communications Law, the 1990 Telecommunications Regulations and the regulations and resolutions issued by the SCT and COFETEL.<sup>83</sup> The latter include, for example, the 1997 Satellite Communications Regulations and the rules for international (2004), long distance (1996) and local (1997) telecommunications services.<sup>84</sup>

111. According to the LFT, a concession is required in order use a frequency band; operate public telecommunications networks; make commercial use of radio and television channels; provide satellite services (including through ground stations); occupy geostationary orbital positions and satellite orbits allocated to Mexico; and exploit signal transmission and reception rights for frequency bands associated with foreign satellite systems that may cover or provide services in Mexican territory. Concessions can only be granted to natural or legal persons of Mexican nationality and foreign equity participation is limited to 49 per cent, with the exception of mobile telephony services where foreign investors may acquire a higher percentage of the equity by obtaining a favourable resolution of the National Foreign Investments Commission (see Chapter II (4)).

112. The reform of the LFT eliminated the permit requirement and the nationality restriction for the installation and provision of special telecommunications services, such as value added services; since 2006 it has only been necessary to register with the SCT. A permit is also required to establish and operate ground transmitting stations, as well as telecommunications services marketing companies not of a public network nature.

113. Frequency bands are awarded under a public competitive bidding procedure and for a term of 20 years, which can be extended for equal periods at the discretion of the SCT. Public telecommunications networks are awarded on the basis of an analysis of interested party applications and for a term of up to 30 years, which may be extended for periods equal to those originally established.

114. Private telecommunications networks do not require a concession or permit to operate, unless they use radio spectrum frequency bands.

115. In May 2007, for the purpose of increasing competition, COFETEL issued a resolution making numbers portable, which will enable users of both fixed and mobile telephony to keep their telephone numbers if they decide to change service provider.<sup>85</sup> A timetable which looks forward to the implementation of portability during the first half of 2008 has been established.

116. The LFT stipulates that concessionaires may freely determine the rates for telecommunications services. As distinct from other concessionaires, TELMEX is subject to a tariff regulation system established in its concession title. Every four years, COFETEL determines what will be the ceiling prices applicable to the basket of controlled services (basic local telephony, national and international LD) based on a cost study submitted by TELMEX (which must not include the cost of non-controlled services). At the same time, TELMEX may not offer these services for less than it costs to supply them (tariff floor).

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<sup>82</sup> The most recent amendment of the Federal Radio and television Law was published in the Official Journal on 11 April 2006.

<sup>83</sup> The most recent amendment of the general means of Communications Law was published in the Official Journal on 25 October 2005. The Telecommunications Regulations were published in the Official Journal on 29 October 1990.

<sup>84</sup> Information consulted at: [http://www.cofetel.gob.mx/wb2/COFETEL/COFE\\_Reglamento\\_reglas\\_y\\_planes\\_1](http://www.cofetel.gob.mx/wb2/COFETEL/COFE_Reglamento_reglas_y_planes_1).

<sup>85</sup> COFETEL Press Release No. 22 of 30 May 2007.

117. As the prices of Internet access services are not regulated by COFETEL and the Mexican legislation does not require subscriber loop unbundling (see below), a company with market power in local telephony could offer Internet services at lower prices than its competitors. Nevertheless, the authorities have pointed out that the CFC oversees the market to prevent this situation from arising.

118. The LFT also stipulates that COFETEL has the right to impose certain obligations with respect to the prices established by concessionaires who, in the opinion of the CFC, have considerable power in a particular market. However, the opinion issued by the CFC classifying TELMEX as a company with a dominant position in certain telecommunications markets was annulled by the Judiciary in February 2007. In this connection, the authorities have noted that the CFC is initiating a new procedure to determine whether any public network concessionaire has substantial power in the relevant markets.

119. The provisions regulating interconnection in Mexico are contained in the LFT, the concession titles and various regulations issued by the SCT and COFETEL. The LFT establishes that public telecommunications network concessionaires must adopt architecture designs that provide for network interconnection and interoperability. Public network concessionaires are required to negotiate interconnection agreements within a period of not more than 60 days from the time at which one of them so requests. If an agreement cannot be reached, the parties can appeal to COFETEL to rule on the outstanding issues, including, if necessary, interconnection rates, within the next 60 days. In recent years, COFETEL has intervened on average eight times a year to establish interconnection conditions that could not be agreed between concessionaires.

120. Discriminatory practices in the application of tariffs or any other interconnection conditions are prohibited. Interconnection agreements do not require COFETEL's approval, but must be registered with COFETEL. In mid-2007, a reform of the rules on interconnection (the Basic Technical Interconnection and Interoperability Plan) was in the public consultation phase.

121. The Mexican legislation does not require operators with a dominant position to unbundle the subscriber loop for another concessionaire seeking access.<sup>86</sup>

122. In April 2006, the Mexican Congress approved reforms of the Federal Radio and Television Law and the LFT. In particular, changes were made to Article 28 of the Law for the purpose of allowing broadcasting concessionaires to provide telecommunications services by making an administrative application to the SCT. However, in May 2007, the Supreme Court of Justice declared that article unconstitutional because it was discriminatory and thus eliminated the possibility of broadcasting concessionaires providing additional services using previously allocated frequency bands.<sup>87</sup> As a result of this, at the end of 2007 Congress was in process of revising the legal framework.

123. In April 2006, COFETEL published an amendment to the rules of the LD service introducing the so-called "caller pays national" mobile telephony tariff scheme. This scheme requires mobile telephony concessionaires to incorporate in the interconnection contracts they sign with LD concessionaires the necessary provisions for the charge for national and international public LD traffic destined for mobile phones to be paid by the one who generates the call.<sup>88</sup>

124. In August 2000, the United States sought consultations with Mexico, alleging that Mexico had adopted anti-competitive and discriminatory regulatory measures, had tolerated certain privately-

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<sup>86</sup> OECD (2007b).

<sup>87</sup> Unconstitutionality Proceeding 26/2006 of the Supreme Court of Justice of the Nation.

<sup>88</sup> Resolution amending the rules of the LD service published in the Official Journal on 13 April 2006.

established market access barriers and had failed to take needed regulatory action in its basic and value-added telecommunications sectors.<sup>89</sup> In April 2002 a panel was established to settle the dispute.<sup>90</sup> In June 2004, the WTO's Dispute Settlement Body adopted the panel's report, which concluded, *inter alia*, that Mexico: (i) had failed to ensure the application of cost-oriented international interconnection rates; (ii) had failed to impose regulatory measures to prevent anti-competitive practices on the part of the main telecommunications operator; and (iii) had failed to ensure access to and use of public telecommunications networks on reasonable and non-discriminatory terms.<sup>91</sup>

125. In June 2004, Mexico and the United States agreed that Mexico would implement the recommendations made in the panel's report, such as repealing the legal provisions establishing that the operator with the majority of outgoing international long distance (ILD) traffic should be the only one to negotiate international interconnection contracts. In 2005, Mexico began allowing the marketing (resale) of the ILD service. However, it still does not allow marketers to provide the service through the leasing of private networks in such a way that the traffic is not routed through authorized international gateways (international simple resale); neither does it allow the deliberate reversal of the direction of ILD traffic (known as *call-back*).<sup>92</sup>

### (iii) Financial services

#### (a) Overview

126. The Ministry of Finance and Public Credit (SHCP) has the primary responsibility for the regulation and supervision of the financial sector, as well as for setting the capital requirements of most of its participants. There are three specific regulatory agencies operating under the SHCP – the National Banking and Securities Commission (CNBV), which oversees the banking sector, securities market, and other credit agencies; the National Insurance and Bonding Commission (CNSF), which oversees insurance companies; and the National Pension Fund Commission (CONSAR), which oversees privately managed pension funds (AFOREs).

127. The Mexican Central Bank regulates financial operations, the foreign exchange and derivative markets, and the payment system and serves as a reserve bank and lender of last resort to financial institutions (see also Chapter I (2)(iii)).

128. Mexico's GATS commitments cover banking, insurance, and other financial services, and mostly pertain to commercial presence (mode 3).<sup>93</sup> Among other things, foreign investment in the market for services relating to the acceptance of deposits and lending of all types is limited to 40 per cent of common capital stock, while individual holdings are bound at 5 per cent of the capital stock, or at 20 per cent with SHCP authorization. In insurance, Mexico's schedule of commitments was bound at 40 per cent of paid-up capital, while the limit on individual holdings by foreign investors was bound at 10 per cent or 20 per cent with due authorization from the SHCP. The schedule does not permit foreign investment in credit unions, savings and loan companies or development banks, but it does allow foreign financial institutions to establish representative offices with the SHCP's authorization.

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<sup>89</sup> WTO document WT/DS204/1 of 29 August 2000.

<sup>90</sup> WTO document WT/DS204/3 of 18 February 2002. Some claims, such as those relating to value added telecommunications, were withdrawn from the request submitted by the United States.

<sup>91</sup> WTO document WT/DS204/R of 2 April 2004.

<sup>92</sup> COFETEL Resolution amending the rules on international telecommunications, published in the Official Journal on 5 April 2005.

<sup>93</sup> WTO document GATS/SC/56/Suppl.3 of 26 February 1998.

129. The provisions for access to the financial services market in Mexican law are considerably more favourable than the country's GATS commitments. Legal reforms in 1999 allowed the participation of foreign investment for up to 100 per cent of the capital of commercial banks, financial groups, securities brokerage firms, and securities market specialists. However, participation of foreign investment in other financial institutions – such as general deposit warehouses, financial leasing companies, currency exchange houses, and insurance and bonding institutions – remains capped at 49 per cent of paid-up capital.

130. Mexico has also incorporated a chapter on financial services in eight free trade agreements, namely: the North American Free Trade Agreement (which has served as a blueprint for other FTAs), and its agreements with Bolivia, Colombia and Venezuela<sup>94</sup>, Nicaragua, Northern Triangle (El Salvador, Honduras, Guatemala), Japan, European Union, and European Free Trade Association.

131. The financial sector legislation includes: (i) General Law on Auxiliary Credit Organizations and Activities; (ii) Investment Company Law; (iii) Credit Institutions Law; (iv) Law Regulating Financial Groups; (v) Central Bank Law; (vi) Rules for the Establishment of Subsidiaries of Foreign Financial Institutions; (vii) Law on Savings Systems for Retirement; (viii) General Law on Insurance Companies and Mutual Institutions; (ix) National Insurance and Bonding Commission Regulations on Inspection and Oversight; (x) People's Savings and Credit Law; (xi) National Banking and Securities Commission Law; (xii) Stock Market Law; (xiii) Law for the Protection of Bank Savings; (xiv) Federal Law on Bonding Institutions; and (xv) Law for the Protection of Financial Services Users.<sup>95</sup>

132. According to several observers, various reforms have transformed the Mexican financial system by improving transparency and market discipline. The following reforms deserve to be highlighted: in 2005, deposit insurance provided by the Institute for the Protection of Bank Savings was reduced to 400,000 units of investment (US\$110,000), permission was given for up to 15 per cent of the assets of privately administered pension funds to be invested in equities, and a new and more far-reaching Stock Market Law (Box IV.1) entered into force; in 2006, the Credit Institutions Law and the General Law on Auxiliary Credit Organizations and Activities were reformed, the limited-scope financial company (SOFOLES) market was liberalized through multipurpose financial companies (SOFOMES<sup>96</sup>), a regime for enabling timely intervention by the authorities in commercial banking institutions was adopted; and in 2007, amendments to the Credit Institutions Law updated the transparency legislation, while other reforms made activities related to the financing of terrorism a criminal offence.

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<sup>94</sup> Venezuela has denounced the Free Trade Agreement it signed with Mexico and Colombia (see Chapter II (5)(ii)).

<sup>95</sup> The latest dates of publication and amendment of the legislation listed are as follows: (i) 14 January 1985, 18 July 2006; (ii) 4 June 2001, 28 January 2004; (iii) 18 July 1990, 18 July 2006; (iv) 18 July 1990, 18 July 2006; (v) 23 December 1993, 31 December 2000; (vi) 21 April 1994; (vii) 23 May 1996, 15 June 2007; (viii) 31 August 1935, 18 July 2006; (ix) 26 January 2004; (x) 4 June 2001, 31 August 2007; (xi) 28 April 1995, 20 June 2005; (xii) 30 December 2005; (xiii) 19 January 1999, 6 July 2006; (xiv) 29 December 1950, 18 July 2006; and (xv) 18 January 1999, 15 June 2007.

<sup>96</sup> SOFOMES are financial entities established in order to carry out financial leasing and/or financial factoring and/or credit operations for any purpose, without the need for SHCP authorization.

**Box IV.1 The Stock Exchange and the New Stock Market Law**

The Bolsa Mexicana de Valores is Mexico's single stock exchange and Latin America's second-largest. The market has performed well in recent years, with the index surging by more than 40 per cent in dollar terms in 2005 and even further in 2006. However, the Bolsa remains small by international standards, with market capitalization of 25 per cent of Mexico's GDP in 2005. It is also highly concentrated: only four stocks in the general equities index account for nearly 50 per cent of the index – telecommunications companies Teléfonos de México (Telmex) and AMX, the supermarket chain Walmex (owned by Wal-Mart of the United States) and Cemex, the Mexican cement company. Foreign investment is a major source of capital.

Private firms and public issuers have since 2001 been able to access the *certificado bursátil* (stock-market certificate), which features a relatively simple issuing process while also restricting a guaranteed return of the bondholders' initial investment. State and municipal governments, along with State-owned companies such as Pemex, have issued these certificates since December 2001.

The new Stock Market Law came into effect on June 2006. Its main objective is to expand and modernize the Mexican securities market. The law seeks to promote medium-sized companies' access to the stock market, strengthen corporate governance standards, consolidate the regulations applicable to publicly held companies, bolster financial authorities' regulatory and oversight capacities, update the regulatory framework including for sanctioning inappropriate market behaviour and practices.

The Stock Market Law also creates a new type of listed company, the *Sociedad Anónima Promotora de Inversión (SAPI)*, which exempts medium-sized firms from the fees required for listing on the stock exchange. According to some estimates, this provision could lift the number of companies to above 1,400 companies over 2007-2012 from only 140 in 2006. In addition, the Law strengthens the rights of minority shareholders, and redefines the role and authority of the National Banking and Securities Commission. As such, it is viewed as bringing Mexico into line with the Basel Accords on banking supervision and regulation.

*Source:* IMF (2005), Economist Intelligence Unit (2006) and Banco de México (2005).

**(b) Banking sector**

133. The Mexican banking sector is composed of commercial banks, development banks, and limited-scope financial companies. In March 2007, the assets of the commercial banks accounted for 45.5 per cent of the total for the domestic financial system, an increase of around 10 percentage points since 2003. As of June 2007, four foreign-owned banks – BBVA Bancomer, Banamex-Citigroup, Banco Santander Mexicano, and HSBC – controlled 69.4 per cent of all bank assets.<sup>97</sup> Overall, foreign control of assets in the financial system is above 80 per cent, which makes Mexico the country with the largest ratio of foreign bank ownership in Latin America.<sup>98</sup>

134. The sectoral distribution of credit granted by commercial banks during 2002-2006 was, on average, as follows (percentage of total credit in brackets): agriculture, forestry and fishing (2 per cent); mining (0.2 per cent); manufacturing (12.4 per cent); construction (3.1 per cent); services and other activities (19.8 per cent); housing (0.1 per cent); consumption (17.5 per cent); domestic financial sector (4.5 per cent), government and public administration (8.4 per cent); Institute for the Protection of Bank Savings (IPAB) (11.5 per cent); and other (2.7 per cent).<sup>99</sup>

<sup>97</sup> National Banking and Securities Commission, *Boletín Estadístico: Banca Múltiple* (Statistical Bulletin: Commercial Banking), March 2007, page 39.

<sup>98</sup> Economist Intelligence Unit (2006), page 42.

<sup>99</sup> Total credit includes the current, past due and discounted portfolios, the interest paid on loans, active and due. WTO Secretariat estimates based on Ejecutivo Federal (2006), page 332.

135. From December 2000 to June 2007, total credit granted by commercial banks to the private sector rose by 102.7 per cent in real terms. The overall robust performance is attributed to the recapitalization and reprivatization of banks, the consolidation of the banking system after the 1994 financial crisis and the inflow of foreign investment, as well as to improved financial regulation, economic expansion and increased consumer confidence.

136. Overall, in Mexico, the figure for credit channelled through the banking system as a proportion of GDP is only 15.6 per cent (June 2007).<sup>100</sup> This suggests the need for reforms additional to those already implemented to recapitalize banks through the IPAB (the successor to the Banking Fund for the Protection of Savings). A large part of the commercial banks profits still come from commissions paid by account holders, rather than from interest paid on loans. Additional reforms designed to facilitate access to credit for small and medium-sized enterprises, make the regulations relating to small banks more flexible, and promote the transparency of the financial system are under consideration.

137. The financial indicators for the Mexican banking system have improved in recent years. Loans past due as a percentage of total loans dropped from 4.6 per cent in 2002 to 2.3 per cent in 2007.<sup>101</sup> Capital adequacy, measured as net capital relative to total risk assets, was 15.9 per cent in June 2007 as compared with 15.5 per cent at the end of 2002. Mexico has also made progress with the modernization of its banking regulatory system, among other things by adopting the Basel Core Principles for effective and transparent banking supervision. According to the International Monetary Fund, at the end of 2005 Mexico had fully complied with 19 of the 25 Core Principles and largely complied with five, while failing to meet one.<sup>102</sup>

138. Development banks figure prominently in the Mexican financial system. There are seven existing institutions listed as national credit companies: Nacional Financiera (NAFIN, see Chapter III (4)(iii)), Banco Nacional de Comercio Exterior (BANCOMEXT, see Chapter III (3)(v)), Banco Nacional de Obras y Servicios Públicos, Sociedad Hipotecaria Federal, Banco de Ahorro Nacional y Servicios Financieros, Banco Nacional del Ejército, Fuerza Aérea y Armada, and Financiera Rural. Measured by the percentage of assets owned relative to total assets, NAFIN is the most important player in the development banking sector, controlling 40 per cent of total development bank assets.<sup>103</sup>

139. Banking licences are granted with SHCP approval based on the requirements listed in Article 9 of the Credit Institutions Law. Minor distinctions are made with regard to ownership structure between domestic and foreign capital.

140. Foreign capital may participate in the provision of banking services through subsidiaries of foreign financial institutions in countries with which Mexico has signed a free trade agreement that includes a financial services chapter. The establishment of subsidiaries is governed by the Credit Institutions Law and the Rules for the Establishment of Subsidiaries and depends on SHCP approval. Subsidiaries can offer the same services as commercial banks, subject to the provisions of free trade agreements, and provided that the sponsoring foreign financial institution offers similar services in the country of origin.

<sup>100</sup> By comparison, this figure is 60 per cent in Chile and over 40 per cent in the United States. Ejecutivo Federal (2007), page 100. Consulted at: <http://www.presidencia.gob.mx>.

<sup>101</sup> National Banking and Securities Commission, *Information Histórica de los Boletines Estadísticos de Banca Múltiple* (Historical Information from Statistical Bulletins on Commercial Banking). Consulted at: <http://www.cnbv.gob.mx>.

<sup>102</sup> IMF (2007).

<sup>103</sup> National Banking and Securities Commission (2007a), page 34.

141. At the same time, foreign investors from any country may hold up to 100 per cent of the shares representing the capital of a banking institution, on the understanding that these operations require the prior authorization of the SHCP (in consultation with the CNBV) if they exceed 5 per cent of the capital. Nevertheless, foreign legal persons that exercise functions of authority may not participate in the capital of banking institutions in any way.

142. There are no additional restrictions on domestic banks or corporations or retail consumers for cross-border borrowing or deposits from/with foreign banks.

143. The Bank of Mexico has the authority to issue general criteria regulating interest rates, payments and commissions charged to customers and other financial and credit institutions. Moreover, commercial banks need to comply with a series of requirements relating to the commissions that they charge to their customers to ensure that the latter are duly informed. There are no provisions in the Mexican legislation that would require commercial banks to provide credit to a particular sector of the economy.

(c) Insurance

144. Mexico's insurance sector comprises insurance companies and mutual institutions. Although insurance penetration<sup>104</sup> is only 1.9 per cent of GDP (beginning of 2007), Mexico is the second largest insurance market in Latin America, with 25 per cent of total premiums.

145. Over the period 2002-06, the value of direct premiums averaged some 137,238 billion pesos, life insurance accounting for 38.9 per cent of this figure, pensions for 4.0 per cent, accidents and illness for 13.2 per cent, and damages for 43.9 per cent; in the meantime, the value of reinsurance premiums averaged about 2,933 billion pesos.<sup>105</sup> Key emerging niches include educational, transportation, and natural hazard products.

146. As of December 2006, there were 91 insurance companies in Mexico; of the total, one was a mutual insurance company and one a State-owned company, while the remaining 89 were private insurance companies. Three foreign and two Mexican insurance companies comprise nearly 60 per cent of the market.

147. The insurance industry is governed by the General Law on Insurance Institutions and Mutual Societies (LGISMS) of 1935 and amendments thereto. The SHCP is mainly in charge of granting authorizations to insurance companies to operate in the country, while the CNSF is a supervisory body.

148. Companies seeking to obtain an insurance licence must meet the requirements set forth in the LGISMS. This Law states that, depending on the origin of the shareholders who subscribe their capital, insurance institutions may be either wholly or majority Mexican-owned or wholly or majority foreign-owned, in which case they are treated as a subsidiary of a financial institution from abroad.

149. In the case of institutions the majority of whose capital is Mexican-owned, foreign natural and legal persons may (with some exceptions) acquire shares representing the insurers' capital but the Mexican investment must retain the power to determine the management and effective control of the institution. According to the Law, effective control may be obtained by acquiring 30 per cent or more

<sup>104</sup> Total value of insurance premiums as a percentage of GDP.

<sup>105</sup> Figures for 2006 reported as of September. National Insurance and Bonding Commission (several years); National Insurance and Bonding Commission (2007a); and National Insurance and Bonding Commission (2007b).



of the shares representing the paid-up capital of an institution, controlling the annual meeting, being able to appoint a majority of the members of the board of directors, or by exercising some other means of control.

150. In the case of insurers the majority of whose capital is foreign-owned, the foreign institution must come from a country with which Mexico has signed a free trade agreement that includes a financial services chapter. These foreign institutions must establish themselves in Mexico through subsidiaries.

151. In addition to meeting the above requirements, subsidiaries must also comply with the Rules for the Establishment of Subsidiaries of Financial Institutions from Abroad. These requirements include the ownership structure, operating and internal controls, financial projections and fitness of directors and senior management.

152. The LGISMS forbids hiring insurance services from companies established abroad when the risk is located in Mexico. Exceptions are granted when the insurable risk is not insured by companies operating in the country, and the insured has received due authorization from SHCP to hire a foreign company to provide the service directly or through an insurance company established in Mexico. Transfer of non-life or life insurance portfolios between insurance companies requires SHCP approval, which is given when the requirements are met.

153. Where the hiring of reinsurance services is concerned, the LGISM allows an insurer established in Mexico to sign a contract with reinsurers from abroad provided that the latter are enrolled in the General Register of Foreign Reinsurers; enrolment depends on the discretionary approval of the SHCP.

154. Insurance companies do not require approval for the premiums they charge. However, they must provide the CNSF with technical reports that lay out the criteria on which their premium calculations are based.

#### **(iv) Air transport and airports**

##### **(a) Main features**

155. In 2006, Mexico's airport network comprised 1,259 airfields and 59 international and 26 domestic airports. Between 2002 and 2006, the number of passengers carried on domestic and international flights increased by slightly more than 37 per cent, reaching some 45.4 million in 2006, while the volume of freight transported rose by 40 per cent, reaching approximately 544,000 tonnes in 2006. It is estimated that physical investment, both public and private, in air transport infrastructure averaged 3,106 billion pesos (US\$296 million) per annum between 2002 and 2006.<sup>106</sup>

156. In 1998, the Government granted concessions on 35 airports organized in four regional airport groups in the form of limited companies: Centre North (13 airports), Pacific (12 airports), South-East (nine airports), and Mexico City (one airport). Mexico City International Airport is a semi-public company with majority Federal Government participation. The other three groups are controlled by domestic and foreign private investors. The government agency Airports and Auxiliary Services (ASA) is a decentralized Federal Government body with legal personality and its own assets. ASA

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<sup>106</sup> Statistical Annex to First Government Report of 1 September 2007, based on data from the Ministry of Communications and Transport. Consulted at: <http://www.informe.gob.mx/informe/>.

operates a network of 20 airports and participates in five other airports in partnership with governments of federative entities and the private sector.<sup>107</sup>

157. There are 18 airlines established in Mexico that provide regular air transport services; of these, 14 carry passengers on domestic routes and seven on international routes, while 11 carry freight. In November 2005, Consorcio Internacional de Aviación (Cintra Group) sold Mexicana de Aviación and its subsidiary Click, thereby complying with a resolution of the Federal Competition Commission (CFC) which sought to dilute the market concentration that had resulted from the merger of Aeroméxico and Mexicana de Aviación in 1995. At the end of 2007, the Government was in the process of selling its approximately 66 per cent holding in the Cintra Group and thus completing the privatization of Aeroméxico.

158. During the period 1995-2005 the Mexican aviation market was dominated by the duopoly of Aeroméxico and Mexicana de Aviación<sup>108</sup>; these two companies were part of the same corporate structure controlled by the State through the Cintra Group, and together with their subsidiaries held 77 per cent of the Mexican passenger transport market in 2000.<sup>109</sup> The level of competition in that market appears to have increased considerably in recent years. At the end of 2006, Aeroméxico, the leading company, controlled 27.4 per cent of the market, followed by Mexicana de Aviación with 20.6 per cent, Aviacsa with 14 per cent, and six low-cost airlines (five of which entered the market in 2005-06) with 19.2 per cent.<sup>110</sup>

(b) Regulatory framework

159. The Ministry of Communications and Transport (SCT) is the main regulatory entity for the air transport sector, with responsibility for planning and implementing policies and programmes for domestic airport development, granting concessions for operating air transport and airport services, its Directorate General of Civil Aviation being in charge of processing applications for concessions, issuing air transport and civil airfield permits and authorizations and proposing official standards. Other state agencies concerned with the sector include Mexican Air Space Navigation Services (SENEAM), which provides air control and navigation services, and ASA, which is responsible for operating, managing and maintaining State-controlled airports.

160. Mexico's commitments with respect to air transport services under the GATS were limited to certain air transport support services (see Table AIV.1).

161. The air transport sector is mainly regulated by the Civil Aviation Law of 1995 and its Regulations of 1998, and by the Airports Law of 1995 and its Regulations of 2000. Since Mexico's previous Review, this legislation has been amended with a view, *inter alia*, to optimizing the sector's activities and complying with the International Civil Aviation Convention.<sup>111</sup>

<sup>107</sup> Information consulted at: [http://www.asa.gob.mx/wb/webasa/red\\_de\\_services](http://www.asa.gob.mx/wb/webasa/red_de_services).

<sup>108</sup> CFC Resolution on the Cintra Case, 2000. Information consulted at: [http://www.cfc.gob.mx/index.php?option=com\\_content&task=view&id=3677&Itemid=183](http://www.cfc.gob.mx/index.php?option=com_content&task=view&id=3677&Itemid=183).

<sup>109</sup> WTO Secretariat estimates based on SCT statistics, consulted at: <http://dgac.sct.gob.mx/index.php?id=477>.

<sup>110</sup> Ministry of Communications and Transport. Information consulted at: <http://dgac.sct.gob.mx/index.php?id=467>.

<sup>111</sup> The most recent amendments to the Civil Aviation Law and its Regulations were published in the Official Journal on 6 June 2006 and 24 June 2004, respectively. The most recent amendments to the Airports Law and its Regulations were published in the Official Journal on 5 July 2006 and 9 September 2003, respectively.

162. The Airports Law and its Regulations establish the general regime applicable to Mexican airport concessions. This Law paved the way for the modernization and development of Mexican airport infrastructure by permitting the transfer of the administration, operation and management of existing airports to the private sector and allowing it to build new ones, through concessions. The concessions are for a term of 50 years and can be extended on one or more occasions for a period of not more than 50 additional years, for which the concessionaires must comply with certain security, investment and other requirements.

163. The legislation allows concessionaires to provide, or hire third parties to provide, airport, auxiliary and commercial services, it being mandatory that these third parties be Mexican trading companies. Under the Constitution, air navigation services must be provided solely and exclusively by the State, through SENEAM.

164. Under the Foreign Investment Law, the participation of foreign investors in concession-holding companies is restricted to a maximum of 49 per cent; the foreign investor may acquire a larger percentage of the capital by obtaining a favourable resolution from the National Foreign Investments Commission (see Chapter II (4)). At the end of 2007 no authorization to invest more than 49 per cent had been granted.

165. The Airports Law distinguishes three categories of services offered in airports: airport services, auxiliary services, and commercial services.<sup>112</sup> Concessionaires must apply to the SCT for registration of the tariffs corresponding to airport and auxiliary services 30 days in advance of their application; the SCT then has ten working days to request additional information or return the application unregistered, or 15 days to accept registration. Concessionaires are free to set different tariff levels, provided that the tariffs do not exceed those registered. The SCT is authorized to regulate the tariffs for airport and auxiliary services after previously obtaining the opinion of the CFC, which must determine whether or not the conditions of reasonable competition in the provision of these services are fulfilled. The SCT acts either ex officio or at the request of the party concerned.

166. The Civil Aviation Law and its Regulations regulate the exploitation of the air space and the provision of air transport services. According to this Law, in order to provide scheduled domestic air transport services (cabotage) it is necessary to obtain a concession from the SCT that will only be granted to Mexican companies. The concession serves as a basis for seeking permission to provide scheduled international services. Foreign participation in domestic air transport companies is limited to 25 per cent of the capital (see Chapter II (4)).<sup>113</sup>

167. Other air transport services are subject to the obtaining of a permit that is available to: only Mexican companies in the case of unscheduled domestic services; to foreign companies in the case of scheduled international services under international treaty provisions; to foreign and Mexican companies in the case of unscheduled international services; and to Mexican or foreign individuals or companies in the case of private commercial air transport services.

168. The Civil Aviation Law stipulates that operators may freely determine the rates for their air transport services, subject to satisfactory conditions of quality, competitiveness, safety and permanence. However, rates for international routes must be approved by the SCT in accordance with the various treaty provisions. All rates must be registered with the SCT before being applied. The SCT may refuse to register these rates or may establish minimum or maximum tariff levels in order to promote competition.

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<sup>112</sup> The various definitions are given in Article 48 of the 1995 Airports Law.

<sup>113</sup> Article 7 (II) of the Foreign Investment Law, the latest amendment to which was published in the Official Journal of 18 July 2006.

169. Mexico has signed 39 bilateral civil aviation agreements: nine with Asian countries, 16 with Caribbean and Central and South American countries, 14 with European countries and two with North American countries. As of mid-2007, Mexico had not signed any open skies agreement. The SCT considers that the domestic air sector is still not prepared for the borders to be thrown wide open, and accordingly is seeking to sign agreements that allow for a gradual and balanced opening, while exhausting the opportunities offered by bilateral relations.

**(v) Maritime transport**

**(a) Main features**

170. Maritime transport moves approximately 70 per cent of the total volume of Mexico's international trade. In 2006, the total volume of international freight was equivalent to some 213 million tonnes, 68 per cent of which represented exports and the rest imports. Mexico has 95 maritime and 18 river ports; of these, 66 are authorized for high-seas traffic. In terms of their principal activity, 37 ports are commercial. Moreover, there are 43 fishing ports, 22 that support tourism, and 11 that handle petroleum.<sup>114</sup> Excluding petroleum transport, Manzanillo, Lázaro Cárdenas, Veracruz, Altamira and Tampico are Mexico's main commercial ports with 75 per cent of the freight volume moved. In 2006, four ports in the Gulf of Mexico (Puertos Dos Bocas, Pajaritos, Veracruz and Cayo Arcas) were responsible for approximately 77 per cent of foreign trade freight volume, mainly exports of petroleum and petroleum derivatives.<sup>115</sup>

171. In mid-2007, the 66 ports capable of handling high-seas freight were grouped into Integral Port Administrations (APIs), of which 16 are administered by the Federal Government and another five by state governments, while one API is in private hands. The APIs are trading companies with autonomy in their operational and financial management of the ports' goods and services. All the country's ports are owned by the State. The authorities have noted that there are no plans to transfer other APIs to the private sector. In practice, many of the principal activities within the APIs are performed by the private sector through concessions.

172. Between 2001 and 2006, public and private investment in port infrastructure increased irregularly, averaging 6,132 billion pesos per annum (US\$568 million), 70 per cent of which was private investment. During the same period, the movement of containers through the national port system increased at an average rate of 14.6 per cent per annum, and the freight transiting through the ports grew on average by 3.7 per cent per annum, reaching 287.5 million tonnes in 2006. Of this freight, 73 per cent was high-seas and the rest cabotage.<sup>116</sup>

173. The Mexican Government's National Infrastructure Programme 2007-2012 notes that in terms of port infrastructure Mexico ranks 64th out of 125 countries, according to a 2006 study by the World Economic Forum. This Programme also estimates that a little over 10 billion pesos a year in port infrastructure investment will be needed to implement the necessary reforms.<sup>117</sup> For the development of new port projects within the National Infrastructure Programme it is proposed to invite bids for a

<sup>114</sup> Some ports handle two or more activities.

<sup>115</sup> Statistical Annex to Sixth Government Report of 1 September 2006, based on Ministry of Communications and Transport data. Consulted at: <http://sexto.informe.fox.presidencia.gob.mx/index.php?dseccion=4>.

<sup>116</sup> Statistical Annex to Sixth Government Report of 1 September 2006, based on Ministry of Communications and Transport data. Consulted at: <http://sexto.informe.fox.presidencia.gob.mx/index.php?dseccion=4>.

<sup>117</sup> National Infrastructure Programme 2007-2012. Consulted at: [www.infraestructura.gob.mx](http://www.infraestructura.gob.mx).

concession to operate specialized container handling terminals in the port of Bahía Colonet. Moreover, the authorities have noted that the National Competitiveness Agreement calls on the land and maritime transport operators and the SCT to undertake to solve the problems of multimodal transport bottlenecks.

174. In 2006, there were five domestic shipping lines and 75 foreign lines offering high-seas maritime transport services from Mexican ports. The merchant marine, which in 2006 consisted of 239 vessels with a capacity of more than 1,000 GRT, is relatively small. In 2006, vessels belonging to foreign merchant fleets were responsible for transporting 31 per cent of cabotage and practically all of high-seas cargo.<sup>118</sup>

(b) Regulatory framework

175. The main legal provisions governing maritime transport are contained in several articles of the Constitution, the Port Law of 1993, its Regulations of 1994, the new Shipping and Maritime Trade Law of 2006 and its Regulations.<sup>119</sup> The SCT, through the General Coordinating Office for Ports and the Merchant Marine and its directorates general, is the main agency responsible for regulation, as well as for policy formulation and implementation in the maritime transport sector. Moreover, the SCT has responsibility for granting concessions for APIs and the provision of services in terminals, marinas and port facilities.

176. The main changes introduced by the 2006 Shipping and Maritime Trade Law relate to foreign participation in cabotage shipping. The new Law continues to reserve cabotage for Mexican ship-owners, but stipulates that if there are no Mexican vessels available under similar technical conditions, the SCT may only grant temporary permits to Mexican ship-owners with a foreign vessel under bare-boat charter, or to a Mexican ship-owner with a foreign vessel under some leasing agreement. The new Law no longer permits the SCT to grant permits to foreign shipping companies. The period of validity of the temporary permits was reduced to three months and no permit for the same vessel may be renewed more than seven times. Furthermore, a Mexican ship-owner holding a temporary permit for a foreign vessel must register it under the Mexican flag if it is going to stay in Mexican waters for more than two years.

177. Under the Foreign Investment Law (see Chapter II (4)), foreign investment in the maritime transport sector is limited to a maximum of 49 per cent of total capital in APIs and in shipping companies that commercially exploit vessels for inland and coastal navigation, with the exception of tourism cruise ships, and certain port operations such as dredging. The Foreign Investment Commission may authorize foreign participation above 49 per cent in port services for inland waterway navigation operations, as well as in shipping companies engaged exclusively in high-seas traffic. The authorities have noted that in recent years authorizations to exceed the permitted percentage of 49 per cent have been granted.

178. Foreign shipping companies and vessels from any country may participate in international maritime (high-seas) transport activities provided their country of origin extends reciprocal treatment to Mexico. The Shipping and Maritime Trade Law of 2006 provides for the possibility of reserving all or part of certain international transport activities for Mexican shipping companies if the CFC rules, in an opinion, that in that particular market competition is lacking.

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<sup>118</sup> Information provided by the authorities.

<sup>119</sup> The Port Law and the latest amendment to its Regulations were published in the Official Journal of 19 July 1993 and 8 August 2000, respectively. The Shipping and Maritime Trade Law was published in the Official Journal of 1 July 2006, and the latest amendment to the Regulations of the Shipping Law was published in the Official Journal of 19 April 2005.

179. The freight rates for regular high-seas shipping services and port service charges are fixed freely by the service providers, except in the absence of reasonable competition, when the SCT establishes the basis for tariff regulation and fixes the levels of payment and rules of application. This is the case with the tariffs for the use of port infrastructure applied by the APIs, and for some services such as pilotage, towing and ferrying. The concession titles of the APIs have maximum tariff levels established for certain services. The tariffs for tourism activities are deregulated but must be registered with the SCT.

180. In mid-2006, the Federal Government created the Mexican Merchant Marine Development Fund (Fondemar) with a view to helping Mexican shipping companies to obtain financing for buying, building or modernizing vessels for maritime traffic. In each case the SCT must determine Fondemar's level of participation in the credit risk through guarantees. According to information provided by the authorities, the resources allocated to Fondemar amounted to 117 million pesos (US\$10.7 million).

181. Mexico has signed up to the International Maritime Organization's International Ship and Port Facility Security (ISPS) Code. The authorities have indicated that the ISPS Code is in force in all the country's high-seas ports.

182. Mexico has not assumed any specific commitments within the framework of the GATS with regard to maritime transport services (see Table AIV.1). This sector has been included in most of the free trade agreements signed by Mexico.

**(vi) Professional services**

183. Within the framework of the GATS, Mexico assumed specific commitments under four professional services headings: accounting, auditing and bookkeeping; consultancy and technical studies for architecture, consultancy and technical services for engineering, and medical and dental services, for which free cross-border supply and consumption abroad are allowed. With regard to commercial presence, foreign investment up to 100 per cent in architectural and engineering services and up to 49 per cent in medical and dental services and accounting services was bound; foreign accounting companies must use the name of their Mexican partners.<sup>120</sup> Mexico did not assume any commitments in the area of legal services.

184. Under Article V, Mexico has notified its preferential agreements relating to services that contain provisions concerning the negotiation of agreements on the mutual recognition of certificates of competency and licences for the provision of professional services. Nevertheless, no notifications have been received under Article VII.4 concerning mutual recognition agreements that Mexico has signed.

185. In October 2007, within the NAFTA framework Mexico had signed mutual recognition agreements for the professions of accountancy, engineering and architecture which are in process of implementation. Moreover, Mexico had concluded an agreement on the mutual recognition of higher education certificates and degrees with Colombia<sup>121</sup> and formed part of the Regional Agreement on the Accreditation of Higher Education Studies, Degrees and Diplomas in Latin America and the

<sup>120</sup> WTO document GATS/SC/56 of 15 April 1994.

<sup>121</sup> Published in the Official Journal on 22 April 2002.

Caribbean (1975).<sup>122</sup> In addition, in May 2006, Mexico and Uruguay signed an Agreement on the Mutual Recognition of Study Certificates, Degrees and Academic Qualifications.<sup>123</sup>

186. In Mexico, the practice of professions is regulated at federal and state levels. An indispensable requirement for practising a regulated profession is to be the holder of a *cédula profesional* (licence) issued by the SEP.<sup>124</sup> To obtain a licence it is necessary, among other things, to possess a diploma recognized by the SEP and to have completed a "social service".

187. Under Article 5 of the Constitution, each State in the Federation has discretion to determine the professions that require a diploma, together with the conditions that must be fulfilled to obtain such a diploma and the authorities responsible for issuing it. In the Federal District, the exercise of professions is governed by the Law Regulating Article 5 of the Constitution passed by the Congress of the Union.<sup>125</sup> In practice, the professions that require a diploma vary from one federative entity to another. The main professions subject to this requirement include: law, architecture, medicine, nursing, chemistry, bacteriology, biology, social and political sciences, anthropology, journalism, accountancy, teaching, economics, computer science, engineering, mathematics, and the professions of aircraft pilot and social worker.

188. At national level, the following professional and technical services are reserved for Mexican citizens: aircraft pilot, ship's captain, first mate, naval architect, ship's engineer; crews of Mexican flag ships and aircraft; airport manager, harbour pilot, customs broker, and train crews.<sup>126</sup>

189. The diplomas issued by institutions authorized by state and federal laws must be registered in order to obtain a licence to practice. Article 13 of the Law Regulating Article 5 of the Constitution stipulates that the Federal Executive may conclude agreements with the States in order to harmonize professional registration. The Mexican authorities have noted that as a result of the signature of such agreements the Directorate General of Professions of the SEP has been given the exclusive authority to issue licences with nationwide validity.

190. Provided there is reciprocity in the country of origin of the applicant, the requirements for the registration of diplomas and the issuing of licences for foreigners who have studied abroad include, *inter alia*, the production of a document proving their right of stay and, in the case of residents, a notarized copy of a valid immigration document. In addition, the following documents must be produced: an official letter confirming the revalidation of the professional studies issued by the SEP; a diploma certified by the country of origin and by the Mexican consulate in the issuing country; and a certificate of exemption from social service or an equivalent letter issued in the country where the studies were pursued.<sup>127</sup>

191. The social service requirement is intended to provide an opportunity for students to pay back part of the cost of their education to society and to contribute to the academic training and professional skills development of the social service provider. This requirement also applies to

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<sup>122</sup> In addition to Mexico, the following countries are party to this Agreement: Bolivia, Colombia, Cuba, El Salvador, Former Yugoslav Republic of Macedonia, the Holy See, Netherlands, Nicaragua, Panama, Peru, Serbia and Montenegro, Slovenia, Suriname, and Venezuela.

<sup>123</sup> Published in the Official Journal on 2 June 2006.

<sup>124</sup> The licence is a personal document authorizing the holder to practise a profession.

<sup>125</sup> Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District, published in the Official Journal on 26 May 1945 (latest amendment published on 22 December 1993).

<sup>126</sup> Article 32 of the Constitution and Article 25 of the Shipping and Maritime Trade Law, published in the Official Journal on 1 June 2006.

<sup>127</sup> The requirements can be consulted on the SEP's web site: <http://www.sep.gob.mx>.

foreigners and Mexicans who studied abroad. Within the context of the present Review, the authorities have noted that, in accordance with the legislation in force, alternatives are being sought to make this requirement more flexible; for example, it has been established that if in the foreigner's country of origin or in that in which he/she received his/her higher education social service is not required, it will not be required in Mexico. Moreover, if in the foreigner's country of origin the social service system exists and its requirements were satisfied, the requirements will also be considered to have been satisfied in Mexico.<sup>128</sup> Where the health care professions are concerned, before a licence can be granted to foreigners, the Directorate General of Professions of the SEP must ask the Ministry of Health to confirm the social service rendered by the foreigner and, where appropriate, determine the place and the form in which this service was performed.

192. Foreigners and Mexicans who studied abroad must also revalidate their diplomas with the SEP in order to obtain a licence.<sup>129</sup> SEP Decision No. 286 establishes the criteria for the revalidation of studies completed abroad. To qualify for revalidation, courses of higher education must be at least 75 per cent equivalent to existing courses in the Mexican education system. In the case of foreigners, the reciprocity granted by the country in which the studies were completed to studies completed in Mexico and the international accreditation of the educational institution attended will also be taken into account.<sup>130</sup>

193. Foreigners may practise a profession in Mexico provided that they satisfy the conditions specified in the Law Regulating Article 5 of the Constitution and subject to the international treaties to which Mexico is party.<sup>131</sup> Apart from the FTA with Israel, Mexico's free trade agreements incorporate provisions on cross-border trade in services and subject the provision of professional services to the principle of reciprocity. Apart from those with Israel, United States and EFTA, all the FTAs contain provisions for eliminating nationality or permanent residence requirements for the granting of licences and certificates to professional service providers of the other Party, as well as for negotiating agreements on the mutual recognition of licences and certificates for the provision of such services.

194. If there is no relevant agreement, the practice of professions by foreigners is subject to the principle of reciprocity in the country from which the applicant comes and compliance with the Mexican legislation.<sup>132</sup> The authorities have noted that the countries granting Mexico reciprocity in the practice of professions are: Argentina, Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Guatemala, Nicaragua, and Peru. Reciprocity means that the country from which the applicant comes does not impose greater requirements on Mexicans than on its own citizens.

195. Foreign lawyers can obtain licences to practise in Mexico provided there is a relevant agreement between Mexico and their country of origin. If there is no such agreement, the foreigner must revalidate his/her studies, meet the requirements laid down by Mexican law and show that the principle of reciprocity applies. If a foreign lawyer obtains revalidation of his/her studies and is authorized to practise in Mexico, he/she may only advise on Mexican or international law.

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<sup>128</sup> Article 3 of the Regulations on the rendering of the Social Service of students of the institutions of higher education in the Mexican Republic, published in the Official Journal on 30 March 1981.

<sup>129</sup> Article 9 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District, published in the Official Journal on 26 May 1945 (latest amendment published on 22 December 1993).

<sup>130</sup> Points 25 and 35 of SEP Decision 286, published in the Official Journal on 30 October 2000.

<sup>131</sup> Article 15 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District. A similar provision can be found in most state laws.

<sup>132</sup> Article 15 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District. A similar provision can be found in most state laws.



196. In general, only lawyers with a licence to practise in Mexico may participate in a law office established on Mexican territory. Nevertheless, provided it is stipulated in the professional services provisions of an FTA, and subject to the principle of reciprocity, lawyers of the country with which the agreement has been signed who have a licence to practise in that country may enter into partnerships with lawyers with a Mexican licence to practise in the national territory. A favourable resolution from the National Foreign Investment Commission is required for a foreign investment in legal services of more than 49 per cent.

197. Some FTAs signed by Mexico provide for the role of a legal consultant through whom lawyers of the country with which an agreement has been signed may provide consultancy services with respect to the laws of their own country, or international law, or the law of a third country; however, foreign legal consultants may not advise on Mexican law.

198. According to information provided by Mexico to the WTO Working Group on Professional Services, to practise accountancy in Mexico, as in the case of other professions, foreign accountants must revalidate their studies and obtain a licence issued by the SEP. In regulated areas of accountancy, such as the auditing of financial statements for tax purposes, foreign professionals may practise in the national territory on condition that this possibility is provided for in an international treaty.<sup>133</sup> There are no restrictions on the mode of establishment or direct foreign ownership of a company providing accountancy services in Mexico.<sup>134</sup>

199. With regard to engineering services, Mexico is participating in the development of regional-level professional qualification accreditation schemes that facilitate the provision of these services by foreign engineers. For example, within the NAFTA framework, procedures have been agreed for granting temporary licences that allow engineers accredited in any of the three countries party to the Agreement to practise in Canada (all provinces), Mexico (all states) and the United States (state of Texas). Moreover, Mexico is a signatory to the Declaration of Montebán, in which several Latin American countries and Spain undertook to establish systems for the accreditation of engineers with a view to mutual recognition that allow for labour mobility between the countries concerned.<sup>135</sup>

200. There are no restrictions on the participation of foreigners in engineering consultancy partnerships established as Mexican enterprises in accordance with the national legislation, except for those engineering activities that are regulated by Articles 7 and 8 of the Foreign Investment Law (see Chapter II (4)(ii)).

201. In Mexico it is not necessary to belong to a professional society to be allowed to practise a profession. In their capacity of advisory bodies and guarantors of high standards of practice within a particular profession, the professional societies and associations give opinions on laws and regulations relating to the practice of their profession and help to design the curricula of the institutions of higher education.<sup>136</sup> They also actively participate in the work of the Mexican Committees for International Practice of the Professions (COMPIs), created to negotiate agreements on the mutual recognition of licences and certificates for the practice of professions under NAFTA.

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<sup>133</sup> Article 52, I(b) of the Fiscal Code of the Federation.

<sup>134</sup> WTO document S/WPPS/W/7/Add.20 of 16 October 1996.

<sup>135</sup> The Declaration of Montebán was signed at the First Latin American Meeting on the Accreditation of Engineering Programmes, in Oaxaca, Mexico, on 6 September 2001, by representatives of universities and professional societies of Argentina, Bolivia, Chile, Colombia, Costa Rica, El Salvador, Mexico, Paraguay and Spain.

<sup>136</sup> Article 50 of the Law Regulating Article 5 of the Constitution relating to the Practice of Professions in the Federal District.

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