

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **(1) OVERVIEW**

1. Mexico has continued to reduce border protection on a reciprocal basis, but MFN protection is significant and may in fact have risen since 1997. The simple average applied MFN tariff increased by some three percentage points, to 16.5% in 2001. Tariff protection for agricultural products remains substantially higher than for other products, with MFN rates on a small number of products slightly exceeding bound rates. Mexico applies tariff quotas on several agricultural products, with most quotas reserved to specific countries. In addition, other products may carry a reduced MFN tariff rate provided they have a quota certificate.

2. Mexico's exceptions to MFN treatment have expanded since its previous Review along with the number of preferential trade agreements in which it participates. Moreover, the gap between MFN and preferential tariff rates has increased as the preferential rates have fallen and MFN rates increased. In addition to preferential rules of origin, Mexico maintains non-preferential rules of origin to prevent circumvention of anti-dumping and countervailing duties; the procedures to apply these rules vary by product and originating country.

3. Mexico uses import permits to protect domestic industries, notably the automotive industry. Mexico is an active user of contingency measures, mainly anti-dumping. In recent years, particularly since 2001, the number of anti-dumping cases initiated has dropped significantly, thus lessening earlier concerns that these measures could become major trade barriers in Mexico. Currently, anti-dumping measures affect mainly Chinese products.

4. Mexico operates numerous programmes in support of selected sectors. In general, support is provided through financing facilities, mostly channelled through development banks or public trust funds, or in the form of tax concessions; other schemes include advice, technical cooperation, training, and consulting services. Mexico has not signed the Plurilateral Agreement on Government Procurement and it uses public procurement to support domestic activities, particularly through price preference margins and local-content requirements.

5. In part to offset the anti-export bias resulting from trade measures on imports, Mexico promotes exports through various duty and tax concessions, one of which was notified to the WTO as an export subsidy. In 2001, Mexico requested an extension for the elimination of its WTO-inconsistent TRIMs in the automotive sector.

6. From 1 January 2000, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights applies fully to Mexico, which had taken steps in advance to implement most of the Agreement's provisions.

#### **(2) MEASURES DIRECTLY AFFECTING IMPORTS**

##### **(i) Registration and documentation**

7. The major change introduced to customs procedures since Mexico's last Review was the establishment of a verification system to allow a better assessment of compliance with customs rules, in particular with respect to national security, and environmental and public health provisions. This new system, aimed notably at fighting corruption, includes a computerized mechanism for the exchange of information between the authorities and foreign trade operators.

8. Importers must present an import declaration accompanied by: a commercial invoice; a bill of lading; documents demonstrating compliance with non-tariff regulations and restrictions, if applicable (see sections (viii) and (ix)); certificates of origin, if applicable (see section (iv)); documents demonstrating guarantee of payments of additional duties when imports appear undervalued, if applicable; and information allowing identification, analysis and control of the imported merchandise (such as serial number, trade mark, model, technical specifications). This latter requirement does not apply to imports made under temporary import regimes, such as the *maquiladora* or authorized export programmes.<sup>1</sup> In addition a certificate of weight and volume from an authorized certification company is required for bulk merchandise imported via maritime transport.

9. In general, import documentation must be submitted by a customs agent or an authorized representative of the importer.<sup>2</sup> Requirements to practice as a custom broker include being Mexican national by birth; this does not apply to authorized representatives of an importer, however, who are licensed to handle procedures only at a given customs point and for a specific importer.<sup>3</sup>

10. Most importers must be registered with the Department of the Treasury, including: persons or firms subject to the general income tax regime; importers operating under the special regime for the border region; persons or firms engaged in agricultural, fishing, or land transport activities, subject to the simplified income tax, whose earnings for the precedent year exceed US\$500,000; and firms not subject to the income tax. Persons or firms importing for their own use are exempt from registration.

11. In addition, Mexico maintains sector-specific registers aimed at detecting fraudulent activities, illegal trans-shipment and undervaluation of shipments. Importers of selected products (including iron and steel products; textiles, clothing, and footwear; chemicals; bicycles; rubber articles; wood; food; and beverages) must present the original application form personally before the General Customs Administration in Mexico City or send it by courier in order to be included in the specific registry.

12. After presentation of the import declaration and payment of all applicable duties, shipments are submitted to an automatic mechanism of selection for inspection. Shipments that have been selected for physical inspection are resubmitted to the automatic mechanism in order to determine if they should be inspected a second time. At some customs points all shipments are submitted twice to the automatic mechanism of selection, including those that have not been selected in the first instance. The Mexican authorities noted that the mechanism was designed in such a way that the probability of being selected for physical inspection varied across shipments according to criteria such as the importer, the type of product, or the country of origin. In principle, unless serious irregularities are detected, physical inspection should be completed in less than three hours.

13. Mexico's customs system makes use of customs advisors to assist with the verification of merchandise selected for physical inspection or for which particular problems have been identified; these are specialists authorized by the Department of the Treasury and Public Credit. In principle 10% of imported merchandise is verified. However, as an emergency measure to fight contraband, all imports of specific textiles and footwear products were being physically inspected as of mid-2001. The authorities noted that the products subject to this measure represented only around 5% of Mexico's imports of textiles and footwear.

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<sup>1</sup> Article 57 of the Customs Law Regulations.

<sup>2</sup> Exceptions include imports by international passengers and diplomatic authorities, and for media and cinematographic activities.

<sup>3</sup> Articles 159 and 168 of the Customs Law.

14. According to the Mexican authorities, 45 appeals against customs administration decisions were made before the Central Administration of Large Taxpayers in 2000. The reasons invoked by importers included errors in the tariff classification and inexact data. The appeal outcome was favourable to importers in 14 instances and to the customs administration in 12; as of December 2001, 19 decisions were still pending. For the first semester of 2001, 24 appeals were submitted, all of which were still awaiting a decision at the end of 2001.

15. With respect to small tax payers, figures from the Central Administration indicate that 60 appeals were presented in 2000, of which two resulted in a favourable outcome for the importer. The reasons for the appeals included inexact data, omission of invoice or bill of lading, and non-payment of anti-dumping and countervailing duties. For the first semester of 2001, the number of appeals lodged by small tax payers before the Central Administration was significantly higher with 348 cases; in 81 cases the decision was favourable to the importers, while in 241 the customs administration decision was confirmed. According to the authorities these figures represent only about 5% of the total number of appeals presented, since they do not include appeals before local administrations.

## **(ii) Customs valuation**

16. As part of the Single Undertaking of the Uruguay Round, Mexico became automatically bound by the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement). Mexico has invoked various provisions available to developing countries for the delayed application of, and reservations under the Agreement.<sup>4</sup>

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

18. The basis for customs valuation varies according to the origin of imports. For MFN sources, customs value is based on the c.i.f. value of imports, while it is based on the f.o.b. value of imports for goods originating in the NAFTA region. Some WTO Members have raised concerns about the introduction of this differential treatment and requested consultations with Mexico (customs valuation for all imports was based on f.o.b. value until the entry into force of NAFTA).<sup>5</sup>

19. The price reference mechanism introduced in 1994 to combat customs under-invoicing remains in force. Under this system, a deposit of guarantee is required when the declared price is inferior to the reference price. The deposit should be equivalent to the amount of duties (including import duties, countervailing and anti-dumping duties) that would be collected if the value of the imported goods was equal to the reference price established by the authorities. As at November 2001, 308 tariff items were subject to this mechanism, including food and beverages, apparel, footwear, tools, and appliances.<sup>6</sup>

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<sup>4</sup> WTO document G/VAL/2/Rev.13 of 10 October 2001.

<sup>5</sup> The European Union requested consultations (WT/DS53/1, 9 September 1996); Switzerland (WT/DS53/2, 18 September 1996) and Norway (WT/DS53/3, 30 September 1996) joined the consultations.

<sup>6</sup> The Resolution establishing this mechanism was published in the *Official Journal* on 18 February 1994 and amended on 5 October 1999; the list of products covered was published on 6 June 2001 and 5 November 2001.

**(iii) Preshipment inspection**

20. The only preshipment inspection mechanism applied in Mexico was introduced in 1998 as part of a new import licensing mechanism (section (viii)).

**(iv) Rules of origin**

21. Mexico applies preferential and non-preferential rules of origin. All free-trade agreements (FTAs) negotiated by Mexico since the mid 1990s contain a specific origin regime. Non-preferential rules of origin apply to products subject to anti-dumping and countervailing duties.

22. Most of Mexico's preferential rules of origin define goods as originating if they are wholly obtained or produced in the region; produced entirely in the territory of its Members exclusively from originating materials; produced from non-originating materials which undergo a change of tariff classification in the region and comply with other requirements, or satisfy a regional-value-content requirement. The rules of origin incorporated in the agreements negotiated with European countries (the European Union and the European Free Trade Association) are based on the principle of "sufficient working or processing"; while they differ from product to product, criteria for defining whether a good as been sufficiently worked or processed may include change in tariff classification, regional-value-content requirement, as well as production process rules. The FTA negotiated with the EFTA countries includes a general regime of rules of origin and three specific regimes for agricultural products negotiated bilaterally by Mexico with Iceland, Norway, and Switzerland. The main characteristics of the different sets of preferential rules in force in Mexico are summarized in Table AIII.1.

23. Preferential imports must be accompanied by a proof of origin. The mechanism for certification differs across agreements. Various agreements (Bolivia, Chile, Costa Rica, Israel, NAFTA, Nicaragua, and the Northern Triangle) provide for self-certification whereby the exporter completes the certificate of origin without the involvement of the authorities. For the agreements with Colombia, EFTA, the European Union, Uruguay, and Venezuela, the proof of origin must be certified by the competent authority in the exporting country (which in the case of Mexico is the Department of the Economy).

24. Mexico maintains special origin certification requirements, introduced in September 1994, for products identical or similar to those subject to countervailing or anti-dumping duties. These requirements were designed to prevent circumvention; they vary by product.<sup>7</sup> Imports of textiles, clothing, and footwear (defined in the Annex II of the Accord establishing the requirements) must be accompanied by specific certificates of origin; their format, content and filing procedures are defined in Annex III of the Accord. When such imports originate in certain trading partners, the certificate of origin must be formalized in the exporting country; partners subject to this additional requirement are: Bangladesh; Cyprus; Hong Kong, China; India; Indonesia; Korea; Macao, China; Malaysia; Pakistan; Philippines; Singapore; Sri Lanka; and Thailand. Imports of other products must be accompanied by a declaration of origin. For non-WTO members, certificates of origin must be legalized by the Mexican diplomatic authorities in the exporting country and verified by an approved private inspection company. Products qualifying under a preferential import scheme, may be imported without additional requirements, provided they comply with relevant preferential rules of origin. When importers do not present the documentation that proof the origin of the goods or when by application of the rules, the origin of the good is determined to be a country on which anti-dumping or countervailing duties are applied, the anti-dumping or countervailing duties in

<sup>7</sup> The Accord establishing non-preferential rules of origin was published in the *Official Journal* on 30 August 1994 and amended on 11 November 1996.

force are applied. Some WTO Members have expressed concern that these specific origin certification requirements are discriminatory, impose excessive informational demands on traders, and could impede the normal flow of exports from third countries.<sup>8</sup>

**(v) Tariffs**

25. Mexico grants at least MFN treatment to all countries, whether WTO Members or not. The authority to modify tariffs, considered to be import taxes, is delegated by Congress to the President of the Republic, under the Foreign Trade Act of 1993. The Act also established the Foreign Trade Commission, which is responsible for submitting recommendations on tariff rates to the President through the Department of Economy; tariff changes are issued through Presidential decrees published in the *Official Journal*.

**(b) Tariff structure**

26. Mexico's import tariff structure is based on the Harmonized Commodity Description and Coding System (HS). There were 11,387 lines included in the MFN tariff schedule in force in May 2001 (11,177 lines in 1997).<sup>9</sup> All imports are subject to *ad valorem* tariff rates, except for some products containing sugar, which are subject to either specific or compound rates. In all cases the specific rate is set at US\$395.86 per tonne of sugar contained in the product. As a result, ten items are subject to specific duties (sugars, cocoa with a sugar content higher than 90%, and syrups) and 45 items to compound duties (products such as condensed milk, fruits, prepared food products, and fruit juices).

27. Given that the specific duties apply on the sugar content of the imported good (rather than on the volume of the imported good), the calculation of *ad valorem* equivalents (AVEs) would require information on the sugar content of each specific product imported. In the absence of this information AVEs were estimated on the basis of import values and volumes for each product and the average proportion of sugar contained in the products subject to compound rates.<sup>10</sup>

28. The simple average applied MFN tariff was 16.5% in May 2001 (Table III.1). This average includes items subject to specific or compound duties, for which estimated *ad valorem* equivalents (AVEs) range from 12% to just over 120%. When lines with specific duties are excluded, the average stands at 16.4%. These averages are higher, by some 3 percentage points, than the average MFN tariff in 1997.

29. In January 1999, Mexico increased most MFN tariff rates by three percentage points (affecting some 80% of total tariff items) or by ten percentage points (around 6% of total tariff items); tariffs on other items were either increased by more than ten percentage points or, more often, reduced. In principle, the three percentage points increase was applied to inputs or intermediary goods, and the 10 percentage points increase to final goods. The Mexican authorities indicated that these increases were made for fiscal reasons to compensate for the negative impact on public finances of external shocks, including the Asian and Brazilian financial crises.

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<sup>8</sup> See Minutes of the previous TPR of Mexico (WTO document WT/TPR/M/29, 16 December 1997).

<sup>9</sup> This excludes items marked as prohibited (17 tariff lines), and items in HS Chapter 98, which identifies goods imported under special operations (35 lines). Estimates in this section were computed by the WTO Secretariat, based on tariff data provided by the authorities

<sup>10</sup> Import values and volumes were taken from the Mexican Institute for Statistics (INEGI), and the volume of sugar contained in each product was derived from the figures provided by Mexico in its Schedule of Commitments (Schedule LXXVII, Section I b, Tariff Quotas). Note (b) of Table III.1 provides other methodological details.

Table III.1  
Summary analysis of Mexico's tariff, May 2001

Analysis	Applied tariffs, 2001				
	No. of lines <sup>a</sup>	Avg. applied tariff <sup>b</sup> (%)	Range (%)	Std-dev. (%)	CV
<b>Total</b>	11,387	16.5	0-260	14.5	0.9
<b>By WTO category</b>					
Agriculture	1,069	24.9	0-260	39.1	1.6
Live animals and products thereof	124	53.5	0-260	84.4	1.6
Dairy products	37	43.1	0-128	45.1	1.0
Coffee, tea, cocoa and sugar	178	27.3	0-161	30.5	1.1
Fruit and vegetables	215	25.1	3-251	18.4	0.7
Grains	25	49.0	0-198	64.5	1.3
Beverages and spirits	61	27.1	0-51	6.8	0.3
Tobacco	14	51.3	23-67	13.4	0.3
WTO non-agriculture (excl petroleum)	10,303	15.6	0-35	8.1	0.5
Fish and fishery products	133	26.8	0-30	5.9	0.2
Textiles and clothing	1,233	24.0	0-35	8.6	0.4
Leather, rubber, footwear, travel goods	288	20.7	0-35	9.8	0.5
Transport equipment	349	17.1	0-30	6.1	0.4
Petroleum	14	9.1	0-18	5.6	0.6
<b>By ISIC sector<sup>c</sup></b>					
Agriculture and fisheries	445	17.8	0-251	22.5	1.3
Mining	124	11.4	3-23	4.5	0.4
Manufacturing	10,817	16.5	0-260	16.5	1.0
<b>By HS section</b>					
01 Live animals and products	282	40.0	0-260	59.9	1.5
02 Vegetable products	412	18.6	0-251	25.7	1.4
03 Fats and oils	66	21.1	0-260	43.0	2.0
04 Prepared foods, etc.	317	26.5	0-141	20.4	0.8
05 Minerals	193	11.5	0-23	4.2	0.4
06 Chemicals and products	2,686	10.9	0-30	6.2	0.6
07 Plastics and rubber	520	16.0	0-30	5.2	0.3
08 Hides and skins	91	18.0	3-35	11.0	0.6
09 Wood and articles	124	19.1	0-30	5.5	0.3
10 Pulp, paper, etc.	292	13.1	0-30	5.9	0.5
11 Textile and articles	1,209	23.6	0-35	8.9	0.4
12 Footwear, headgear	101	31.8	13-35	5.4	0.2
13 Articles of stone	291	18.7	3-30	5.2	0.3
14 Precious stones, etc.	65	13.2	0-30	10.1	0.8
15 Base metals and products	1,161	15.9	0-30	5.7	0.4
16 Machinery	2,482	14.3	0-30	7.2	0.5
17 Transport equipment	364	17.1	0-30	6.0	0.4
18 Precision equipment	458	15.0	0-30	6.8	0.5
19 Arms and munitions	29	20.5	3-30	7.6	0.4
20 Miscellaneous manufactures	232	23.5	3-30	5.6	0.2
21 Works of art, etc.	12	3.0	3	0.0	0.0

a There are 17 prohibited goods not included in the analysis out of a total of 11,404 lines in Mexico's tariff schedule.

b Includes AVEs of specific and compound duties calculated as  $AVE = k + spQ/V$ , where  $k$  is the *ad valorem* component of the duty ( $k = 0$  for specific rate only);  $s$  is the specific component (in US\$ per unit measure of sugar);  $Q$  is the volume of imports;  $V$  is the value of imports; and  $p$  is the proportion of sugar in the product.

c ISIC Classification (Rev.2), excluding electricity (1 line).

Source: WTO Secretariat estimates, based on data from the Mexican Government.

30. As a result, and in comparison with the situation prevailing in 1997, Mexico's tariff structure for May 2001 showed a clearer tariff escalation pattern. For most manufacturing sectors the average tariff applied to fully processed goods is substantially higher than for raw materials. Exceptions cover the chemical industry (ISIC 35) and other manufacturing industries (ISIC 39), for which applied rates

on semi-processed goods are slightly lower than on raw materials; however in both cases applied tariffs on fully processed goods are higher (Chart III.1).

31. Tariff dispersion, measured by the coefficient of variation, fell with respect to its 1997 level as the average tariff increased and the standard deviation remained at a similar level (Table III.1). In 2001, the most common tariff rate was 13% (applied to 34% of tariff lines), followed by 18% applied to some 24% of all lines. Following the 1999 tariff increase, duty-free entry dropped from close to 14% of all tariff lines in 1997, to some 2% in 2001.

32. Tariff protection for agricultural products remains substantially higher than for non-agricultural products, respectively 24.9% and 15.6%, (based on the WTO classification of agricultural products). Product groups with relatively high average tariffs in 2001 were (HS codes in parentheses): meat (02), tobacco products (24), cereals (10), dairy products (04), clothing (61-62), and footwear (64); those with relatively low average tariff included works of art (97), pulp of wood (47), fertilizers (31), oil seeds (12), and organic chemicals (29).

(c) Tariff bindings

33. In December 1995, WTO Members agreed to suspend Mexico's application of the provisions of Article II of GATT 1994 for the purpose of enabling it to implement amendments to the Harmonized System nomenclature in 1996; in December 2000, the suspension was conditionally extended until 30 April 2001.<sup>11</sup> The certification of modifications and rectifications was circulated to Members in October 2001.<sup>12</sup>

34. As part of its accession to GATT in 1986, Mexico bound its entire tariff schedule at a maximum 50% *ad valorem* rate. In the Uruguay Round, Mexico agreed to reduce bound rates from the general base rate of 50% to 35% *ad valorem* for non-agricultural products, with certain exceptions.<sup>13</sup> Exceptions affect a relatively wide range of manufactured products, for which bound rates generally stand at 50%. Paper for newsprint was bound at 15% but only for a minimum volume of 40,000 tonnes; no bound rate was specified for imports in excess of 40,000 tonnes. However, the authorities indicated that it could be assumed that in the absence of a specific bound rate the general bound rate for industrial products would apply.

35. Resulting from the tariffication process, several agricultural products are subject to much higher bound rates than other products. In several cases such bindings take the form of mixed rates expressed in terms of *ad valorem* and/or specific rates. Additional duties above the bound tariff level may be imposed under the Special Safeguard Provisions of the WTO Agreement on Agriculture.

36. Current applied rates for a few agricultural products subject to *ad valorem* duties exceed bound rates; however, except in the case of tobacco for wrapping, any difference between applied and bound rates seems marginal.<sup>14</sup> In addition, some products currently subject to compound applied rates were bound at *ad valorem* rates; in a few cases the estimated AVEs of current applied rates also appear to exceed consolidated rates (Table III.2). With respect to sugar products subject only to specific rates, the current applied rate of US\$395.86 per tonne exceeds the specific bound rate (which would stand at some US\$376 per tonne in mid-2001), however Mexico's schedule provides for this

<sup>11</sup> WTO document WT/L/379, 13 December 2000.

<sup>12</sup> WTO document WT/Let/404, 12 October 2001.

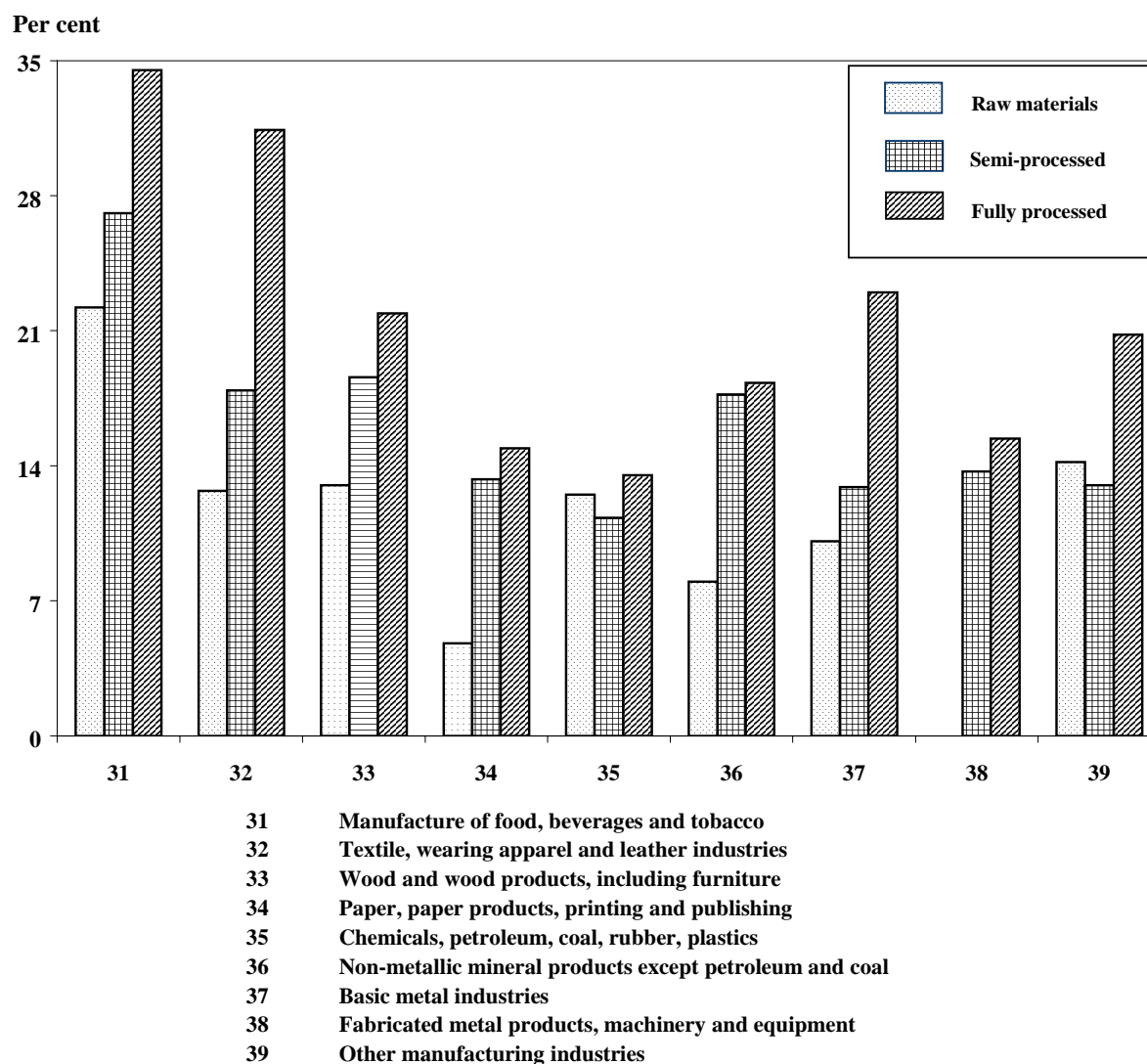
<sup>13</sup> For a summary description of the binding structure, see WTO (1998), or Mexico's Schedule of Commitments (LXXVII) for a full description.

<sup>14</sup> According to the authorities the two tariff lines for tobacco for wrapping (falling under HS 2401) were created from the subheading HS 2402.

possibility when the protection provided by the specific duty is less than a given *ad valorem* rate (in that case the minimum *ad valorem* protection for those products was bound at 162%). The Mexican authorities noted that the Decree establishing these specific rates for products containing sugar stipulates that in no case should the resulting tariff undermine Mexico's international commitments.

### Chart III.1

#### Tariff escalation for manufactured products<sup>a</sup>, May 2001



<sup>a</sup> By 2-digit ISIC category.

Source: WTO Secretariat estimates, based on data from the Mexican Government.



Table III.2  
Tariff items for which applied rates approximate or exceed bound rates

Farm items for which applied rates approximate or exceed bound rates						
Tariff item	Description	Applied rates	AVE for specific or compound rates	Bound rate <sup>a</sup>		
				For 2001	Final	Base
(% , unless otherwise specified)						
0103.91.01	Live swine	10		9.3	9	10
0103.92.01	Live swine	10		9.3	9	10
0105.11.01	Fowls of the species gallus domesticus	48		46.7	45	50
1003.00.01	Barley, for sowing	10		9.3	9	10
1006.10.01	Paddy rice with husk	10		9.3	9	10
1209.11.01	Sugar beet seed for sowing	10		9.3	9	10
1209.19.99	Other seeds for sowing	10		9.3	9	10
1701.11.01	Cane sugar	\$0.39586/kg.	71.9	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1701.11.99	Other cane sugar	\$0.39586/kg.	107.8	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1701.12.01	Beet sugar	\$0.39586/kg.	no import data	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1701.12.99	Other beet sugar	\$0.39586/kg.	129.1	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1701.91.01	Other sugar containing flavouring or colouring matter	\$0.39586/kg.	15.3	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1701.99.01	Other sugar	\$0.39586/kg.	94.8	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1701.99.99	Other other sugar	\$0.39586/kg.	120.1	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1703.10.01	Cane molasses	10 + \$0.39586/kg.	76.2	46.7	45	50
1703.90.99	Other molasses	10 + \$0.39586/kg.	50.9	46.7	45	50
1704.90.99	Other sugar confectionery	20 + \$0.39586/kg.	112.3	\$0.19/kg. or 81.2	\$0.18/kg. or 78.3	\$0.20/kg. or 87
1806.10.01	Cocoa powder containing sugar	\$0.39586/kg.	18.6	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
1901.20.01	Mixes and doughs	10 + \$0.39586/kg.	37.7	37.3	36	40
2106.90.05	Syrups	\$0.39586/kg.	13.5	\$0.37/kg. or 162	\$0.36/kg. or 156	\$0.40/kg. or 173
2202.10.01	Water, containing sugar	20 + \$0.39586/l.	50.6	41.3	37	50
2401.10.01	Tobacco for wrapping, not stemmed or stripped	67		46.7	45	50
2401.20.02	Tobacco for wrapping, stemmed or stripped	67		46.7	45	50

a As established in Mexico's Schedule, bound rates for specific or compound duties should read, for instance, for HS 1701.11.01 US\$0.36 per kg. but not less than 156%; bound rates for 2001 are estimated on the basis of equal annual decreases.

Source: WTO Secretariat, based on data from the Mexican Government.

#### (d) Seasonal tariffs

37. Since 1993, Mexico has maintained MFN seasonal tariffs for sorghum, soybeans and safflower seeds. Importation is duty free during the following periods: sorghum, 16 December-15 May; soybeans, 1 February-31 July; and safflower seeds, 1 January-30 September. During other periods a tariff of 15% applies to the first two products, and of 10% to safflower seeds. Seasonal tariffs are also applied to preferential imports of some vegetables and fruits originating in the NAFTA region, until total duty elimination is reached on 1 January 2003.

#### (e) Tariff quotas

38. In its Schedule of Concessions, Mexico included tariff quotas for several agricultural products including poultry meat, animal fats, milk, cheese, beans, potatoes, coffee, wheat, barley, maize, and products with a high sugar content. For all products, except milk powder, initial and final in-quota bound rates were set at 50%; except for coffee and sugar products, Mexico did not commit itself to increasing the size of the quotas.

39. Most quotas were allocated to selected countries through the incorporation of reserved access rights in Mexico's Schedule. In general, the United States was granted the bulk of the quota (for instance 99.9% of the total quota for maize, 97% for poultry meat, 94% for animal fats, 88% for beans, and 75% for cheese); Canada received a substantial share of the wheat (28%) and barley

(49%) quotas; the remaining shares were allocated to MFN countries or to other preferential partners. The only products for which no reserved access rights were established in Mexico's commitments were coffee and sugar products.

40. Import (and export) quotas are assigned by the Department of Economy according to the mechanisms established in the Foreign Trade Act of 1993 and its Regulations, which stipulate that quotas must be allocated through: public bids; as stipulated in international treaties signed by Mexico; or by any justified procedure established by the Department of Economy and submitted to the opinion of the Foreign Trade Commission. Certificates granted through public bids are nominative and transferable. The authorities indicated that the majority of tariff quotas were allocated on a "first come first served" basis or through direct assignment, with only a small proportion allocated through public bids.

41. The authorities also noted that since 1996, except in the case of powder milk, importers have not applied for MFN quota licences because better access conditions than those specified in Mexico's Schedule of Commitments have been granted.<sup>15</sup> In the case of powder milk, until May 1999, the tariff quotas were allocated exclusively to the *Compañía Nacional de Subsistencias Populares* (CONASUPO), a state institution, which undertook the (in-quota) imports for the private sector and for LICONSA, the state enterprise responsible for the social distribution programme for milk. With the elimination of CONASUPO, since May 1999, tariff quotas have been allocated to consuming and processing firms according to the following mechanism: some 80% of the quota directly assigned to firms in function of their historical acquisitions from CONASUPO between 1995 and 1997; the remaining share (about 20%) has been allocated through public bids. By acquiring quotas through public bids, firms generate historical rights and may be considered for direct assignment.<sup>16</sup>

42. In addition to the products for which tariff quotas were included in Mexico's Schedule of Commitments, other agricultural or manufactured products may benefit from a reduced MFN tariff rate provided a quota certificate is obtained from the Department of Economy. Agricultural products include: live poultry (in-quota rate of 10% rather than 48%); alfalfa flour (0% rather than 18%); and cigars (20% rather than 45%). The following manufactured products may also benefit from this measure: paperboard boxes (0% rather than 13%); copper anodes (0% rather than 13%); moulding boxes (0% rather than 18%); and motor vehicles (8% rather than 30%). The authorities indicated that these quotas are aimed at guaranteeing the supply of products when domestic production is insufficient to meet domestic demand, and that, in the case of manufacturing products, all quotas have been filled.

43. Mexico also maintains certain tariff quotas for imports from all preferential partners except from Bolivia, EFTA countries, and El Salvador. Product coverage of these tariff quota varies according to each preferential scheme. In 2001, a total of some 160 tariff items were subject to preferential tariff quotas, covering products such as: agricultural and wood products (for NAFTA originating goods); apples and motor vehicles (from Chile); tuna (from Guatemala); shrimps (from Honduras); cut flowers (from Israel); fuels, chemical and plastic products, and pumps (from Colombia and Venezuela); agricultural products (from Nicaragua); agricultural, leather, footwear, and metal products (from Costa Rica); tuna and motor vehicles (from the European Union); and agricultural and textile products (from Uruguay). Tariff quotas also apply to some agricultural products imported under the special tariff regime in force in Mexico's border region.

44. The number of different tariff quotas schemes adds complexity to Mexico's import regime. For instance, certain motor vehicles (classified under tariff item 8703.2201) face the following

<sup>15</sup> Notification of in-quota imports of powder milk between 1995 and 1999 are reproduced in WTO documents G/AG/N/MEX/2 of 28 November 1996 and G/AG/N/MEX/11/Rev.1 of 25 January 2001.

<sup>16</sup> Accord published in the *Official Journal* on 21 December 2001.

tariff rates: 30% (out-quota), 8% (in-quota) and 5% (for the northern border region) from MFN sources; 0% from Costa Rica and Israel; 1.2% from Bolivia; 1% from Nicaragua; 2.2% from the NAFTA region; 2.2% (in-quota) or 10% (out-quota) from the European Union; 0% (in-quota) or 30% (out-quota) from Chile; and 20% from Colombia and Venezuela.

(f) Concessional entry

45. Temporary imports are exempt from import taxes, as well as anti-dumping and countervailing duties, although they should comply with all other non-tariff measures and regulations. Such imports are classified in two main categories: those allowed to enter for a limited period and a specific use, and then returned abroad without changes; and those imported for processing or repair activities by in-bond industries and firms with export programmes authorized by the Department of Economy. Details on export-oriented concessional programmes (e.g. PITEX, ECEX, the *maquiladora* regime) are provided in section (3)(vii).

46. Mexico maintains a special import regime for persons or firms involved in certain industrial and services activities located at the border, that have been properly registered with the Department of Economy. Firms or individuals may be registered under one of the following activities: industrial; fishing; construction; maintenance and repair; retailing trade; hotel; restaurants; or other services. Under this regime selected products are fully or partially exempt from import duties. These regimes are being phased out and should expire on 31 December 2002.<sup>17</sup>

47. In 2000, Mexico introduced programmes for sectoral promotion (PROSEC) covering specific manufacturing activities (section (4)(iii)). Under these programmes firms registered with the Department of Economy can import selected inputs for their production activities at a reduced import tariff rate. Firms registered under the *maquiladora* programme or authorized under the temporary import regime to import parts and components to produce export goods may also benefit from the concessions established through PROSEC.

(g) Tariff preferences

48. Since the previous Trade Policy Review of Mexico, the importance of tariff preferences in Mexico's trade has continued to increase. New FTAs were signed with Nicaragua, Chile, Israel, the European Union, the Northern Triangle (El Salvador, Guatemala and Honduras) and the European Free Trade Association. In addition, tariff concessions made under the LAIA Economic Complementarity Agreement with Uruguay were significantly extended through the adoption of a new Protocol in late 1999 (see Chapter II(4)(ii)).

49. As at November 2001, Mexico granted tariff preferences to imports from 39 countries: Argentina; Bolivia; Brazil; Canada; Chile; Colombia; Costa Rica; Cuba; El Salvador; Ecuador; the 15 members of the European Union; Guatemala; Honduras; Iceland; Israel; Liechtenstein; Nicaragua; Norway; Panama; Paraguay; Peru; Switzerland; the United States; Uruguay; and Venezuela. The increase of MFN tariff rates noted above, coupled with the progressive tariff reduction under preferential schemes has resulted in a substantial and widening gap between MFN and preferential tariff rates. This gap raises concerns about potential trade diversion.

50. Applied tariffs vary significantly across preferential agreements and sectors, generally as a result of the specific schedules of tariff reductions and the dates of entry in force of each agreement. Tariff phase-outs for sensitive products, which are in most cases agricultural products, should be completed by 2007 for goods from Colombia and Venezuela; 2008 from the United States and Canada; 2009 from Bolivia and Costa Rica; 2012 from Nicaragua; 2006 from Israel; and 2010 from

<sup>17</sup> The Decrees establishing the transitional tariff schemes for the incorporation of various border activities in the general import regime were published in the *Official Journal* on 31 December 1998.

EFTA. The elimination of tariffs on most sensitive goods from the European Union should be completed by 2010, although a few products, including dairy products, cereals, and meat, were put on a waiting list and no time-frame was established, though a review is to take place before July 2003.

51. Regardless of the preferential partner, applied rates for agricultural products are substantially higher than for non-agricultural goods; Chile and the United States benefit from the lowest tariff on agricultural products, with, on average, a preferential margin of some 20 percentage points over MFN sources. Substantial differences also appear for non-agricultural goods, in particular for textiles and clothing, footwear, and transport equipment (Table III.3).<sup>18</sup>

52. Mexico also grants tariff preferences under the GSTP and the CPC arrangements, although they remain negligible.

**(vi) Other charges affecting imports**

53. In addition to the import tariff and a customs processing fee, the following taxes, also applied to domestically produced goods, may be levied on imports: the value-added tax; the tax on new automobiles; and the special tax on products and services. In January 2002, a new excise tax was established on luxury products and services.<sup>19</sup>

54. The customs processing fee (DTA) varies according to the origin and nature of imports. The general DTA is 0.8% of the declared customs value; imports under temporary regimes carry a reduced rate of 0.176%, or under certain conditions a specific amount of Mex\$159 per transaction (about US\$16). In principle, definitive importation from preferential partners is exempt from DTA. As at December 2001, imports from Canada, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, the United States, and Venezuela were exempt; exemptions for imports under other preferential agreements were to enter in force at later dates, as negotiated.

55. The value-added tax (VAT), Mexico's main domestic tax, is levied on domestic and imported products. In 2001, the VAT was generally applied at 15%; a 10% rate was applied to activities undertaken in the border areas, except property transfers; and a zero rate on the sale of non-industrialized animal and vegetable products, pharmaceuticals, ice, water, agricultural machinery, ixtle (a jute-like fibre), fishing boats, fertilizers, greenhouses, food products (except beverages other than milk, juices and syrups), certain domestic services, and exports of goods and services.

56. The special tax on products and services (IEPS) is levied at variable rates according to the product. This tax is levied on the following products (rates in parentheses): alcoholic beverages (25% to 60%); tobacco products (20.9% to 100%); and gasoline and diesel, for which rates are adjusted on a monthly basis.

57. The tax on new automobiles (ISAN) was reintroduced in 1997.<sup>20</sup> The tax is applied on the sale price of the vehicle to the final consumer, including all optional equipment and before discounts and special offers. The ISAN takes the form of a compound rate with a specific amount (five different levels defined for ranges of prices) and an additional *ad valorem* rate applied on the difference between the value of the vehicle and the lower boundary of the price range within which a vehicle falls. The *ad valorem* equivalent of the ISAN ranges between 2% and 10% of the vehicle's value. Compact automobiles for "popular consumption" are exempt from the tax; such cars are defined as cars with a maximum value of Mex\$65,000 (some US\$6,800), for a maximum of five passengers and with engines produced domestically.

<sup>18</sup> This analysis is based on preferential tariffs provided by the Mexican authorities as applied in May 2001; various preferential schemes under the LAIA as well as the FTAs that entered into force after that date are not included.

<sup>19</sup> Federal Fiscal Income Law for 2002 published in the *Official Journal* on 1 January 2002.

<sup>20</sup> Federal Law of New Cars Tax (of 29 December 1997).

Table III.3  
Average tariffs under Mexico's main preferential agreements, May 2001<sup>a</sup>

	No. of lines <sup>b</sup>	Average Tariffs <sup>c</sup> (%)							
		MFN	U.S.	Canada	Bolivia	Costa Rica	Colombia	Venezuela	Chile
<b>Total</b>	11,404	16.6	1.1	1.6	1.6	1.3	4.5	6.0	0.3
<b>By WTO category</b>									
Agriculture	1,073	25.6	4.9	9.1	13.4	11.8	16.0	16.3	3.2
Non-agriculture (excl petroleum)	10,317	15.6	0.7	0.9	0.3	0.2	3.3	4.9	0.0
<b>By ISIC sector<sup>d</sup></b>									
Agriculture and fisheries	449	17.8	2.0	2.2	5.4	3.4	7.4	7.5	2.3
Mining	124	11.4	0.1	0.1	0.0	0.0	2.3	2.3	0.2
Manufacturing	10,830	16.6	1.1	1.6	1.4	1.2	4.4	5.9	0.2
<b>By HS section</b>									
01 Live animals and products	283	40.3	9.4	24.5	20.7	24.6	27.6	27.6	3.8
02 Vegetable products	415	18.6	2.6	2.4	6.6	4.2	9.3	9.3	2.9
03 Fats and oils	66	21.1	5.3	5.3	16.2	6.1	15.6	15.5	4.5
04 Prepared foods, etc.	317	28.5	3.7	4.5	16.2	11.6	14.8	15.4	3.3
05 Minerals	193	11.5	0.4	0.4	0.0	0.0	2.2	2.2	0.7
06 Chemicals and products	2,697	11.0	0.6	0.7	0.6	0.1	2.6	2.7	0.0
07 Plastics and rubber	520	16.0	1.4	1.5	0.6	0.5	3.3	3.4	0.0
08 Hides and skins	91	18.0	0.9	0.9	0.6	1.4	3.0	3.1	0.0
09 Wood and articles	124	19.1	1.1	1.1	0.3	1.4	3.9	3.9	0.0
10 Pulp, paper, etc.	294	13.1	0.5	0.5	0.3	0.2	2.1	2.3	0.0
11 Textile and articles	1,209	23.6	0.4	1.2	0.5	0.2	3.3	17.0	0.0
12 Footwear, headgear	101	31.8	0.8	1.9	0.8	1.4	4.4	4.8	0.0
13 Articles of stone	291	18.7	0.9	0.8	0.4	0.1	3.8	3.8	0.0
14 Precious stones, etc.	65	13.2	0.4	0.4	0.0	0.0	3.0	2.7	0.0
15 Base metals and products	1,161	15.9	1.4	1.4	0.0	0.4	3.1	2.9	0.0
16 Machinery	2,482	14.3	0.7	0.7	0.1	0.1	3.3	3.2	0.0
17 Transport equipment	364	17.1	0.9	0.9	0.0	0.0	9.7	9.4	0.0
18 Precision equipment	458	15.0	0.3	0.3	0.0	0.0	3.1	3.2	0.0
19 Arms and munitions	29	20.5	0.0	0.0	0.0	0.0	4.3	4.2	0.0
20 Miscellaneous manufactures	232	23.5	0.9	0.9	0.3	0.5	4.1	4.4	0.0
21 Works of art, etc.	12	3.0	0.0	0.0	0.0	0.0	3.4	2.5	0.0
	No. of lines <sup>b</sup>	MFN	Nicaragua	EU	Israel	Uruguay	El Salvador	Guatemala	Honduras
<b>Total</b>	11,404	16.6	1.5	6.2	7.5	2.3	3.1	3.1	5.0
<b>By WTO category</b>									
Agriculture	1,073	25.6	10.4	17.4	23.8	15.4	17.2	16.3	16.7
Non-agriculture (excl petroleum)	10,317	15.6	0.6	5.1	5.8	0.9	1.6	1.7	3.8
<b>By ISIC sector<sup>d</sup></b>									
Agriculture and fisheries	449	17.8	3.9	6.3	15.6	8.2	7.8	7.1	7.5
Mining	124	11.4	0.4	0.3	1.3	0.0	0.3	0.4	0.4
Manufacturing	10,830	16.6	1.4	6.3	7.3	2.0	2.9	2.9	5.0
<b>By HS section</b>									
01 Live animals and products	283	40.3	16.7	30.2	40.3	27.5	29.4	29.4	29.0
02 Vegetable products	415	18.6	5.6	8.8	16.9	9.5	10.3	9.5	9.3
03 Fats and oils	66	21.1	12.3	18.0	21.1	13.0	16.8	16.8	16.9
04 Prepared foods, etc.	317	28.5	11.5	17.0	27.2	17.4	17.8	15.9	16.4
05 Minerals	193	11.5	0.7	1.2	1.9	0.0	0.6	1.4	1.3
06 Chemicals and products	2,697	11.0	0.1	2.9	4.1	0.0	0.3	0.3	0.3
07 Plastics and rubber	520	16.0	0.8	7.1	6.0	0.0	1.4	1.4	1.3
08 Hides and skins	91	18.0	1.4	5.7	6.0	0.0	3.7	3.7	3.5
09 Wood and articles	124	19.1	1.3	6.5	8.4	0.0	4.1	4.4	5.0
10 Pulp, paper, etc.	294	13.1	0.4	4.5	4.8	0.0	1.8	1.9	1.8
11 Textile and articles	1,209	23.6	1.6	8.2	10.4	3.5	4.5	4.7	23.6
12 Footwear, headgear	101	31.8	2.5	9.5	9.8	10.3	8.3	11.5	8.8
13 Articles of stone	291	18.7	0.4	7.1	7.5	0.0	1.9	1.9	1.9
14 Precious stones, etc.	65	13.2	0.9	2.8	4.7	0.0	0.0	0.0	0.0
15 Base metals and products	1,161	15.9	0.4	7.0	4.9	0.0	1.3	1.2	1.2
16 Machinery	2,482	14.3	0.2	4.7	4.8	0.0	0.6	0.7	0.7
17 Transport equipment	364	17.1	0.6	6.0	5.3	6.6	2.3	3.3	2.5
18 Precision equipment	458	15.0	0.2	3.2	5.3	0.0	1.1	1.1	1.0
19 Arms and munitions	29	20.5	1.3	0.0	0.0	0.0	20.5	20.5	20.5
20 Miscellaneous manufactures	232	23.5	1.6	6.8	8.3	0.0	3.9	3.9	3.8
21 Works of art, etc.	12	3.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

a Most preferences granted under the LAIA, as well as FTAs which entered into force after May 2001 were not included.

b Includes 17 prohibited goods.

c Duty rate is either the preferential rate granted under this agreement or MFN rate, whichever is lower.

d ISIC Classification (Rev.2), excluding electricity (1 line).

Source: WTO Secretariat estimates, based on data from the Mexican Government.

**(vii) Minimum import prices**

58. Mexico does not apply minimum import prices.

**(viii) Import prohibitions, restrictions, and licensing**

59. Mexico's Foreign Trade Act of 1993 permits the introduction of regulations and non-tariff restrictions under various circumstances including: for balance-of-payments reasons; to regulate the entry of used goods or goods that lack a substantial market in their country of origin; as established in international treaties; as retaliation for restrictions applied to Mexican exports in other markets; to prevent unfair trade practices; and for national security, public health, animal and plant health, or environmental threats not addressed through Mexican technical regulations (NOMs, section (ix)). Measures adopted under this provision must be submitted to the Foreign Trade Commission, except in the cases of emergency, where, subject to the fulfilment of certain conditions, no formal approval from the Commission is required. In any case goods subject to regulations and non-tariff restrictions must be identified by their tariff item in Mexico's tariff nomenclature.

**(a) Import prohibitions**

60. Mexico maintains import prohibitions on 17 tariff items for reasons of public safety, health, morality or child protection.<sup>21</sup> Mexico also applies trade (import and export) prohibitions on a number of countries as provided for in United Nations Security Council resolutions.

**(b) Import restrictions and licensing**

61. Mexico maintains import (and exports) permits for sensitive products for reasons of national security, public health, and protection of domestic industries. In 2001, imports from MFN sources subject to permit included: arms; petrochemical products; vehicles; used tyres; used machines; used clothing; and used office machines. Permits are also required for some products imported under preferential conditions or under the special import regime for the border region; in particular for food products. The list of products subject to import permits represents slightly more than 1% of Mexico's tariff lines.<sup>22</sup>

62. Import permits are issued by the Department of Economy; they are established for a given quantity and value of merchandise and are nominative and non-transferable.<sup>23</sup> For used vehicles and used machines, the Department of Economy issues import permits only when the foreign product has no domestically produced substitute.<sup>24</sup> For products of the automotive industry, permits are granted following the criteria described in section (4)(viii). Publication in the *Official Journal* of the tariff items subject to import permits, as requested under the Foreign Trade Act, gives transparency to this system, though the frequent changes introduced and, in some cases, the conditionality of permits on the absence of a domestically produced substitute undermine the predictability of access to the Mexican market for the products affected.

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<sup>21</sup> Prohibited imports are classified under the following headings: 0301.9901, 1211.9002, 1302.1102, 1302.1902, 2833.2903, 2903.5903, 2903.5905, 2910.9001, 2925.1901, 2931.0005, 2939.1002, 3003.4001, 3003.4002, 3004.4001, 3004.4002, 4908.9005, 4911.9105.

<sup>22</sup> The Accord establishing this list was published in the *Official Journal* on 29 August 1997; successive amendments were published on: 31 December 1997; 3 April 1998; 27 July 1998; 12 August 1998; 23 December 1998; 26 January 1999; 6 September 1999; 31 December 1999; 21 January 2000; 13 March 2000; 15 June 2000; 30 June 2000; 9 November 2000; 31 December 2000; 18 May 2001; 9 July 2001; and 10 September 2001.

<sup>23</sup> Articles 17 to 25 of the Regulation to the Foreign Trade Act.

<sup>24</sup> Registro Federal de Trámites (2001).

63. In 1998, Mexico introduced a new import licensing mechanism, the Automatic Notice of Importation. The main objective of this mechanism is to allow the authorities to collect statistical information on the price of imports of specific goods from certain countries before the importation takes place.<sup>25</sup> Imports must be notified at least ten days in advance. When the announced prices are below the reference prices determined by the Department of the Treasury and Public Credit for the price reference mechanism described in section (2)(ii), a pre-shipment inspection must be undertaken.<sup>26</sup> The resulting verification report, which covers notably the f.o.b. price and origin of the merchandise, must be presented to the Department of Economy. Three companies have been appointed by the Mexican authorities to undertake this work: BIVAC International, Intertek Testing Services, and Société Générale de Surveillance. The selection of the company is the importer's choice.<sup>27</sup>

64. As at November 2001, the Automatic Notice of Importation mechanism was applied to imports classified under 86 tariff items originating in some 30 countries, and included products such as food, chemicals, wood, textiles, clothing, footwear, household articles, toys, bicycles, and iron and steel articles (Table III.4). The list of products and countries covered by this programme is adjusted when the authorities detect evidence of under-invoicing; products might also be dropped from the list. The authorities indicated that this mechanism allowed them to deter fraudulent practices in particular with respect to the origin of the merchandise; they also noted that for some products average import prices had converged towards the reference prices estimated by the Department of the Treasury and Public Credit.<sup>28</sup> Several WTO Members expressed concerns about this system, considering that it could result in discriminatory restrictions against imports from certain countries.<sup>29</sup>

**(ix) Regulations, standards and sanitary requirements**

65. As part of the Single Undertaking of the Uruguay Round, Mexico automatically became bound by the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). The General Bureau of Standards and Regulations (DGN) operates as the national enquiry and notification points foreseen in Articles 10.1 and 10.3 of the TBT Agreement and in Paragraphs 3 and 10 of Annex B of the SPS Agreement. Since 1995, the DGN has made some 189 notifications under the TBT Agreement, and 175 under the SPS Agreement.<sup>30</sup>

66. To ensure compliance with the Code of Good Practice provided for in the TBT Agreement, the adoption of this Code has been made a registration requirement for Mexican standardization bodies. Mexico is member of the three standard-setting bodies explicitly referred to in the SPS Agreement: the Codex, the OIE, and the IPPC (Convention of 1991); it is also member of the ISO, the IEC and the ITU.

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<sup>25</sup> The Accord establishing the Automatic Notice of Importation was published in the *Official Journal* on 27 July 1998, and notified in WTO document G/LIC/N/2/MEX/ of 30 October 1998.

<sup>26</sup> The minimum value of shipments subject to inspection is US\$1,000.

<sup>27</sup> The rules for the operation of inspection companies were published in the *Official Journal* on 10 September 1998.

<sup>28</sup> Department of Economy (2000a).

<sup>29</sup> WTO document G/LIC/M/8, 19 November 1998.

<sup>30</sup> Figures refer to notifications received as at end August 2001 (WTO document series G/TBT/N and G/SPS/N/MEX).

**Table III.4**  
**Products subject to the import licensing system (November 2001)**

Tariff line	Description	Minimum import price <sup>a</sup>
0210.90.03 <sup>b</sup>	Salted poultry meat	0.641/kg.
2008.20.01 <sup>c</sup>	Pineapples	0.701/kg.
2815.12.01 <sup>c</sup>	Sodium hydroxide	0.217/kg.
2847.00.01 <sup>c</sup>	Hydrogen peroxide	0.340 to 0.680/kg.
3102.21.01 <sup>d</sup>	Ammonium sulphate	0.106/kg.
3903.19.02, 3903.19.99, 3903.90.05 <sup>c</sup>	Polymers of styrene	0.850 to 0.980/kg.
4002.19.02 <sup>d</sup>	Synthetic rubber	0.635 to 0.768/kg.
4412.13.01, 4412.13.99, 4412.22.01 <sup>c</sup>	Plywood and similar stratified wood containing tropical wood	0.460 to 0.710/kg.
5208.11.01 <sup>c</sup>	Woven fabrics of cotton	0.350/m <sup>2</sup>
5208.12.01, 5208.13.01 <sup>e</sup>	Woven fabrics of cotton	0.483 to 0.575/m <sup>2</sup>
5208.19.01, 5208.21.01 <sup>c</sup>	Woven fabrics of cotton	0.450/m <sup>2</sup>
5208.39.99 <sup>e</sup>	Woven fabrics of cotton	1.070/m <sup>2</sup>
5210.11.99 <sup>e</sup>	Woven fabrics of cotton	0.537/m <sup>2</sup>
5210.31.01 <sup>c</sup>	Woven fabrics of cotton	1.430/m <sup>2</sup>
5407.43.99, 5407.51.01, 5407.53.01 <sup>e</sup>	Woven fabrics of synthetic filament yarn	0.244 to 0.830/m <sup>2</sup>
5407.61.02, 5407.61.99, 5407.72.01, 5407.81.01, 5407.82.99 <sup>c</sup>	Woven fabrics of synthetic filament yarn	0.360 to 0.930/m <sup>2</sup>
5407.91.02, 5407.91.99 <sup>e</sup>	Woven fabrics of synthetic filament yarn	0.250 to 0.450/m <sup>2</sup>
5408.10.02, 5408.21.99 <sup>c</sup>	Woven fabrics of artificial filament yarn	0.700 to 1.190/m <sup>2</sup>
5513.11.01 <sup>c</sup>	Woven fabrics of synthetic staples fibres	0.720/m <sup>2</sup>
5513.41.01 <sup>e</sup>	Woven fabrics of synthetic staples fibres	0.491/m <sup>2</sup>
5516.11.01 <sup>e</sup>	Woven fabrics of artificial staples fibres	0.814/m <sup>2</sup>
5516.14.01 <sup>c</sup>	Woven fabrics of artificial staples fibres	0.930/m <sup>2</sup>
5803.10.01 <sup>e</sup>	Gauze	0.094/m <sup>2</sup>
6002.43.01 <sup>e</sup>	Knitted or crocheted fabrics	2.660 to 4.160/kg.
6106.20.99 <sup>c</sup>	Women's or girls' blouses, shirts or shirt blouses	3.110/piece
6115.92.01 <sup>c</sup>	Hosiery of cotton	0.370 to 1.210/pair
6115.93.01, 6115.99.99 <sup>e</sup>	Hosiery of cotton	0.660 to 1.630/pair
6201.13.99 <sup>c</sup>	Overcoats	15.600/piece
6203.42.99, 6203.43.99 <sup>c</sup>	Men's suits or pants	5.290 to 7.500/piece
6204.43.99, 6204.44.99, 6204.62.01, 6204.63.99 <sup>c</sup>	Women's suits, shirts or pants	6.000 to 27.250/piece
6205.20.99 <sup>c</sup>	Shirts for men	6.750/piece
6206.40.99 <sup>c</sup>	Shirts for women	7.110/piece
6215.10.01 <sup>c</sup>	Ties	3.740/piece
6402.20.01, 6402.91.01, 6402.99.01, 6402.99.99 <sup>c</sup>	Footwear with upper side with narrow strips or flanges attached to sole by lugs and sandals	0.720 to 7.180/pair
6908.90.01 <sup>f</sup>	Tile square or rectangle form paving stone and similar items or coverings	0.400 to 0.430/kg.
6911.10.01 <sup>c</sup>	Tableware and kitchenware	2.030 to 3.360/kg.
6912.00.01 <sup>c</sup>	Ceramic tableware and kitchenware	1.360 to 2.260/kg.
7013.29.03, 7013.39.03, 7013.99.99 <sup>c</sup>	Glassware	0.639 to 2.940/kg.
7208.37.01, 7208.38.01, 7208.39.01, 7208.51.01, 7208.52.01, 7209.16.01, 7209.17.01, 7210.12.01, 7210.49.01, 7210.70.01, 7213.91.01 <sup>d</sup>	Flat rolled products, bars and rods of iron or non-alloy steel	0.330 to 0.747/kg
7216.31.01, 7216.32.01 <sup>f</sup>	Angles, shapes and sections of iron or non-alloy steel	0.474/kg.
7216.32.99 <sup>d</sup>	Angles, shapes and sections of iron or non-alloy steel	0.506/kg.
7216.40.01 <sup>f</sup>	Angles, shapes and sections of iron or non-alloy steel	0.474/kg.
7304.10.01, 7304.29.99 <sup>d</sup>	Tubes, pipes and hollow profiles of iron or steel	0.750 to 1.358/kg.
7306.40.99 <sup>f</sup>	Other tubes and pipes	3.614/kg.
7308.20.01, 7308.90.99 <sup>f</sup>	Conduction towers (to electric conduction)	1.170/kg.
7323.94.03 <sup>c</sup>	Iron table	3.530/kg.
8301.40.01 <sup>c</sup>	Locks	3.900/piece
8712.00.02 <sup>c</sup>	Bicycles for children	30 to 40/piece
9505.10.01 <sup>c</sup>	Items for Christmas holidays	4.8/kg.

a US\$ per unit of measure.

b Applies to imports from the United States and Ecuador.

c Applies to imports from: China; Korea, Democratic People's Republic; Republic of Korea; Philippines; Hong Kong, China; India; Indonesia; Macao; Malaysia; Pakistan; Sri Lanka, Thailand; Chinese Taipei; and Viet Nam.

d Applies to imports from: Bulgaria; Republic of Korea; India; Indonesia; Japan; Malaysia; Czech Republic; Republic of Kazakhstan; Rumania; Russia; Singapore; South Africa; Ukraine; and Yugoslavia.

e Applies to imports from Bangladesh and all countries listed under (c).

f Applies to imports from Brazil.

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



67. Mexico's system of technical regulations, standards, and sanitary regulations is relatively centralized. The National Standardization Commission is responsible for drawing up standardization policies and coordinating the action of the various institutions relating to technical regulations and standards, as well as approving the National Standardization Programme. The Commission is a national body made up of representatives from all federal administration agencies empowered to issue standards and technical regulations, as well as from various sectors (academic, industrial, commercial and consumer groups) and from private standardization bodies.<sup>31</sup> Each year the Commission draws up a National Standardization Programme, with the areas and sectors that each department or standardization body wishes to standardize or regulate. The draft technical regulations and standards prepared on the basis of this Programme are published in the *Official Journal*.<sup>32</sup>

(a) Technical regulations and standards

68. The legal basis for Mexico's conformity assessment and standardization system is contained in the Law on Metrology and Standardization of 1992 (LFMN), amended in 1997 and 1999. The Regulations of the Law were adopted in 1999. Among others, the main objectives of the statutes are to define the content and legal value of the Mexican Standards Catalogue; to define procedures for the elaboration of statement of regulatory impact for each regulation; to detail the rules and procedures for the operation of the different committees involved in standardization activities both at the national and international levels; to detail the development of conformity assessment procedures; to regulate the quality marks; and to define the conditions and procedures for the establishment of mutual recognition agreements.

69. Mexican regulations are classified in three categories: technical regulations (Official Mexican Standards – NOMs); standards (Mexican Standards – NMs); and referential standards (NRs). Technical regulations aim to establish specifications for goods, services or processes to ensure safety, the protection of human life, animals, plants or the environment, or prevent deceptive practices. Standards are used as guidelines for consumers and producers, and as instruments of quality promotion. In general standards are voluntary, except when their application is required in a technical regulation or when producers or retailers state that their goods and services comply with a specific standard. NMs are also mandatory for goods and services purchased by Federal Agencies under government procurement rules.

70. NRs are developed by decentralized agencies of the Federal Government to establish specifications for goods and services subject to government procurement. Examples of these standards are those developed by Petróleos Mexicanos (PEMEX) and the Federal Electricity Commission (CFE) in areas such as security clothing and electrical infrastructure.<sup>33</sup> The standards are developed when there is no relevant NM or international standard or when their content is obsolete or inapplicable.

71. The authorities indicated that there was no accurate information available on the proportion of technical regulations identical equivalent to international standards. However they noted that some 60% of technical regulations and standards have at least a partial concordance with international standards.<sup>34</sup>

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<sup>31</sup> The federal agencies represented in the Commission include the following Departments: Agriculture, Rural Development, Fisheries and Food; Communications and Transportation; Economy; Energy; Environment and Natural Resources; Health; Labor and Social Provision; Social Development; and Tourism.

<sup>32</sup> Mexico notifies this programme to the WTO independently of the individual notification of draft technical regulations and standards; the notification for 2001 is contained in WTO document G/TBT/W/157 of 19 April 2001.

<sup>33</sup> PEMEX's referential standards may be consulted online at: <http://www.pemex.com/>.

<sup>34</sup> All standards and technical regulations may be consulted online at: <http://www.economia-normas.gob.mx/>.

72. Preliminary draft technical regulations are elaborated by federal public administration agencies, within the scope of their respective responsibilities, and submitted to national standardization advisory committees, in which interested parties may participate. The LFMN stipulates that preliminary draft regulations presented at the committees should have an attached statement of regulatory impact, which should contain a clear explanation of the regulation's objective, proposed measures, alternatives considered and why they were rejected, as well as a general description of the advantages and disadvantages and the technical feasibility of verification and compliance with the proposed regulations. In addition, when regulations may have a broad impact on the economy or a substantial effect on a specific sector, the statement should include a financial analysis of the present value of costs and benefits of the preliminary draft regulation, and of the alternatives considered, as well as a comparison with international standards. The authorities indicated that the proportion of draft technical regulations that were expected to have a significant impact and thus required a cost-benefit analysis was very low. The draft regulations are published in the *Official Journal*, with a period of 60 days for receiving comments.<sup>35</sup>

73. Under the LFMN, regulatory agencies are authorized to issue emergency technical regulations when they conclude that there is imminent risk of damage to a legitimate objective. Emergency regulations may be applied for up to six months. In no case may the technical regulation be issued more than twice consecutively. Before the second issue, a regulatory impact statement should be submitted to the Department of Economy. If the agency that introduced the regulation decides to extend its term or make it permanent, the regulation should be submitted as a preliminary draft regulation subject to normal adoption procedures. In August 2001, there were fifteen emergency NOMs in force: seven for transport and communication equipment; one for natural gas containers; one for alcoholic beverages; three for animal protection; and three for phytosanitary protection. Only one of the emergency regulations applicable to transport equipment was based on international standards.

74. The LFMN stipulates that technical regulations, standards, and referential standards should be reviewed every five years from the date they come into effect. The result of the review should be notified to the Technical Secretariat of the National Standardization Commission; if it is not notified, the application of the regulation is suspended and the agencies that issued it should publish the cancellation in the *Official Journal*. The authorities indicated that, at the end of 2001, 401 technical regulations were being revised, while the review process was about to start for 5,037 standards.

75. Voluntary standards are drawn up and issued by the national standardization bodies, which are private non-profit entities; when there is no specific standardization body for a given sector the DGN publishes Mexican standards. In the case of voluntary standards, only the title of the standard is published in the *Official Journal*, while the full text is made known to the general public by a variety of means, such as internet specialized magazines and periodicals, and is made available upon request.

76. Since the previous Review of Mexico the number of technical regulations and standards has increased. In August 2001, there were 717 technical regulations in force - 15 of which were emergency regulations - compared with 574 in 1997, and 267 draft regulations in the process of adoption; most related to environmental and worker protection, followed far behind by services, transport and communication equipment, and food. The number of standards increased from 5,400 in 1997 to 5,900 in August 2001. Standards apply mainly in the food industry, electrical industry, construction materials, textile industry, and chemical industry.

77. Domestic and imported products must comply with the correspondent technical regulation. For transparency purposes, under the Foreign Trade Act, the Department of Economy is responsible

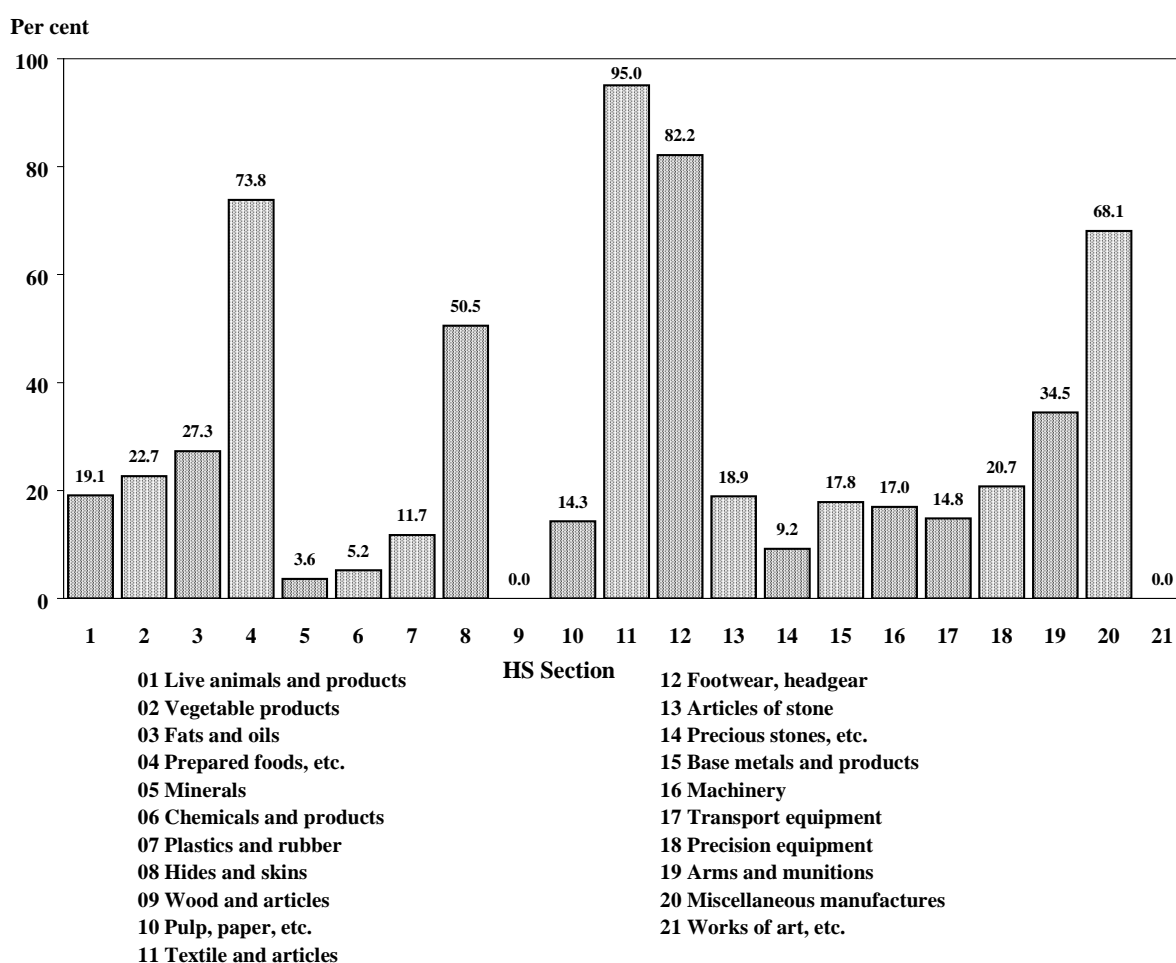
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<sup>35</sup> This period differs from the one notified to WTO (90 days, WTO document G/TBT/2/Add.14, 19 July 1996) because Article 47 of the LFMN was amended in 1997.

for publishing in the *Official Journal* the technical regulations for which compliance must be verified by the customs authorities at the point of entry into Mexico; only imports identified by their HS codes may be subject to such verification. Notwithstanding any verification that may be made at the point of entry, compliance with technical regulations may also be verified once products are within the Mexican territory. The lists of NOMs to be verified by customs were published in the *Official Journal* on 2 June 1997.<sup>36</sup> As at December 2000, close to 28% of the total number of lines in Mexico's tariff schedule were subject to technical regulations; for textile, footwear, and prepared food products, this proportion was close to or higher than 80% (Chart III.2).

**Chart III.2**

**Share of tariff lines subject to technical regulations, by HS Section, May 2001<sup>a</sup>**



<sup>a</sup> Tariff lines subject to at least one NOM (Norma Oficial Mexicana).

Source: WTO Secretariat estimates.

78. With the exception of some products subject to labelling requirements, imports of products subject to verification at the border must be accompanied by a NOM certificate or a copy of the certificate. Each importer must obtain a NOM certificate, even when the product has already been

<sup>36</sup> The lists have been modified a number of times since 1997 through agreements published on 10 October 1997, 16 December 1998, 5 April 1999, 2 June 2000, 28 July 2000, and 18 May 2001.

tested for another importer. To obtain a NOM certificate, the importer must send samples to a Mexican-based test laboratory accredited by the Mexican accreditation entity and approved by the concerned government agency. When the product is found to be in compliance with the NOM, the DGN or an accredited private certification organization issues the certificate in the name of the importer. Certain imports, notably those covered by special import regimes, are exempted from compliance with technical regulations.

79. Independently from the measures taken at the border, compliance with technical regulations is verified at the distribution points. In the case of domestic products, compliance with technical regulations is verified both at the production and distribution points. In product-areas where no Mexican regulations exist, the relevant government agency may require that domestic and imported products comply with, in priority order, international standards, specifications established by the country of origin, or producers' specifications.

80. Mexico maintains mutual recognition agreements with Canada and the United States on the basis of articles 908.6 and 1304 of the NAFTA, for specific products of the automotive, electrical and electronic industries. In addition Mexico maintains several mutual recognition agreements with producer associations or testing laboratories in Colombia and in the APEC. In addition to the mutual recognition agreements that Mexico has with Canada and the United States, private accreditation and certification bodies and laboratories have signed agreements of this nature with other international institutions.<sup>37</sup>

81. Mexico also participates in programmes of international bodies such as the Quality Assessment Recognition System (QSAR), the International Laboratory Accreditation Conference (ILAC), the InterAmerican Accreditation Cooperation (IAAC) and the National Council of Laboratory Accreditation (NACLA). Mexico also participates in the International Accreditation Forum (IAF) through the Mexican Accreditation Entity (EMA).

82. Mexico's network of 65 calibration laboratories is overseen by the DGN with the active participation of the Mexican Accreditation Entity, the National Metrology Centre (CENAM) and the Federal Consumer Protection Agency (PROFECO). The laboratories in this network are responsible for ensuring the provision of the equipment used by private testing laboratories. The National System of Testing Laboratories (SINALP) is in charge of providing the test data used by government agencies and accredited certification bodies. At the end of 2001, there were 21 accredited private certification bodies for quality systems and 14 accredited private certification bodies for products. The National Metrology Centre was created in 1994 to help oversee laboratories; offer technical support in areas such as calibration, evaluation, and development of models; study methods to elaborate national measurement standards; and support harmonization with international practices. The policies and procedures for certification were published in the *Official Journal* on 24 October 1997 and modified on 29 February 2000.

83. No substantial changes have been made to metrology regulations since Mexico's previous Review. The General System of Units of Measure is the only legal and mandatory system. Domestically manufactured or imported measuring instruments that are subject to a technical regulation, require approval of the model or prototype on behalf of the Department of Economy, prior to their commercialization, regardless of the jurisdiction of other agencies. The LFMN established the National System of Calibration with the purpose of obtaining uniformity and reliability of measurements performed domestically, as pertains to commercial and service transactions, as well as to industrial processes and their respective works of scientific investigation and technical

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<sup>37</sup> The two mutual recognition agreements are detailed in Accords published in the *Official Journal* on 5 April 2000 and 24 October 2000.

development. The National System of Calibration comprises the Department of Economy, the National Metrology Centre, the corresponding accreditation entities, the accredited calibration laboratories and by other experts in the field. LFMN Regulations provide for the exceptional use of other unit measure systems, with the authorization of the Department of Economy, when such units are not foreseen by the LFMN and related technical regulations.

84. Within the WTO, isolated complaints have been raised about Mexico's practices concerning technical regulations. The United States drew attention to a Mexican emergency regulation prohibiting the use of certain coolants for refrigerators and air conditioners, questioning the nature of the emergency and noting that although compliance had to be tested by an accredited laboratory, not a single laboratory had been accredited to perform the required tests.<sup>38</sup> Chile has requested consultations with Mexico for measures affecting the importation of matches, considered in Mexico's legislation as an explosive and dangerous product; the European Union has joined the consultations.<sup>39</sup> In the context of this Review, the Mexican authorities indicated that the Department of Defense was no longer applying this restriction to imported matches.

(b) Marking, labelling, and packaging

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

86. In August 2001, 26 technical regulations in force and three draft regulations referred explicitly to labelling requirements. In addition, specific labelling requirements may be contained in other technical regulations. The two main technical regulations in force in this area are: NOM-050-SCFI-1994 establishing general packaging and labelling requirements; and NOM-051-SCFI-1994 establishing specific labelling requirements for food and non-alcoholic beverages. In addition labelling requirements apply to products such as: fruit; alcoholic beverages; textiles and apparel products; leather products; second-hand products; equipment to be used in agricultural activities; and electrical domestic appliances.

87. As noted in the previous section, compliance with labelling requirements does not apply to all products, exceptions include temporary imports for repair or the in-bond industry, goods imported for educational and scientific organizations, and goods imported in bulk.

(c) Sanitary and phytosanitary regulations

88. Mexico's sanitary and phytosanitary legal framework is based on: the Law on Metrology and Standardization of 1 July 1992, and its reforms; the Federal Law on Animal Health of 18 July 1993, amended on 12 June 2000; the Federal Law on Plant Protection of 5 February 1994; the Internal Regulation of the Department of Agriculture, Rural Development, Fisheries and Food of 12 April 1996, amended on 10 July of 2001; and the Regulation on Sanitary Control of Products and Services of 9 August 1999.

89. Until July 2001, the government agency in charge of administering sanitary and phytosanitary regulations was the Animal and Plant Health National Commission (CONASAG), a decentralized institution of the Department of Agriculture, Rural Development, Fisheries and Food. In July 2001, following a reorganization of the Department of Agriculture, this Commission was replaced by the National Service of Health, Food Safety and Agro-food Quality (SENASICA). The functions of the General Directorates for Animal Health, for Plant Health, and for Phyto-Zoosanitary Inspections have

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<sup>38</sup> WTO document G/TBT/M/14, 10 February 1999.

<sup>39</sup> WTO documents WT/DS232/1, 28 May 2001 and WT/DS232/2, 8 June 2001.

remained unchanged. These Directorates will continue as administrative and technical branches of SENASICA.

90. Measures to prevent the introduction of diseases into Mexico take the form of technical regulations (NOMs), elaborated by the Directorates for Animal and Plant Health, and applied to imported plants and animals. In August 2001, some 81 phytosanitary NOMs were in force, of which three were emergency NOMs; and 62 zoosanitary NOMs. Mexico maintains 87 sanitary and phytosanitary inspection sites at entry points, and 44 internal checkpoints in 5 quarantine zones. The entry of specific products is confined to given entry points; for instance, from 29 June 2001, the list of entry points for apples from the United States has been reduced to five.

91. To prevent the introduction of quarantine diseases, Mexico has established procedures for inspection in the country of origin. In addition to the provisions contained in different FTAs, Mexico maintains sanitary and phytosanitary cooperation agreements with: Argentina; Australia; Chile; Cuba; Guatemala; Japan; New Zealand; Peru; the United States; and Uruguay.

92. Most animal and plant products are subject to special imports provisions. The Accord published in the *Official Journal* on 8 December 1997 reproduces the revised list of products currently affected by these provisions. All listed products are required to meet specific sanitary regulations; in addition most are subject to physical inspection at the entry point and to the obtention of an import permit. Imports permits are issued at the entry point by the General Directorate for Phyto-Zoosanitary Inspections.

93. Isolated complaints have been raised about Mexico's practices concerning sanitary and phytosanitary measures. In particular, Mexico's restrictions on rice imports from Thailand and on fresh bovine meat from Argentina have been brought before the WTO Committee on Sanitary and Phytosanitary Measures.<sup>40</sup>

**(x) Contingency measures**

**(a) Anti-dumping and countervailing measures**

94. Mexico's main anti-dumping (AD) and countervailing (CV) duty provisions are contained in: the Foreign Trade Act (LCE) of 1993 and its Regulations; the WTO Agreement on the Implementation of Article VI of the GATT 1994 (the AD Agreement); and the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement). In addition, various regional and bilateral agreements signed by Mexico also include AD and CV provisions, including, in the case of NAFTA, a review and dispute settlement mechanism for AD and CV duty matters (Table III.5). Although the LCE was enacted prior to the WTO AD and SCM Agreements, their entry into force has not led to changes in the LCE.

95. Mexican AD and CV statutes have been extensively discussed by WTO Members in the Committee on Anti-Dumping Practices and in the Committee on Subsidies and Countervailing Measures.<sup>41</sup> In response to concerns raised by several Members, Mexico noted that in the event of inconsistencies between the WTO Agreements and the LCE, or omissions in the latter, the provisions of the WTO Agreements would prevail.

<sup>40</sup> For restrictions on Thai rice see WTO documents G/SPS/GEN/216, 22 November 2000 and G/SPS/R/21, 22 May 2001; for restrictions on fresh bovine meat from Argentina see WTO document G/SPS/GEN/129, 19 July 1999.

<sup>41</sup> The following WTO Members have raised questions in those fora: Australia; Canada; the European Communities; Hong Kong, China; Korea; the United States; and Venezuela. Mexico's replies are reproduced in the following WTO Documents: G/ADP/W/67 (10 October 1995); G/ADP/W/68 (17 October 1995); G/ADP/W/64, G/ADP/W/66, G/ADP/W/69, G/ADP/W/70 (25 October 1995); G/ADP/W/65 (27 October 1995); G/ADP/W/257 (16 January 1996).

**Table III.5**  
**Main legislation on anti-dumping and countervailing measures**

<b>National provisions</b>
<ul style="list-style-type: none"><li>- Article 131 of the Political Constitution of the United Mexican States</li><li>- Foreign Trade Act and its Regulations</li><li>- Fiscal Code</li><li>- Federal Code on Civil Procedures</li><li>- Customs Law and its Regulations</li><li>- General Import Tariff Law and its Regulations</li><li>- Agreement establishing the rules for determining the country of origin of imported goods and the provisions for their certification with regard to countervailing duties</li></ul>
<b>International provisions</b>
<ul style="list-style-type: none"><li>- WTO Agreement on the Implementation of Article VI of GATT 1994</li><li>- WTO Agreement on Subsidies and Countervailing Measures</li><li>- North American Free Trade Agreement (Chapter XIX)</li><li>- Free-Trade Agreement with Bolivia (Chapter VIII)</li><li>- Free-Trade Agreement with Colombia and Venezuela (Chapter IX)</li><li>- Free-Trade Agreement with Costa Rica (Chapter VIII)</li><li>- Free-Trade Agreement with El Salvador, Guatemala and Honduras (Chapter IX)</li><li>- Free-Trade Agreement with Nicaragua (Chapter IX)</li><li>- Free-Trade Agreement with Uruguay (Chapter VI)</li></ul>

*Source:* Unidad de Prácticas Comerciales Internacionales, Marco legal vigente [Online]. Available at: <http://www.upci.gob.mx/general/marco/marco.htm> [11 July 2001].

96. In December 2000, a reform was introduced to Article 48 of the LCE Regulations defining the conditions for a country to be considered a centrally planned economy.<sup>42</sup> This reform was intended to provide explicit criteria to define more clearly the existence of a market economy but might still leave ample room for interpretation. Thus, for example, a market economy is deemed to exist when, among other things, the currency of the country under investigation is generally convertible; salaries in that country are established through free negotiation between workers and employers; decisions relating to prices, supplies, and investment in the industry under investigation respond only to market signals without significant State interference; such industry uses only one set of accounting records audited according to generally accepted criteria; and the industry's production costs and financial situation are not distorted in relation to the depreciation of assets, debts or other factors.

97. The Department of Economy, through its International Trade Practices Unit (UPCI), has the authority to conduct and deal with AD and CV investigations and to determine any duties that might arise. The UPCI is responsible for decisions on dumping, subsidies, material injury, and duty determination.

98. The UPCI operates one of the world's most active trade defence systems. Between 1987 and 2001, 237 investigations were conducted (219 for dumping and 18 for subsidies), of which 178 resulted in the imposition of provisional duties and 119 in definitive duties. The ratio of cases in which definitive duties were imposed to the number of completed investigations is close to 60%. These figures are strongly conditioned by the high number of investigations conducted against Chinese products in 1993 and 1994, which resulted in most cases in the imposition of definitive AD duties. Following the peak reached in 1993, with the initiation of 83 AD investigations, the number of initiations has fallen substantially but remains high. In 2001, only four AD investigations were initiated. Due to the sunset review procedures that have been conducted so far, 19 definitive AD duties have been eliminated. As of November 2001, there were 63 AD duties in force.

99. Over the period 1987-01, the countries most affected by Mexican AD investigations were, in decreasing order, the United States, China, and Brazil; imports from the European Union (EU) as a group were the target of three investigations, while 22 individual investigations were conducted

<sup>42</sup> WTO document G/ADP/N/1/MEX/1/Suppl.1, 31 January 2001.

against import from specific Members of the EU. The proportion of investigations that resulted in the imposition of duties is significantly higher for China than for any other country; as a result China ranks first in terms of number of duties imposed (Chart III.3). Since 1987, the Mexican trade defence system has mostly affected basic metal products (particularly steel), petrochemicals, plastics, textiles, and footwear.

100. Between January 1996 and December 2000, 42 AD investigations were initiated while 23 requests for initiation were rejected or withdrawn. Among the 42 cases initiated, 36 were completed, of which 25 resulted in the imposition of provisional duties (generally confirmed in the final decision); when no provisional duties were imposed, the final decision resulted in the imposition of definitive duties in one-fourth of the cases (Chart III.4). Over that period, countries that faced the highest number of AD procedures were the United States, China, Russia, Ukraine, and Chinese Taipei. AD investigations mainly affected, basic metal, chemical, and agricultural products, and machinery and equipment.

101. As at 2 March 2001, there were 90 AD duties in force (two were provisional duties) applying to a wide range of products (1,383 tariff lines representing over 12% of total lines in Mexico's tariff schedule). All but 53 tariff lines were subject to *ad valorem* duties ranging between 4% and 1,105%; 88% of duties were higher than 100% (Chart III.5). Products subject to duties are mainly included in the following HS Sections: textiles and clothing (818 tariff items); chemicals (277); machinery and electrical equipment (88); and footwear (56). An analysis by country of origin shows that Mexico's AD measures cover a particularly broad range of Chinese imports: from China, products classified in 1,310 tariff lines were subject to AD duties, while from the United States 20 lines were affected; from Russia 12; and from all other countries less than 10.

102. Mexico has used CV duty measures sparingly. Since its previous Review, Mexico initiated an investigation for allegedly subsidized canned peach halves from Greece; although a preliminary determination presumed the presence of subsidy, the definitive decision conclude that there was no subsidy. Brazil, the United States, and Venezuela accounted for two thirds of subsidy investigations; such investigations affected mainly steel and agricultural products. CV measures imposed on steel products originating in Brazil and Venezuela were eliminated on 30 January 2001. As at June 2001, there was one CV measure in force, affecting bovine meat from the European Union.<sup>43</sup>

103. The support granted to the Mexican industry through AD, CV, and safeguard measures is significant. For instance, AD duties applied to bovine meat imports benefit 1.4 million producers; AD duties applied to textile, clothing, and leather products, mainly from China, benefit some 2,700 firms that generate 177,000 direct jobs.<sup>44</sup>

104. The UPCI provides support to Mexican firms subject to AD or CV measures in third markets, through direct advice, and other support to exporters under investigation, and through the analysis of third countries' trade defence legislation and practices. In 2000, the UPCI provided advice to 79 firms and organizations for 32 AD cases against Mexican imports in Argentina, Australia, Brazil, Ecuador, the European Union, India, Israel, Panama, Peru, and the United States; 19 firms or organizations involved in four investigations for subsidies in the United States; and 77 firms or organizations for 17 safeguard procedures conducted by Brazil, Chile, El Salvador, Panama, Russia, the United States, and Venezuela.

<sup>43</sup> WTO document G/SCM/N/75/MEX, 7 August 2001.

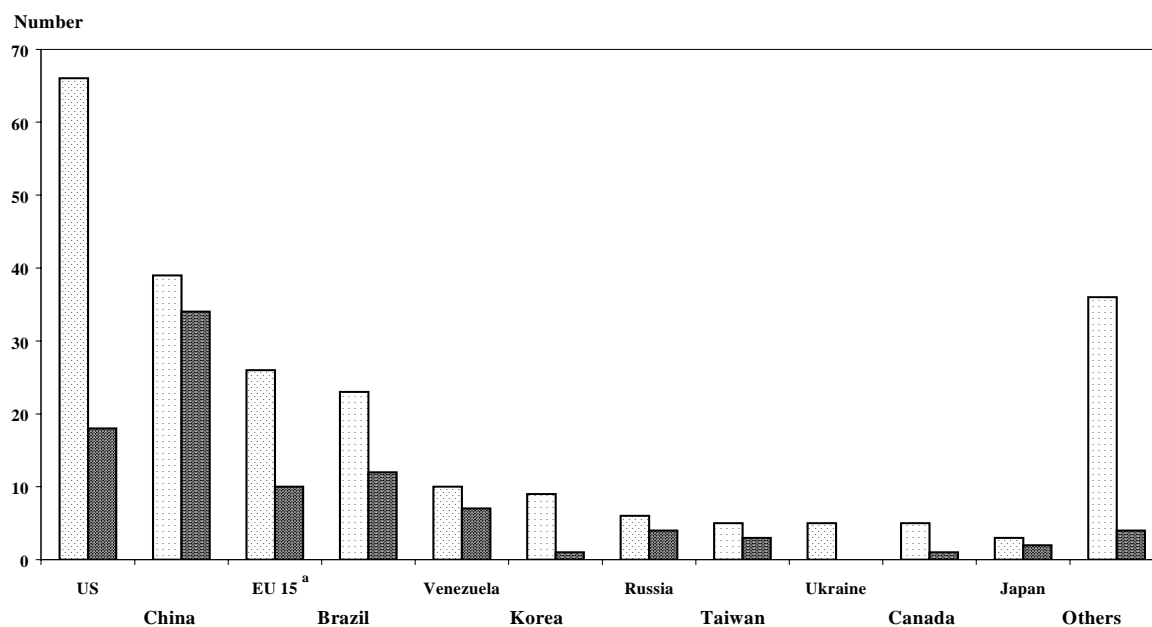
<sup>44</sup> Department of Economy (2000a).



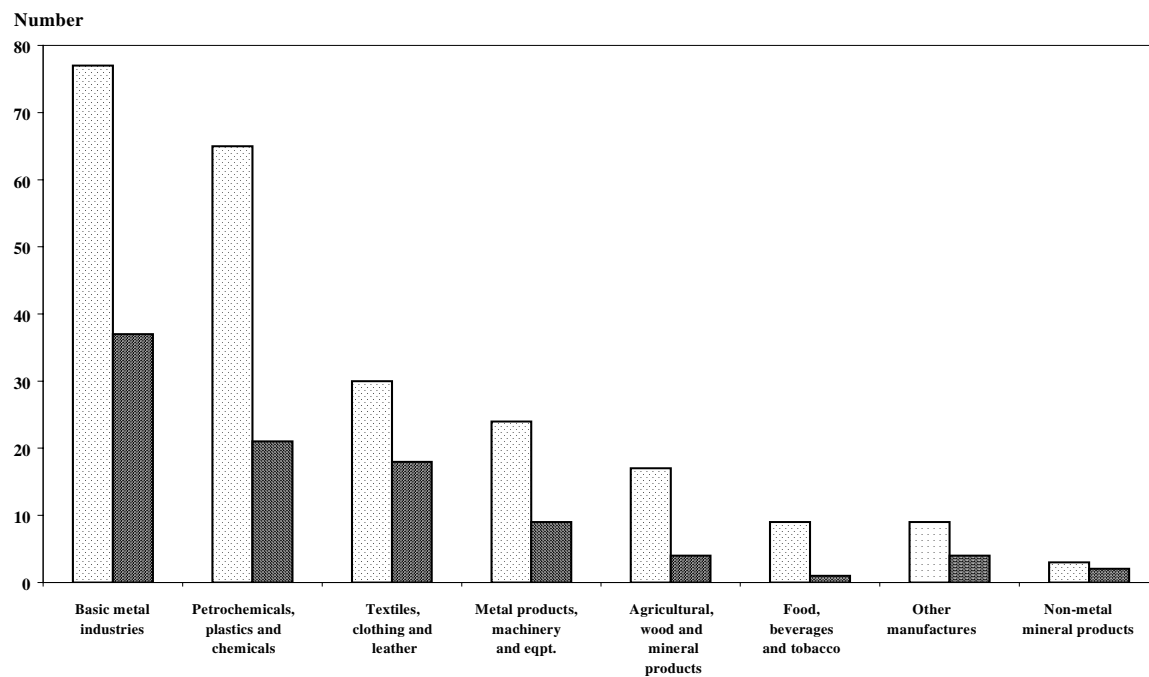
**Chart III.3**

**Number of anti-dumping investigations initiated and duties imposed, 1987-01**

(a) By country



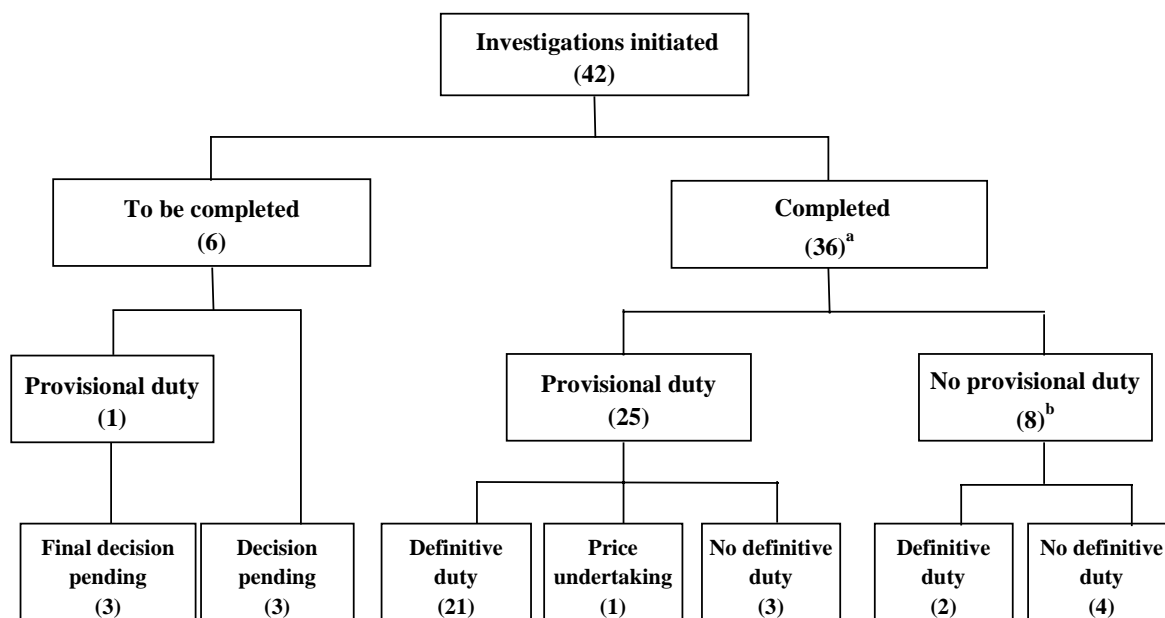
(b) By sector



Source: The Mexican authorities.

**Chart III.4**

**Anti-dumping investigations initiated between January 1996 and November 2001,  
(Number of cases)**



<sup>a</sup> Three investigations were concluded by the applicants' withdrawal.

<sup>b</sup> Two investigations finished at the preliminary determination stage without anti-dumping duties.

*Source:* WTO Secretariat.

105. Several trade defence measures taken by Mexico have been challenged either under the WTO Dispute Settlement mechanism or under Chapter 19 of NAFTA. The AD duty determination on imports of high fructose corn syrup (HFCS) originating in the United States has been challenged by the United States in the WTO and by U.S. producers under the NAFTA provisions. Both panel determinations found that the threat of injury determination was inconsistent with WTO and Mexican rules (Chapter II(4)(ii)).<sup>45</sup>

106. In addition, two countries - the United States and Brazil - requested consultations in the WTO regarding other AD actions taken by Mexico. The United States requested consultations regarding Mexico's definitive AD measure on live swine<sup>46</sup>; consultations were held in September 2000 covering the AD duties as well as alleged import prohibitions, sanitary restrictions, and technical regulations applied by Mexico on swine imports.<sup>47</sup> Brazil requested consultations, later joined by the European Union and the United States, regarding Mexico's provisional AD measure on electric transformers<sup>48</sup>; the Mexican authorities noted that with the conclusion of the investigation and the elimination of the provisional duties the case was closed in March 2001.

<sup>45</sup> WTO document WT/DS132/AB/RW, 22 October 2001.

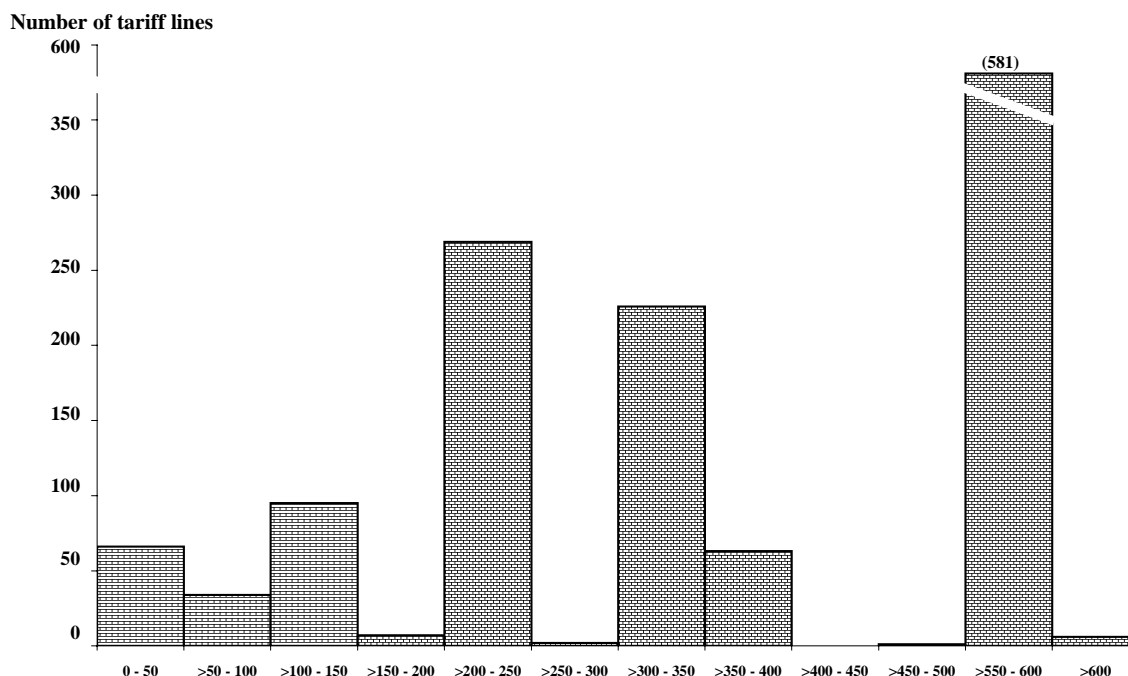
<sup>46</sup> WTO document WT/DS203/1, 13 July 2000.

<sup>47</sup> Department of Economy (2000b).

<sup>48</sup> WTO documents WT/DS216/1, 4 January 2001, and WT/DS216/2 and WT/DS216/3, 17 January 2001.

**Chart III.5**

**Distribution of *ad valorem* anti-dumping duties, March 2001**



Source: WTO Secretariat estimates, based on data from the Mexican Government.

107. With respect to the cases reviewed under the NAFTA provisions, and except in the dispute on HFCS discussed above, the AD determinations made by the Mexican authorities were, at least in part, always affirmed; in three instances the case was terminated at the request of the appellant or by joint consent of participants (Table III.6).

(b) Safeguards

108. Since its previous Review, Mexico has not applied safeguard measures, either at the global or regional level.

109. The Mexican legislation on safeguard measures is made up of various provisions of the Mexican Foreign Trade Act and its Regulations, together with the WTO Agreement on Safeguards and provisions contained in the various FTAs signed by Mexico. In addition Resolution 70 of the Latin American Integration Association (LAIA) also includes safeguard provisions. Mexican provisions on safeguard measures were discussed in the WTO Committee on Safeguards.<sup>49</sup>

110. As noted in Mexico's previous Review, the safeguard provisions included in some FTAs have raised concerns in the WTO.<sup>50</sup> In particular, the NAFTA recognizes two types of safeguards:

<sup>49</sup> The following WTO Members raised questions: Australia; the European Communities; India; Japan; Korea; and the United States. Mexico's replies are reproduced in the following WTO documents: G/SG/W/124, G/SG/W/127, G/SG/W/128, G/SG/W/129, G/SG/W/130 (23 February 1996); and G/SG/W/131 (27 February 1996).

<sup>50</sup> The different arguments and positions have been summarized in the synopsis of "systemic" issues related to regional trade agreements (WTO document WT/REG/W/37, 2 March 2000).

multilateral or global (for imports originating in NAFTA and other parties), and bilateral (when the imported product causing injury originates within NAFTA). The NAFTA requires its members to exempt each other from any global safeguard action unless their exports account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof.

**Table III.6**  
**Review of Mexican AD and CV determinations under Chapter 19 of NAFTA, July 2001**

Case	Description of the measure	Appealed by	Outcome of the review
MEX-94-1904-01	Final AD duty determination on imports of flat coated steel products from the U.S.	U.S. producers	Panel unanimously remanded the determination to the agency twice in each instance affirming part of the determination. Final decision affirming the second determination on remand issued on 13 April, 1998
MEX-94-1904-02	Final AD duty determination on imports of cut-to-length plate products from the U.S.	U.S. producers	Panel, with two dissenting opinions, remanded the agency's determination. Final order affirming the determination on remand issued on 30 October, 1995
MEX-94-1904-03	Final AD duty determination on polystyrene and impact crystal from the U.S.	U.S. producer	Panel, with one dissenting opinion and one concurring opinion, affirmed the agency's determination
MEX-95-1904-01	Final AD duty determination on Seamless line pipe originating in the U.S.	U.S. producer	Panel review automatically terminated by sole requester
MEX-96-1904-01	Final AD duty determination on cold-rolled steel sheet originating in or exported from Canada	Canadian producer	Panel review automatically terminated at request of participants
MEX-96-1904-02	Final AD duty determination on rolled steel plate originating in or exported from Canada	Canadian producers	Panel unanimously affirmed in part and remanded in part the agency's determination twice. Final order affirming the agency's second determination on remand issued on 18 December, 1998
MEX-96-1904-03	Final AD duty determination on hot-rolled steel sheet originating in or exported from Canada	Canadian producers	Panel unanimously affirmed in part and remanded in part the agency's determination. Final order affirming the determination on remand issued on 15 September, 1997
MEX-97-1904-01	Final countervailing duty determination on imports of hydrogen peroxide originating in the U.S.	Mexican producer	Panel review terminated by joint consent of participants
MEX-USA-98-1904-01	Final AD duty determination on imports of high fructose corn syrup originating in the U.S.	U.S.	Panel unanimously affirmed in part and remanded in part the agency's determination in October 2001
MEX-USA-00-1904-01	Final AD duty determination on imports of urea originating in the U.S.	U.S. and Mexican producers	To be determined
MEX-USA-00-1904-02	Final AD duty determination on bovine carcasses and half carcasses, fresh or chilled originating in the U.S.	U.S. and Mexican producer	To be determined

Source: WTO Secretariat, based on information from the NAFTA Secretariat [Online]. Available at: <http://www.nafta-sec-alena.org/> [19 January 2002].

111. Mexico designated 294 eight-digit tariff items for which it reserved its right to impose additional duties under the Special Safeguard Provisions of the WTO Agreement on Agriculture; Mexico notified that no such special safeguard was applied between 1995 and 1999.<sup>51</sup> Mexico also retained its right to use the transitional safeguard mechanism under the provisions of the WTO Agreement on Textiles and Clothing, but has not made use of this provision.

<sup>51</sup> WTO documents G/AG/N/MEX/3, 28 November 1996 and G/AG/N/MEX/9, 26 September 2000.

**(xi) Other measures affecting imports**

112. Apart from the Automatic Notice of Importation mechanism and the specific registries aimed at preventing under-invoicing described in sections (i) and (viii) above, Mexico maintains no import surveillance mechanisms.

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

114. No import monopolies, cartels or sole distributors appear to exist in Mexico other than certain activities of the state companies in the energy sector (Chapter IV(3)).<sup>52</sup> Mexico has no import restrictions in place to deal with balance-of-payments problems and has never invoked Article XVIII:B of GATT. There are no export restraint agreements limiting exports from foreign countries to the Mexican market.

**(3) MEASURES DIRECTLY AFFECTING EXPORTS**

**(i) Registration, documentation, and certification**

115. All exporters must present to the customs an export declaration accompanied by a commercial invoice and, if applicable, other documents certifying compliance with specific export regulations. Exports must be handled by Mexican customs brokers. From 1998, exporters of products subject to the Special Tax on Products and Services (alcohol, alcoholic beverages, and tobacco) must be recorded in a sectoral register of exporters handled by the General Customs Administration; this register was established to prevent the use of fictitious exports to evade domestic taxes.

**(ii) Export taxes**

116. Mexico maintains export taxes, applied on the f.o.b. value of goods, for a few products including sugars, human blood, petroleum products, and historical heritage goods. In 2001, rates ranged from an *ad valorem* rate of 25% for bitumen and asphalt to 50% for historical heritage goods. The tariff quotas on exports of various sugar products in force at the time of Mexico's previous Review were eliminated in 1998; most sugar exports are now exempted from export taxes (Table AIII.2).<sup>53</sup> In the context of this Review, the authorities noted that although revenue from export taxes was negligible, these were maintained mainly for domestic market supply reasons. Exports of alcoholic beverages and tobacco products are subject to the Special Tax on Products and Services (section (2)(vi)) although the tax rate for 2001 was 0%.<sup>54</sup>

**(iii) Minimum prices**

117. No minimum export prices have been used by Mexico since its previous Review.

**(iv) Export prohibitions**

118. Several products are prohibited from export, including certain animal products, plants, narcotics, tropical timber, and archaeological goods (Table AIII.2). Reasons include requirements of

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<sup>52</sup> WTO document G/STR/N/6/MEX, 31 July 2001.

<sup>53</sup> Decree published in the *Official Journal* on 23 January 1998.

<sup>54</sup> Special Tax on Products and Services Law, Article 2-III.

international agreements signed by Mexico (e.g. the CITES), control of dangerous substances (e.g. narcotics), sanitary, phytosanitary or health reasons, or to preserve Mexico's cultural heritage. Mexico also restricts exports to comply with United Nations resolutions.

**(v) Export restrictions and licensing**

119. Some 30 tariff items require prior export licensing from the Department of Economy; they comprise petroleum products; hides and leather of wild animals; and certain types of gold and coins (Table AIII.2). Exports of maize flour are also subject to an export permit. The Foreign Trade Act allows other Departments of the Federal Administration to establish regulations that might restrict exports (or imports) provided these regulations are submitted to the scrutiny of the Foreign Trade Commission.<sup>55</sup> Mexico has made no use of export quotas since 1993.

**(vi) Export subsidies**

120. In general, Mexico promotes exports through tax and duty concessions without relying on direct budgetary outlays. The only non-agricultural export programme notified as a subsidy to the WTO is the Programme of Temporary Imports to Produce Export Goods (PITEX, see (vii) below).<sup>56</sup> In the context of discussions in the WTO Committee on Subsidies and Countervailing Measures, several Members have raised concerns on Mexico's notifications, questioning in particular the non-notification of other export promotion schemes, including the *maquila*, the ALTEX, the drawback, and the ECEX programmes; Mexico believes those programmes do not fully meet the notification requirements of Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.<sup>57</sup>

**(vii) Duty and tax concessions**

121. Unless limited by a preferential agreement, imported inputs incorporated into goods which are exported are not subject to import tariff or VAT taxes. In addition, Mexico promotes exports through various administrative tax facilitation schemes which apply to regular exporters. The principal schemes are: the *maquila* programme and the Programme of Temporary Imports to Produce Export Goods (PITEX); other programmes include the High-volume Exporting Companies Programme (ALTEX), the Foreign Trading Companies Programme (ECEX), and the duty drawback scheme.

122. More than 90% of Mexican exports are undertaken by firms benefiting from the *maquila*, PITEX or ALTEX programmes. Between 1994 and September 2000, more than 7,700 PITEX programmes were authorized covering planned exports with an annual value of almost US\$29 billion; also, close to 62,000 extensions or modifications were granted for PITEX programmes in force. During that period, some 3,100 new *maquila* plants were authorized, in addition to the 3,641 approved extensions, generating 690,000 new jobs and a total investment of about US\$5.5 billion. Close to 4,000 firms were registered under ALTEX, and 734 under ECEX. In the same period, the number of approved duty drawback petitions reached almost 54,000, covering exports with a projected total value of just over US\$8 billion.

<sup>55</sup> Foreign Trade Act of 1993, Article 27.

<sup>56</sup> WTO document G/SCM/N/38/MEX, 17 November 1998.

<sup>57</sup> Questions were raised by Chile (G/SCM/Q2/MEX/12, 29 January 1999), the United States (G/SCM/Q2/MEX/13/Rev.1, 8 March 1999) and the European Union (G/SCM/Q2/MEX/14, 4 August 1999); Mexico's replies can be found in (G/SCM/Q2/MEX/15, 11 February 2000). Mexico's previous notification (G/SCM/N/3/MEX of 21 November 1996) generated questions from Argentina, Canada, the European Union, Japan, Korea, Poland, Turkey, and the United States; replies are reproduced in G/SCM/Q2/MEX/11, 20 June 1997.

(a) The *maquila* and PITEX programmes

123. Since Mexico's previous Review, substantial changes have been made to the *maquila* and PITEX programmes to comply NAFTA restrictions on the use of drawbacks, referrals, and waivers of customs duties (Articles 303 and 304). In particular, Mexico was required to eliminate by 1 January 2001 all minimum export requirements associated with export promotion programmes. To achieve this, Mexico amended its Customs Law, the Regulations to the Foreign Trade Act, and the PITEX and *maquila* decrees.<sup>58</sup> Under the FTAs negotiated with the EFTA countries and the European Union, Mexico will also have to amend its export promotion programmes in 2003.

124. As a result of parallel changes to the *maquila* and PITEX legislation, the two programmes have converged and their benefits and requirements are now largely equivalent. Under either programme companies may undertake the temporary importation of certain inputs provided they comply with minimum export requirements as follows:

- annual foreign sales of over US\$500,000 or exports of at least 10% of annual sales for the temporary importation of raw materials, trailers, and containers; and
- exports representing at least 30% of annual sales for the temporary importation of machinery and equipment, and of tools for research, industrial safety, quality control, and telecommunications.

125. The temporary importation of machinery and equipment under the two programmes is further limited to a maximum of five years or the full depreciation period provided in the Mexican Income Tax Law, whichever is longer. NAFTA contains special rules for trade in textiles and clothing products.

126. Until end 2000, eligible inputs imported under the PITEX and *maquila* programmes received duty-free treatment regardless of the destination of the final product. Currently, temporary imports under those programmes receive the following tariff treatment:

- NAFTA originating inputs incorporated in exports to NAFTA members may be imported duty free with no minimum export requirements;
- non-NAFTA originating inputs incorporated in final goods destined to the NAFTA region are subject to the relevant import duty but a duty concession may be claimed equal to the lesser of the tariff payable in Mexico on the inputs or the tariff paid on final goods upon importation into Canada or the United States;
- inputs from all sources incorporated in exports to non-NAFTA members may still be imported duty free provided minimum export requirements are met; and
- trailers and containers may be imported duty free regardless of final destination or minimum export requirements.

127. In practice, under the amended PITEX and *maquila* programmes the lion's share of inputs qualifying for temporary importation remains duty free as these are mostly made up of NAFTA originating inputs. In the case of non-NAFTA originating inputs incorporated in exports to NAFTA members, the relevant Mexican tariff on inputs depends on their origin and user industry, and may be the MFN rate, the preferential rate provided for in a free-trade agreement, or a concessional rate under a sectoral promotion programme or Rule 8 (see (b) below).

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<sup>58</sup> Amendments to the PITEX and *maquila* decrees were published in the *Official Journal* on 13 November 1998, 30 October 2000, and 31 December 2000; related amendments to the Foreign Trade Act were published on 31 December 2000.

128. All temporary imports remain exempt from Mexico's value-added tax. Anti-dumping and countervailing duties will be collected from 1 January 2001; a transitional provision stipulates that such duties be collected only in cases investigated from that date.

(b) Other tax concessions

129. In parallel with the changes to the *maquila* and PITEX programmes described above, Mexico introduced sectoral promotion programmes (PROSEC) that allow producers in a specific industry to import inputs, machinery or equipment at reduced duty rates of, generally, 0% or 5%. These concessions are provided for as special items included in Chapter 98 of Mexico's tariff schedule and are conditional upon beneficiary firms' compliance with Rule 8 of the General Import Tariff Law. Companies covered by the PITEX and *maquila* may benefit from PROSEC provided they register with the Department of Economy (section (4)(iii) below); benefits are not tied to export-performance requirements.

130. The High-volume Exporting Companies Programme (ALTEX) benefits direct exporters of non-petroleum products with annual foreign sales of at least US\$2 million, or 40% of total sales. Benefits include simplified fiscal and administrative procedures such as immediate VAT refunds, and specific financial incentives granted by BANCOMEXT.<sup>59</sup> ALTEX benefits may be cumulated with those available under *maquila* and PITEX programmes. Indirect exporters may also claim ALTEX benefits provided indirect export sales account for at least 50% of total sales.

131. The Foreign Trading Companies Programme (ECEX) targets two types of firms: export promoting firms, which must have a minimum capital equivalent to Mex\$200,000 and handle exports of at least three different producers; and export consolidating firms, which must have a minimum capital equivalent to Mex\$2 million and handle exports of at least five different producers. The benefits granted include the possibility of subscribing to ALTEX and PITEX programmes; a 50% discount on the cost of the non-financial services provided by BANCOMEXT; and specific financial, training, and technical assistance services from BANCOMEXT and NAFIN.

132. Mexico also maintains a drawback mechanism through which exporters may obtain import duty refunds for, among other products, raw materials, replacement parts, trailers, containers, and fuels incorporated in goods exported or re-exported without processing. The Drawback Decree was amended on 29 December 2000 to take into account the changes made to PITEX and *maquila* Decrees.

**(viii) Export-performance requirements**

133. Export-performance requirements are contained in the PITEX and *maquila* programmes. The authorities noted that these requirements were established with the objective of granting an administrative facility to large exporters by allowing them to import tax-exempt inputs, rather than having to pay the tax on importation and then obtaining reimbursement through the drawback mechanism.

**(ix) Export-processing zones**

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

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<sup>59</sup> The Decree establishing the ALTEX programme and its reforms were published in the *Official Journal* on 3 May 1990, 17 May 1991, and 11 May 1995.



(x) **Export finance, insurance, and guarantees**

135. Export finance continues to be mainly provided by BANCOMEXT, the Federal Government bank responsible for supporting the export sector. BANCOMEXT supports short, medium and long-term export financing, mainly for small and medium-size companies, through loans and guarantees. BANCOMEXT's financial support is provided through five main instruments: discounted trade-related loans channelled through commercial banks; direct loans to private and public entities; loans to the public sector for trade-related activities; pre- and post-export guarantees for trade finance, tender bonds, performance bonds, bank guarantees; and limited equity participation.

136. BANCOMEXT operates as a first-tier bank as well as through the commercial banking system. According to its annual report for 2000, the persistent decrease in Mexican foreign trade financing provided by the commercial banking system has led to an intensification of BANCOMEXT first-tier export credit activity. In 2000, BANCOMEXT awarded US\$4.4 billion in loans, guarantees, and bonds for foreign trade activities, of which US\$2.5 billion directly to the private sector. The bulk of the US\$4.4 billion, was granted to direct exporters (some 86%), while suppliers in the export chain received 14% of the total. In terms of sectoral allocation, the main beneficiaries of BANCOMEXT financing are the food, textile and apparel industries, and public-sector companies in the energy sector for the development of infrastructure projects (Table III.7).

**Table III.7**  
**BANCOMEXT's export financing by sector, 2000**  
(US\$ million)

Sector	Amount	Share (%)
Food <sup>a</sup>	795	17.9
Textile and apparel	779	17.5
Energy <sup>b</sup>	562	12.6
Chemical and pharmaceutical	354	8.0
Metal-mechanic <sup>c</sup>	350	7.9
Tourism	270	6.1
Furniture and ornamental goods	172	3.9
Construction material	143	3.2
Automobiles and spare parts	123	2.8
Electric-electronic	117	2.6
Other <sup>d</sup>	786	17.6
Total	4,451	100.0

a Includes financing for agriculture, livestock, fresh produce, and fisheries.

b Financing granted to public-sector companies for the development of infrastructure projects.

c Includes metal-mechanic, machinery and capital goods.

d Leather, footwear, leather crafts and plastic manufactures, international transportation and other manufactures. Includes export financing for service, construction, and engineering projects as well as import financing for healthcare and education.

Source: BANCOMEXT, *Annual Report 2000*, [Online]. Available at: <http://www.bancomext.com/> [21 September 2001].

137. BANCOMEXT's participation in venture capital activities in 2000 remained limited. The Bank also offer credit lines to buyers of Mexican products in Latin America; 22 Mexican firms and 16 Latin American importers benefited from these facilities in 2000.

138. Mexico's development bank NAFIN (section (4)(iii) below) also offers export support through short-term foreign trade financing programmes, which cover up to 100% of firms' pre-export operations, exports, and input imports under preferential terms and conditions.

139. BANCOMEXT also provides Mexican exporters and banks both pre-export and post-export guarantees and solidary obligations with the purpose of fostering trade activities and

facilitating access to credit. To stimulate commercial banks' participation, BANCOMEXT has implemented pre-export guarantee schemes that protect banks in case of default; coverage ranges from 50% to 70% of the value of exports. Post-export guarantee programmes cover various categories of post-export risk, such as political risk on loans extended by Mexican banks or to Mexican exporters; coverage of up to 90% of the total value of such financing is granted. BANCOMEXT's underwritten export guarantees, solidary obligations and insurance for 2000 amounted to US\$253 million.

140. Export guarantee facilities are linked to minimum national-content requirements.

**(xi) Export promotion and marketing assistance**

141. Export promotion activities are carried out by private organizations and the public sector, the latter mainly through the Department of Economy and BANCOMEXT. The Joint Commission for Export Promotion (COMPEX) coordinates and undertakes export promotion activities. The Commission, headed by the Department of Economy, is composed of representatives from other departments, BANCOMEXT, and from the private sector.

142. Since 1995, COMPEX has adopted a strategy focusing on micro, small and medium-size enterprises, strengthening its international programmes, and encouraging an export culture. COMPEX also consolidates public and private export promotion projects through the National Export Guidance System (SNOE), providing information to businesses through 90 export guidance offices throughout the country.

143. In addition to the programmes handled by the Department of Economy, BANCOMEXT provides assistance to small and medium-size firms in the export chain to identify overseas market opportunities, set up meetings with potential customers and participate in international fairs. It also offers specialized training, counselling, and technical assistance.

144. Various Mexican States also maintain export promotion programmes.<sup>60</sup>

**(xii) Measures applied in third markets**

145. The Mexican authorities noted that Mexican exports were facing various trade defence measures, imposed mainly by Argentina, Brazil, and the United States. In December 2001, these measures included 21 anti-dumping duties, three price undertaking, and two countervailing duties; they affected mainly steel products, polyvinyl, and cement. Mexico also raised concerns with respect to the application of allegedly unjustified TBT measures affecting notably its food and beverages exports to the European Union and the United States.

**(4) MEASURES AFFECTING PRODUCTION AND TRADE**

**(i) Competition policy**

146. Since the establishment of the Federal Competition Commission (CFC) in 1993, competition policy has become an important policy tool to protect the competitive process in Mexico by ensuring the efficient functioning of the market mechanism. The authorities consider that Mexico's competition policy complements trade liberalization, privatization, and regulatory reform. A major objective of that policy is to prevent official trade barriers from being replaced by private obstacles

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<sup>60</sup> States with specific export promotion programmes include: Baja California, Durango, Morelos, Puebla, and Veracruz.

after trade liberalization; together with regulatory reform, it should also prevent privatization from transforming public monopolies into private monopolies, and limit the abuse of natural monopolies.

147. The Economic Competition Law (LFCE) entered into effect in 1993; the Regulations to the LFCE (RLFCE) were published in the *Official Journal* in 1998. The Regulations define enforcement-related matters such as substantial market power, monopolistic practices, and relevant market, as well as proceedings criteria. Mexico's competition law and policy were presented to the WTO Working Group on the Interaction between Trade and Competition in late 1997.<sup>61</sup> A comprehensive review of Mexico's competition laws and policies was conducted by the OECD in 1999, with an update in June 2001.<sup>62</sup>

148. The LFCE is based on Article 28 of the Mexican Constitution, which prohibits monopolies and restrictions to free competition of any kind. The Federal Competition Commission (CFC) was created as an autonomous body in charge of applying the LFCE. The CFC is empowered to conduct investigations, issue administrative rulings, and impose remedies to anti-competitive market practices. The CFC is composed of five commissioners, appointed for ten years by the President of Mexico. Proceedings may be initiated ex officio or at the request of an interested party.

149. Implementation of the LFCE comprises three main elements: the prohibition of monopolistic practices; the prohibition of official barriers to interstate trade; and merger control. These elements apply to practically all areas of economic activity within the Mexican territory, and no distinction is made between national and foreign, or public and private economic agents.

150. The only monopoly areas explicitly not subject to the LFCE are: legally constituted worker's associations; copyright and patent holders; export trade associations that do not sell or distribute their products in Mexico; and strategic areas constitutionally reserved to the State.<sup>63</sup> The authorities noted that according to the LFCE, even these exclusions from the monopoly prohibition do not apply in cases of anti-competitive conduct and business combinations. As a result, state companies operating in strategic areas are also compelled to refrain from anti-competitive behaviour carried out in related markets.

151. As noted, the LFCE applies to all areas of economic activities, including those subject to specific sectoral regulations. For several such sectors, specific regulatory agencies have been established, including: the federal telecommunications commission (COFETEL); the energy regulatory commission (CRE); and the national banking and securities commission (CNBV).

152. The LFCE forbids absolute and relative monopolistic practices. Absolute monopolistic practices are acts of collusion between competitors to fix prices or output, divide markets or rig bids. To prove their existence the CFC needs only to demonstrate that the practice effectively occurred; no determination of substantial market power is required as it is deemed that these acts always harm competition and are forbidden per se. The LFCE also explicitly forbids information exchange as an absolute practice whenever the object or effect of the exchange is to fix, increase or manipulate prices. By contrast, relative monopolistic practices are evaluated under a rule-of-reason approach. In order for these practices to be in violation of the LFCE, it must be determined that they unduly displace, or intend to displace, competitors from the market, and that the presumed responsible party has substantial power in the relevant market.

<sup>61</sup> WTO document WT/WGTCP/W/54, 8 December 1997.

<sup>62</sup> OECD (1999a).

<sup>63</sup> Strategic areas constitutionally reserved to the State are postal services; telegraphs and radio telegraphy; extraction of petroleum and other hydrocarbons; basic petrochemicals; radioactive minerals and generation of nuclear energy; electric power; and minting of coins and issuance of bank notes. Satellite communications and railroads have been removed from the strategic sector list to allow the opening up of these activities.

153. The LFCE contains provisions linked to the Constitutional prohibition on Federal States from restricting the entry or exit of national or foreign merchandise to and from their territories. Thus, although Mexico's federal system gives state governments freedom to enact laws regarding matters not reserved to the Federation, the CFC is empowered to investigate and undertake proceedings seeking to prove the existence of interstate trade barriers so as to declare them void.

154. Between 1997 and 2000, the CFC reviewed 14 cases of alleged barriers imposed by state governments; states involved included Durango, San Luis Potosí, Sinaloa, and Sonora. Many of the measures at issue consisted of restrictions on movement of agricultural products, including beef, pork, and pasteurized milk. The authorities noted that the recommendations issued by the CFC to eliminate barriers to interstate trade have generally been observed by the states involved. Although the CFC is not empowered to sanction failure to abide by its recommendations, affected private parties and the CFC itself may seek a Court order compelling the State to observe the CFC recommendation.

155. The LFCE empowers the CFC to deter mergers and acquisitions that would have anti-competitive objectives or effects. Mergers exceeding certain pre-established thresholds must be notified. The LFCE considers fines of up to 225,000 times minimum daily wage for the Federal District (some US\$4.40 in mid 2001) for participation in a prohibited concentration, and a fine up to 100,000 times such wage for failure to notify a concentration to the CFC.

156. The CFC plays also an important role in competition advocacy. The LFCE empowers the CFC to issue opinions on existing policies and legislation, and on modifications thereof, implemented by other government entities. In addition, some sectoral laws include provisions that allow the CFC to determine whether effective competition exists in a certain market, or whether certain firms have substantial market power. Such a determination may trigger price and other types of regulation. The CFC participates in the inter-departmental commissions that oversee privatizations and regulatory reform. The CFC has the power to veto participants in privatization processes when the acquiring company can place the process of competition at risk.

157. As a Member of the inter-departmental Foreign Trade Commission, the CFC follows anti-dumping and countervailing duty decisions; on several occasions the CFC has raised concerns on the effects of AD and CV duties on domestic competition, although the CFC can not block decisions since it has no power of veto.

158. The CFC has coordinated with competition authorities in other countries to exchange experiences and apply techniques of competition analysis in the context of international trade. This has led to the inclusion of competition policy provisions in the free-trade agreements with Chile, Colombia and Venezuela, the European Free Trade Association, the European Union, and Israel. Additionally, the CFC has bilateral cooperation agreements on competition with Canada and the United States. The Mexican authorities expected to negotiate agreements with Brazil and Korea in the near future.

159. The CFC has given special attention to rooting out collusion schemes that prevent the benefits of economic competition and of the market economy from reaching consumers. In that sense, the Regulations to the LFCE establish that a price violation is presumed when: business chambers or associations issue price instructions or recommendations; competitors maintain sales prices for tradeable goods or services significantly higher or lower than their international reference price; and competitors establish the same maximum or minimum prices for a good or service, or adhere to sales or purchase prices for goods or services as set by a business association or chamber or any competitor.<sup>64</sup>

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<sup>64</sup> Article 5 of the Regulations to the LFCE, published on 4 March 1998.

160. CFC activities related to regulated sectors include declarations on competition matters whenever sector-specific legal provisions expressly foresee that the CFC must issue a resolution on such matters. This mainly concerns requirements for a regulator to impose tariff regulation, as is the case of airport services, telecommunications, and LPG distribution. The CFC may veto participants in privatization processes when the acquiring company can place competition at risk. It may also issue opinions on applications presented by private parties to regulatory agencies and the CFC to obtain or transfer permits or concessions that are not subject to a public auction process. This applies whenever sector-specific legal provisions expressly foresee that the CFC must issue an opinion, as is the case of natural and liquid petroleum gas related activities.

161. The CFC has played an important role in ensuring that concessions for the provision of public services are granted under conditions of equity and preserve competition. In particular, the CFC has taken part in the awarding of concessions at national ports, in bidding for the radio spectrum, and in the granting of permits for the distribution of natural gas.

162. Between January 1997 and December 2000, the CFC processed 1,994 files, including mergers, acquisitions, privatizations, monopolistic practices, other restrictions to competition, and consultations; 1,855 were concluded. Monopolistic practices and other restrictions to competition accounted for 440 cases, and merger cases for 1,004. Of the 934 decisions issued on mergers 796 cases were approved, 30 cases were approved conditionally, and 9 were blocked; the other 99 cases relate to complaints withdrawn or dismissed, and ex officio investigations where no violations were detected. During the period, 540 cases were related to concessions, permits, and privatizations; and 15 investigations regarding state-owned companies were reviewed (Table III.8).

## **(ii) Marketing and pricing arrangements**

163. The LFCE empowers the Department of Economy to set the maximum price of products and services considered essential for the domestic economy or for mass consumption.<sup>65</sup> For this purpose, the Department is also authorized to agree or coordinate the necessary actions with the producers and distributors concerned. Such behaviour is not deemed a violation of the LFCE, although the law establishes that the Department must try to minimize its effects on competition and free market participation. The Mexican authorities indicated that, congruent with Mexico's price liberalization policy, price controls under this provision have been eliminated progressively. The controls on cornflour and corn tortillas were eliminated on 31 December 1998; since then the only product subject to price controls under these provisions has been liquid petroleum gas.<sup>66</sup>

164. The agency responsible for the inspection and surveillance of maximum prices determined pursuant to the Article 7 of the LFCE is the Federal Consumer Protection Agency (PROFECO), in coordination with the Department of Economy. PROFECO's powers include the monitoring and verification of compliance with prices agreed, fixed, established, registered or authorized by the Department of Economy, and coordinating price inspection with other legally empowered agencies in order to protect consumer interests effectively and to avoid duplication of functions.

165. Pharmaceuticals remain subject to an official price regime, although the Department of Economy and the pharmaceutical industry, represented by the national chamber of the pharmaceutical industry (CANIFARMA), have an agreement that allows pharmaceutical firms to modify the price of their products according to the evolution of their costs of production. However, in the context of this Review, the Mexican authorities noted that this regime was in practice no longer applied.

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<sup>65</sup> Article 7 of the LFCE.

<sup>66</sup> The Accord eliminating price controls on cornflour and tortillas was published in the *Official Journal* on 31 December 1998; the Accord establishing maximum price for liquid petroleum gas and related distribution services was published on the *Official Journal* on 28 September 2001.

Table III.8  
CFC enforcement activity, 1997-00<sup>a</sup>

	1997	1998	1999	2000
<b>Horizontal agreements</b>	<b>8</b>	<b>7</b>	<b>4</b>	<b>6</b>
Sanctions or orders sought	7	5	2	3
Orders or pecuniary sanctions imposed	6	18	0	7
Total pecuniary sanctions imposed (U.S. dollars) <sup>b</sup>	115,067	141,647	0	160,329
<b>Vertical agreements</b>	<b>40</b>	<b>38</b>	<b>35</b>	<b>54</b>
Sanctions or orders sought	2	2	5	5
Orders or pecuniary sanctions imposed	1	12	7	8
Total pecuniary sanctions imposed (U.S. dollars) <sup>b</sup>	278,673	213,443	467,088	7,374
<b>Merger<sup>c</sup></b>	<b>372</b>	<b>358</b>	<b>341</b>	<b>375</b>
Sanctions or orders sought	5	13	13	31
Orders or pecuniary sanctions imposed	17	12	20	18
Total pecuniary sanctions imposed (U.S. dollars) <sup>b</sup>	188,461	290,108	311,732	300,786
<b>Interstate trade barriers</b>	<b>4</b>	<b>6</b>	<b>2</b>	<b>3</b>
Sanctions or orders sought <sup>d</sup>	4	5	2	3
Orders or pecuniary sanctions imposed	0	0	0	0
Total pecuniary sanctions imposed <sup>b</sup>	0	0	0	0

a Cases solved.

b Data calculated using the average exchange rate for each year.

c Includes privatizations, licences, and permits.

d Recommendation to the corresponding authorities.

Source: Data provided by the Mexican authorities.

166. All gasoline, diesel, other petroleum-based fuels, and petrochemicals are subject to official prices administered by the Department of the Treasury and Public Credit. Tariffs for public services, including public transport, public water supply, and professional services such as notary public services, are set at the State or local level.

167. In addition, as provided for in specific sectoral regulations, some services activities are subject to price registration requirements. This is the case in particular for telephony, railroad, airport and seaport services (Chapter IV(5)).

### (iii) Incentives

#### (a) Overview

168. Mexico has notified the Programme of Temporary Imports to Produce Export Goods (PITEX, section (3)(vii)) under Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.<sup>67</sup> Agricultural support measures are discussed in Chapter IV(2).

169. Mexico operates numerous support programmes, which are applied in almost every sector. In general, support is provided through financing facilities or in the form of tax concessions; other schemes include advice, technical cooperation, training, and consulting services. Transparency concerning support programmes has been greatly enhanced through an inventory of such programmes compiled and publicly released by the inter-departmental commission for industrial policy (CIPi).<sup>68</sup> The inventory does not include various programmes maintained by the Department of Agriculture.

<sup>67</sup> WTO document G/SCM/N/38/MEX, 17 November 1998.

<sup>68</sup> Information on industrial policy programmes is available at: <http://www.cipi.gob.mx/>.

170. The CIPI was created in May 1996 to coordinate and evaluate the support programmes maintained by the different government entities.<sup>69</sup> The CIPI is chaired by the Minister of Economy, and incorporates the Ministers of Agriculture, Comptroller General and Administrative Development, Environment and Natural Resources, Labor and Social Provision, Public Education, Social Development, Tourism, and Treasury and Public Credit, as well as the directors of Mexico's two major development banks (BANCOMEXT and NAFIN) and of the National Council for Science and Technology (CONACYT).

171. The CIPI's main task has been to inventory all federal government measures and programmes aimed at supporting productive sectors, classifying each of them by institution and type of measure. As at May 2001, the CIPI listed a total of 134 different programmes; in terms of number of programmes, the main federal entities involved in industrial policy programmes were the Department of Economy, BANCOMEXT and NAFIN, and the Department of the Treasury and Public Credit (Table AIII.3). The CIPI is also charged with evaluating Mexico's industrial policy programmes; so far no global assessment of the impact of these programmes or estimates of the level of support provided have been undertaken. Explicit support estimates would further increase the transparency of industrial policy programmes and fiscal management.

172. In addition to the programmes maintained at the federal level, most Mexican states have established mechanisms to foster economic activities; however the financial resources involved appear limited. In general, state support consists of financial resources channelled to targeted economic agents (mainly micro or small enterprises) through trust funds. Support may also take the form of fiscal incentives. Selected state industrial programmes are described in Table AIII.4.

#### *Fiscal incentives*

173. Mexico maintains several fiscal measures to promote economic activities. Tax concession schemes for export promotion are described in section (3)(vi). In October 2000, a new scheme for sectoral promotion (PROSEC) was established to mitigate the effects of the changes introduced to the PITEX and *maquila* programmes required under Article 303 of the NAFTA.<sup>70</sup>

174. The PROSEC applies to firms that produce finished goods covered in a specific sectoral promotion programme and imported inputs listed under this specific programme. As at September 2001, 22 sectoral programmes covered the following activities: electrical; electronic; furniture; toys, games and sporting goods; footwear; mining and metallurgy; capital goods; photographic; chemical; plastic and rubber manufactures; iron and steel; medical equipment, medicines and pharmaceutical products; transportation, except for the automotive industry; paper and carton; wood; leather and furs; agricultural machinery; automotive and autoparts; textiles and apparel; chocolate, candy and similar products; coffee; and other industries. PROSEC benefits consist of reduced import duties on specified inputs.

175. Other tax concessions include: sector-specific concessions, for instance in favour of the cinematography industry, air and maritime transport, and agriculture, fishing and forestry; and measures to promote technological development or more environmentally friendly equipment. A few of these fiscal advantages are contingent on meeting national-content requirements (e.g. exemption of

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<sup>69</sup> The Accord establishing the CIPI was published in the *Official Journal* on 27 May 1996; Internal Regulations of the CIPI were published on 30 September 1998.

<sup>70</sup> PROSEC was established through a Decree published in the *Official Journal* on 9 May 2000 and amended through Decrees published on 30 October 2000, 31 December 2000, 1 March 2001, 18 May 2001, and 7 August 2001.

the tax on vehicles), or are granted only if no domestic substitute is available (duty-free import of decontaminating equipment) (Table III.9).

**Table III.9**  
**Fiscal incentives to promote economic activities**

Institution	Name of the programme	Description
Department of Economy	Export promotion programmes: ECEX, PITEX, ALTEX, drawback, and maquila	Programmes described in section (3)(vii)
	Sectoral promotion programmes (PROSEC)	Partial or full import duty exemption for specific intermediary imports in specific industries
Department of the Environment and Natural Resources (SEMARNAT)	Duty-free import of decontaminating equipment	Exemption applies only if the equipment to be imported could not be substituted by equipment produced, or that could be produced, in Mexico
	Accelerated depreciation of equipment for preventing or controlling pollution	Fiscal incentives for the acquisition of specific equipment authorized by the National Institute of Ecology
Department of the Treasury and Public Credit (SHCP)	Fiscal incentives to the agricultural and forestry sectors	Investments deductible from the asset tax due
	Fiscal incentives to primary and agro-industrial sectors	Firms involved in primary activities benefit from a 50% reduction of the income tax; those that, in addition, process or commercialize their products obtain a reduction of 75%
	Fiscal incentives for the asset tax	Exemption of income tax
	Fiscal incentives for air and maritime transport	Firms domiciled in Mexico involved in air or maritime transport benefit from different incentives related to the asset tax
	Technological development	Income tax deduction
	Exemption of the tax on vehicles (ISAN)	Tax exemption for vehicles meeting statutory conditions, including having a domestically produced engine
	Fiscal incentives for taxpayers under contract with public entities	Tax incentives on infrastructure investments
	Fiscal incentives for agricultural, fishing and mining sectors	Various tax exemptions on the consumption of diesel
	Exemption of the asset tax	Exemption granted to contributors whose annual income is lower than Mex\$13,500,000
	Fiscal incentives for the cinematographic industry	Benefits are granted to: firms producing, promoting or distributing Mexican films; promoters of foreign films exhibited for non-commercial purposes; persons who reproduce, subtitle or realize dubbing of foreign films in Mexico; and Mexican producers who participate in international festivals

Source: CIPI, Descripción de los programas de apoyo empresarial del Gobierno Federal [Online]. Available at: [http://www.cipi.gob.mx/desc\\_prog\\_apoyo.pdf](http://www.cipi.gob.mx/desc_prog_apoyo.pdf) [1 October 2001].

### *Financing facilities*

176. There is a relatively large number of official credit programmes, with special financing programmes available in particular through Mexico's development banks, notably BANCOMEXT and NAFIN and various specific trusts (Table AIII.5). These resources are directed primarily to micro, small and medium-sized industrial enterprises. The funds involve are significant: in march 2001, the total credit granted by Mexico's development banks represented 43% of the total credit granted by commercial banks.<sup>71</sup>

177. Most official credit schemes would appear to set interest rates at levels that ensure cost recovery, yet offer implicit assistance by charging interest at below-market rates. Quantifying any

<sup>71</sup> CNBV (2001a).



such assistance is difficult as market interest rates reflect not only the cost of money to lending institutions but also the costs and risks associated with specific debtors and projects. Resources channelled through trust funds, in particular at the state level, generally take the form of soft loans and thus also involve a degree of assistance.

*Other programmes*

178. Federal entities have also established a multitude of training, technical assistance, and consulting services programmes targeting specific economic sectors or agents. These programmes cover a broad range of areas, including external trade-related activities, basic training for managers, technical assistance for technological improvement, and quality and standards promotion (Table AIII.6). Federal entities also provide advice services, in particular for export promotion (section (3)(xi)) and Table AIII.7). Other industrial promotion mechanisms include programmes for developing productions chains, industrial linkages, and strategic alliances (Table AIII.8).

**(iv) Production controls**

179. The authorities indicated that production of energy, basic petrochemicals, and agricultural products is not subject to controls. However, in practice production levels for crude petroleum are decided by the Government. Petroleum production is set at levels congruent with the general principles of Mexico's economic policy.

**(v) Role of state-owned enterprises**

180. Under the WTO notification requirements, the authorities have indicated that Mexico has no state-trading enterprises as defined by Article XVII of the GATT 1994.<sup>72</sup>

181. Articles 27 and 28 of the Constitution define various areas considered strategic and reserved exclusively to the State. Under these provisions, certain hydrocarbons and basic petrochemical-related activities, as well as the public distribution of electricity, have been reserved for the national petroleum and electricity companies, PEMEX and the CFE. In 2000, PEMEX imported petroleum products for a total value of US\$4,700 million (of which US\$366 million corresponded to natural gas, and US\$72 million to petrochemicals); PEMEX did not import crude petroleum.

182. State involvement in the production and supply of goods and non-public services has continued to decline. Most of the divestitures concluded between 1997 and 1999 affected entities in the transport and communications sectors: in 1997, the most important transactions were the privatization of the North-eastern and North-Pacific railways and the Satélites Mexicanos, for a total value of some US\$2,570 million (96% of total value of the divestiture operations for 1997); for 1998, the main divestitures included the South-eastern railway, the South-eastern Airport Group (including nine airports and an airport services firm), the PIPSA group (four firms producing or importing paper), and various entities producing or distributing natural gas, for a total value of US\$865 million (86% of the 1998 operations); for 1999, the privatization of the Pacific Airport Group amounted to US\$256 million (94% of the total). As a result, the number of parastatal federal entities fell from 229 at the end of 1997 to 202 at the end of 2000. Entities actually in operation at the end of 2000 comprised 74 decentralized organizations, 80 enterprises with majority state participation and 21 public trusts.

183. No divestitures were made in 2000 and 2001.

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<sup>72</sup> WTO document G/STR/N/6/MEX, 31 July 2000.

**(vi) Government procurement**

184. Mexico was not a signatory to the GATT Government Procurement Agreement and has not signed the WTO Plurilateral Agreement on Government Procurement.

185. In 1999, government procurement amounted to some Mex\$228.3 billion (US\$23.8 billion), of which 31% corresponded to goods, 44% to services, and 25% to construction services.<sup>73</sup> The federal entities that stand out for the number of contracts and volume of procurement are the Department of Communications and Transport, the Department of Public Education, the Department of Agriculture, Rural Development, Fisheries and Food, the Department of the Treasury and Public Credit, and the Department of Health. The major parastatal entities in terms of number of contracts and volume of procurement are the national petroleum company (PEMEX), the Federal Commission for Electricity (CFE), and health-related entities (the IMSS and the ISSSTE). In 1999, government procurement by public enterprises accounted for some 60% of total government procurement.

186. A wide variety of products were purchased, from consumption goods (such as food, office supplies, clothing, footwear, and medicines) to investment goods (oil-drilling equipment, sea platforms, electric power plant equipment, and power transmission towers). The services most often purchased are building, cleaning and maintenance of plants, machinery and equipment; surveillance; and services for system analysis, design, programming, and maintenance. Among the products and services more frequently acquired by PEMEX are: tubes, pipes, integral oil process, liquid and gaseous nitrogen, gas additives, gas analysers, liquid chlorine, and tow-truck repairs; the CFE buys transformers, cable, replacement parts for power plants, concrete and wooden posts, fuel, and charcoal; the Department of Communications and Transport purchases block signal systems, motor vehicles, architecture and engineering services for toll-road constructions, as well as automatic data processing equipment; and the IMSS mainly procures medicines, medical supplies, and laboratory materials.

187. The basic legal principles for government procurement in Mexico are defined in Article 134 of the Constitution, which establishes that the public purchase of goods and services must, in general, be undertaken through public tenders involving sealed offers. The Law on Public Procurement and Works implementing this provision was abrogated in 2000, and replaced by two new statutes; the Law for Acquisitions, Leases and Services (LAASSP), and the Law for Public Works (LOPSRM). In addition specific chapters on government procurement were included in the FTAs concluded by Mexico. The new laws acknowledge and give priority to Mexico's procurement obligations under the FTAs. Regulations to the LAASSP were issued on 20 August 2001.

188. There is no central procurement office in Mexico: federal government agencies, state corporations and federal states are autonomous in the planning and carrying out public purchases. Responsibility for implementing government procurement legislation is shared by various federal entities. The Department of the Comptroller General and Administrative Development (SECODAM) is responsible for establishing and promoting the necessary standards to ensure that government procurement takes place under procedures that promote equality of conditions for all participants, as well as transparency in contract awards. The Department of the Treasury and Public Credit authorizes the budget for the Annual Acquisitions Program of Goods, Leases and Services (PAAAS) and the Annual Public Works Program (PAOP) presented by the entities and enterprises each year, in order to establish their procurement requirements. The Department of Economy receives the PAAAS and PAOP from the Federal Public Administration, compiles them and presents them to the business sector and promotes the participation of small business in government procurement.<sup>74</sup>

<sup>73</sup> Department of Economy (2001b). The authorities noted that these figures corresponded to purchases from the public and private sector.

<sup>74</sup> The PAAAS and PAOP are available online at: <http://www.economia-paasop-gob.mx/>.

189. As provided for in the law, procurement generally takes place through open tendering procedures following public notices. In the process of open tendering, any supplier who fulfils all the requirements specified in the invitation to participate and the tender documentation may submit a bid. The process of open tendering may be: national, in which case only Mexicans can participate, and the goods to be procured must be produced in Mexico and contain in general at least 50% local content; or international, in which case foreigners and Mexicans may participate. International tenders take place only if it is mandatory under an FTA signed by Mexico; when the procurement is financed with resources from international financial institutions; when national suppliers are unable to fulfil the tendering requirements; or the price is appropriate. In any case, participation of foreigners from countries that are not part of an FTA or that do not grant reciprocal treatment to Mexican suppliers may be denied. The law also establishes a price preference margin for domestic goods in international tendering. This preference margin does not affect the obligations established by Mexico in the FTAs.

190. The authorities noted that information was not available on the proportion of government procurement that took place through national or international bids though a project is being developed to establish a mechanism that would allow them to obtain this information.

191. Currently, invitations to participate are advertised through a notice published in the *Official Journal*; in addition the SECODAM disseminates information on Internet.<sup>75</sup> Goods and services acquired, leased or contracted by federal entities must comply with technical specifications in accordance with the LAASSP and Mexico's FTAs.

192. Bid challenges are resolved by the SECODAM; challenges may be made by persons or firms that consider their rights were affected, either by decision of award, or at any stage of tendering.<sup>76</sup> Resolutions by SECODAM may be appealed under the Federal Law of Administrative Procedure.

193. Under the NAFTA, which covers only purchasing by the Federal Government, both PEMEX and the CFE were required to open up 50% of their covered procurement contracts to competition from Canadian and U.S. companies, subject to certain exclusions; 70% of PEMEX and CFE procurement contracts must be opened after eight years, and after ten years all procurement restrictions must be eliminated. Additionally, Mexico may set aside contracts with a global annual value of up to US\$1 billion from the obligations of the NAFTA procurement; from 2003, the value of set-asides will increase to US\$1.2 billion.

194. The LAASSP and LOPSRM do not apply to procurement carried out by federal states under their own budget. Government procurement at the state level is subject to specific state provisions. Participation in state-level procurement typically requires registration in the specific state registry. In some cases state provisions establish preferences for local suppliers. For instance, government procurement provisions in the State of Mexico establish a preferential margin of up to 5% of the value of the purchased goods or services for suppliers certified as enterprises of the State of Mexico (such certificates are granted according to Law for Economic Promotion in the State of Mexico); in addition, state provisions establish that purchases of goods or services from outside of the State of Mexico may be made only when: the purchasing entity concludes, after investigation, that the goods (or services) could not be supplied in the State in the required quality or volume; the prices offered outside the State appear appropriate; or as required by law or international treaties.<sup>77</sup>

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<sup>75</sup> Available at: <http://www.compranet.gob.mx/>.

<sup>76</sup> A description of bid challenges resolved by SECODAM is available online at: <http://www.compranet.gob.mx/>.

<sup>77</sup> Articles 34 and 35 of the Procurement Law of the State of Mexico. Mexican States' legislation on government procurement is available online at: <http://www.compranet.gob.mx>.

**(vii) Local-content schemes**

195. Mexico maintains several mechanisms establishing local-content requirements: general local-content provisions are maintained for participation in domestic public tendering (section (vi)); sector-specific local-content requirements are maintained for motor vehicles, to promote the use of parts and components produced by the domestic automotive parts industry (section (viii)).

**(viii) Trade-related investment measures (TRIMs)**

196. Pursuant to Decision G/L/463 adopted by the Council for Trade in Goods on 31 July 2001, Mexico requested an additional extension of the transition period for the elimination of the trade-related investment measures (TRIMs) relating to the automotive industry of two years from 1 January 2002.<sup>78</sup> Mexico argued that it was encountering particular difficulties in implementing the provisions of the TRIMs Agreement; the authorities noted that persistent difficulties stem principally from the disruption and uncertainty that would affect the domestic automotive industry if the programme for the gradual phasing out of TRIMs was modified.<sup>79</sup>

197. Provided the additional extension is granted, from 1 January 2004 Mexico shall totally eliminate the national value-added and trade-balance requirements contained in the Decree for the Development and Modernization of the Automotive Industry (of 11 December 1989 and amended on 8 June 1990, 31 May 1995 and 12 February 1998) – hereafter the Auto Decree – and its Regulations (of 30 November 1990).

198. Current legislation establishes that final assemblers and manufacturers of parts and components must be registered with Department of Economy, which is in charge of monitoring compliance with the motor vehicles regime. Under this regime the level of national value-added incorporated in the manufacture in Mexico of automotive vehicles must not be less than 31% in 2001, 30% in 2002, and 29% in 2003.<sup>80</sup> The autoparts manufacturers must comply with a minimum national value-added content of 20%. Final assemblers that began production of automotive vehicles before 1992 benefit from different rules for determining the national value-added to be incorporated from suppliers.

199. The Mexican authorities noted that the effective administration of the Auto Decree has resulted in a substantial integration of domestic providers, as shown by the 45% national value-added incorporated in automotive products in 2001, which was some 14 percentage points higher than the level required in the Decree.<sup>81</sup>

200. A trade-balance requirement contained in the Auto Decree stipulates that final assemblers must maintain a positive foreign exchange balance, which takes into account their exports of assembled vehicles as well as parts and components manufactured by them or purchased from Mexican suppliers. The total value of new vehicles that a final assembler may import is determined by dividing the foreign exchange surplus by a factor set in the Decree. For 2002, this factor is 0.577, which means that for US\$100 of foreign exchange surplus, US\$173 worth of new vehicles may be imported. This factor is to be reduced annually to reach 0.55 in 2003.

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<sup>78</sup> The original notification is contained in WTO document G/TRIMS/N/1/MEX/Rev.1, 10 May 1995; Mexico's request for an extension is reproduced in WTO document G/C/W/293, 31 August 2001.

<sup>79</sup> The Mexican authorities noted that this request for extension does not concern commercial vehicles (trucks and buses), since the measures maintained in this area were eliminated in late 2000.

<sup>80</sup> Articles 7 and Transitory III of the Auto Decree.

<sup>81</sup> Poder Ejecutivo Federal (2001).

201. Imports of vehicles are subject to permits issued by the Department of Economy (section (2)(viii)). In principle, only final assemblers complying with the requirements and conditions established in the Auto Decree may import new vehicles into Mexico. However, the Department of Economy may authorize the importation of new vehicles when the prices, before taxes, set by final assemblers exceeds the corresponding international prices for equivalent vehicles. The authorities noted that this mechanism is applied only in exceptional circumstances; it was used once in 2001. The other exception established in the Auto Decree refers to new-vehicle dealers established in Mexico's northern border strip and free-trade zones in Baja California and parts of Sonora, which may import new vehicles for use in these regions provided they meet a local-content requirement (i.e. they may import up to an amount not in excess of the difference between the value of sales of new vehicles manufactured in Mexico and the value of imports incorporated into such vehicles).

202. The Decree for the Development and Modernization of the Commercial Vehicles Manufacturing Industry (11 December 1989) and its Regulations were abrogated in late 2000.<sup>82</sup> Under this Decree imports of commercial vehicles were subject to local-content requirements, with final assemblers authorized to import new vehicles up to a value equal to the national value-added incorporated in their annual domestic production. The importation of commercial vehicles remains contingent on import permits, which are issued by the Department of Economy provided the imported product has no domestically produced substitute (section (2)(vii)).

**(ix) Adjustment assistance**

203. Mexico does not explicitly provide assistance for industrial adjustment; neither does it maintain programmes offering employment-related services including training, job search allowances or relocation allowances to help workers who are laid-off due to increased foreign competition. However, the international trade liberalization commitments undertaken by Mexico provided for the progressive reduction of trade barriers in sensitive sectors, thus providing an adjustment period. Since its previous Review, Mexico has taken no safeguard measure, either at a global or regional level (section(2)(x)).

**(x) Free-trade zones**

204. Until the end of 1993, five zones had free-trade-zone status, which was granted to certain regions to encourage their economic development and promote increased foreign trade. These zones and the northern border strip benefited until that date from import-tax preferences in the form of tariffs at zero or 5%. A decree of 24 December 1993, amended in 1994, eliminated the five free-trade zones, which were incorporated into a transitional border-region scheme aimed at consolidating those areas into Mexico's general import regime by the end of 2000. The decree listed the specific tariff lines that may be imported duty free for use in industry, construction, fishing, repair or maintenance activities; duty-free status was to be eliminated in stages ending on 31 December 2000, with different schedules for NAFTA-originating and other imports. A decree of 29 December 1995, abrogating earlier legislation on the matter, added a concessional rate of 5% to the duty-free status and introduced a few tariff quotas; the decree maintained different schedules by region, and provisions for a phase-out of concessions by the end of 2000. In 1998, the phasing-out period was extended until 31 December 2002.

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<sup>82</sup> The Accord abrogating the Regulations to the commercial vehicles Decree was published in the *Official Journal* on 11 December 2000.

**(xi) Intellectual property rights and innovation****(a) Legal and institutional framework**

205. Mexico is a member of the World Intellectual Property Organization (WIPO) and a signatory to most international intellectual property right (IPR) agreements (Table AIII.9). Since the previous Review of Mexico, various agreements have entered into force in Mexico, notably the International Convention for the Protection of New Varieties of Plants, the Stockholm Act of the Lisbon Agreement for the Protection of Appellations of Origin, and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

206. Since 1 January 2000, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) applies fully to Mexico, which incorporated the Agreement in its domestic law through the ratification of the Marrakesh Agreement. Under the requirements of the TRIPS Agreement, Mexico has notified to WTO Members its IPR-related laws and regulations, and provided information on its national enforcement system (Table AIII.10). Based on those notifications, the TRIPS Council reviewed Mexico's IPR statutes in 2000.<sup>83</sup>

207. Mexico has also made IPR commitments through the various free-trade agreements (FTAs) it has entered into (Chapter II(4)(ii)). The NAFTA, in particular, provided early impetus for the modernization of Mexico's IPR regime, NAFTA provisions having bound Mexico earlier than multilateral IPR disciplines in the WTO. Although the general IPR objectives are similar in all of Mexico's FTAs, variations occur in the specific provisions or language in each agreement. Thus, for example, under the NAFTA, patent protection is granted for at least 20 years from the date of filing or 17 years from the date of grant, while the FTA with the Northern Triangle (Guatemala, El Salvador, and Honduras) requires that such protection does not expire before 20 years after filing; other FTAs specify the protection period by reference to international agreements rather than explicitly in their text. The recent FTA with the European Union requires Mexico to accede to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure within three years of the FTA's entry in force.

208. Mexico's IPR lead agencies are the Mexican Institute of Industrial Property (IMPI) and the National Copyright Institute (INDAUTOR).<sup>84</sup> Mexico notified to WTO Members the IMPI and the Copyrights General-Directorate (replaced in 1996 by INDAUTOR) as the contact points specified in Article 69 of the TRIPS Agreement.<sup>85</sup>

209. IMPI is an autonomous agency under the aegis of the Department of Economy. The Institute's main responsibilities include to process and grant patents and trade marks, and other titles to protect industrial property rights; resolve questions concerning the application of such rights; investigate possible administrative infractions; act as an arbiter in disputes concerning damages payments for violations; promote technology transfer and the creation and development of industrial inventions; maintain records on inventions published in Mexico and elsewhere; and take part in negotiations in areas under its responsibility. INDAUTOR, under the aegis of the Department of Public Education, is the administrative authority for, among other things, promoting copyrights and related rights, operating the Copyright Public Registry, and promoting the creation of literary and artistic works. The Department of Agriculture is responsible for the registration of new plant varieties.

<sup>83</sup> Questions addressed to Mexico and the corresponding replies in the context of the review are contained in WTO document IP/Q/MEX/1, 14 November 2000.

<sup>84</sup> The websites of the IMPI and INDAUTOR are <http://www.impi.gob.mx/> and <http://www.sep.gob.mx/indautor/>.

<sup>85</sup> WTO document IP/N/3/Rev.5, 6 July 2001.

210. Mexico's main dedicated provisions governing IPRs are largely contained in two laws, as amended, and their regulations: the Industrial Property Law (LPI) of 1991, and the Federal Law on Copyright of 1996 (LFDA). Other IPR-related laws and regulations include the Federal Law on Plant Varieties, the Competition Law, the Customs Law, and various statutes governing administrative, criminal and civil procedures (Table AIII.11). Protection has been broadened since Mexico's previous Review, through various amendments to the legislation, including amendments to the LPI aimed at strengthening enforcement and the protection of lay-out designs of integrated circuits. The Federal Law on Plant Varieties (FLPV) came into effect in October 1996, and the LFDA in March 1997. New regulations under both the LFDA and the FLPV were adopted in 1998.

211. As shown in Table III.10, Mexican legislation covers all major areas referred to in the TRIPS Agreement; in certain areas, including industrial designs, trade marks and copyrights, Mexico grants exclusive rights for periods in excess of the minimum called for in the TRIPS Agreement. In particular, the Federal Law on Copyright expanded protection from 50 to 75 years and introduced a clear-cut distinction between economic and moral rights. It also gives authors inalienable moral rights, including the right to withdraw their work from circulation at any time. These provisions are intended to protect authors against accepting to transfer all rights under disadvantageous terms, but may also lessen the potential value of their exclusive rights, offsetting in part the effect of the longer protection period introduced by the LFDA.

212. The TRIPS Agreement takes no side in the issue of the exhaustion of IPRs, and Mexico has chosen not to restrict the importation of goods put on the market in another country with the consent of their legitimate right holder. This potentially pro-competitive stance appears to have resulted in lower domestic prices for certain consumer products: anecdotal evidence indicates that there exists an active commerce whereby goods are acquired abroad, particularly in the United States, at discounted prices and then imported into Mexico where they compete with goods locally manufactured under licence or imported by an official distributor.<sup>86</sup>

213. Any party may apply to the IMPI for a compulsory licence in cases where for no valid reason a patent is not worked within three years after it was granted or four years after the application was filed, whichever ends later. Importation of a patented item or of a product made with the patented process is sufficient to satisfy the working requirement. The IMPI may also grant public utility licences in emergencies or for national security reasons, when the production or distribution of basic products would otherwise be hindered or their prices increase. The authorities indicated that no compulsory or public utility licences have been applied for nor granted since the entry in force of the LPI.

214. The IMPI may prohibit or regulate the use of trade marks, registered or not, for competition policy considerations; when their use hinders efficient production, distribution or marketing of goods and services; and when in case of national emergency their use obstructs or makes more expensive the production or distribution of basic goods or services. The authorities have noted that, for example, in case of national emergency the use of trade marks for medicines may be prohibited and reference made only to active ingredients so they can be more efficiently distributed.<sup>87</sup> In the context of this review the authorities indicated that the use of trade marks has never been prohibited or regulated.

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<sup>86</sup> Delgado and Goodrich (2000).

<sup>87</sup> WTO document IP/Q/MEX/1, 14 November 2000.

Table III.10

Overview of IPR protection in Mexico, 2001<sup>a</sup>

Subject	Coverage	Duration	Selected exclusions and limitations
Copyright and related rights	Original works susceptible of disclosure or reproduction by any means related to, among other areas, literature, music, drama, dance, photography, architecture, audiovisual arts, radio and television, computer programs, and compilations including data bases Related rights include moral rights as well as performers' and broadcasters' rights No registration is required for protection	Life of the author plus 75 years Unless otherwise specified, the transfer of economic rights is for 5 years, and for more than 15 years only in exceptional circumstances	No violation is deemed to occur when works are used for no direct financial gain, or for educational or research purposes No authorization is required for, among others, the reproduction of current affairs articles unless this is expressly prohibited by the rights holder; partial reproduction for research purposes; the making by individuals, or education or research institutions of a once only, single copy of a work for no financial gain The owner retains the inalienable moral right to withdraw publication rights
Patents <sup>b</sup>	Any invention that is new, resulting from an inventive step and susceptible of industrial application	20 years from the date of filing, non-renewable	Biological processes for the production and propagation of plants and animals; biological and genetic material found in nature; animal breed; the human body and its living parts; plant varieties; computer programs, schemes to present information Compulsory licences may be granted if a patent is not exploited within three years after the grant or four years after filing unless it has been exploited, including through importation Public utility licences may be granted for the use of a patent in case of emergency or national security
Industrial designs <sup>b</sup>	Subject to registration, designs that are novel and susceptible of industrial application Includes ornamental industrial drawings	15 years from the date of filing, non-renewable	
Utility models <sup>b</sup>	Subject to registration, objects, utensils, apparatus and tools that offer a different function from their integrating parts	10 years from the date of filing, non-renewable	
Layout designs of integrated circuits <sup>b</sup>	Subject to registration, defined integrated circuits and layout designs	10 years from the date of filing, non-renewable	Layout designs in commercial use for more than two years
Trade marks <sup>b</sup>	Subject to registration, all visible signs that differentiate products or services from similar items in the market Includes denominations and commercial names	10 years from the date of filing, renewable. In general, a trade mark's registration expires if not used during three consecutive years	Geographic denominations, names that may mislead in relation to origin, denominations similar to trade marks deemed to be well known in Mexico The use of trade marks may be regulated by the authorities for, among others, competition policy reasons or in case of national emergencies
Geographical indications <sup>b</sup>	Subject to a declaration from the authorities, denominations of origin, defined as the name of a region serving to designate a product originating therein and whose characteristics derive only from the geographic setting	As long as the initial conditions for protection prevail	The State holds title to denominations of origin, which may be used only with its authorization
Undisclosed information <sup>b</sup>	Information with industrial or commercial application that conveys a competitive advantage, kept in confidence and protected as such in documents or other media	Indefinitely	
New plant varieties	New, distinctive, stable and homogeneous plant varieties Foreign applications from UPOV members will be accorded a one-year priority right	18 years for perennial plants (including forest and fruit trees, vines); 15 years for others	No consent from the right holder is required for, among other uses, research or consumption for the benefit of the grower

<sup>a</sup> For a rigorous description of IPR protection in Mexico, direct reference should be made to the relevant statutes. (See Table AIII.11).

<sup>b</sup> No protection is granted when this may be contrary to public order, morality or contravene other legal provisions.

Source: WTO Secretariat.



## (b) IPR and innovation-related activities

215. Among other objectives, the Industrial Property Law and the Federal Law on Copyright seek to promote, respectively, inventive activities with industrial applications and Mexico's cultural heritage. IMPI's technology-related registration activities increased substantially over 1996-00, in both applications and grants of patents, utility models, industrial designs and trade marks. During that period, the annual number of patent applications almost doubled, a trend accompanied by a sharp increase in the importance of Patent Cooperation Treaty (PCT) applications (Table III.11). The number of patents granted also increased, but at a slower pace. Greater protection to IPRs may have been an important positive factor in the large increases in Mexico's trade and investment flows, two pillars of its mostly good economic performance in recent years (Chapter I).

**Table III.11**  
**Patents: applications and patents granted, by nationality and technology field, 1991-00**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Patent applications</b>	5,271	7,695	8,212	9,944	5,393	6,751	10,531	10,893	12,110	13,061
Traditional applications	5,271	7,695	8,212	9,944	..	4,193	3,962	3,705	3,503	3,399
PCT applications	n.a.	n.a.	n.a.	n.a.	..	2,558	6,569	7,188	8,607	9,662
<b>Patents granted</b>	1,360	3,160	6,183	4,367	3,538	3,186	3,944	3,219	3,899	5,519
by nationality of holder										
United States	801	2,567	3,714	2,367	2,198	2,084	2,873	2,060	2,324	3,158
Germany	95	51	458	395	205	214	227	215	351	525
France	49	26	251	210	162	108	120	117	209	333
Japan	67	52	220	175	123	101	98	102	134	243
Switzerland	34	36	256	228	109	101	112	101	152	228
United Kingdom	44	28	206	175	136	70	90	114	124	167
Mexico	129	268	343	288	148	116	112	141	120	118
Italy	30	22	138	99	83	51	44	56	59	118
Other countries	111	110	597	430	374	341	268	313	426	629
by technology field										
Consumer goods	139	378	771	638	527	515	660	496	750	1,602
Chemistry and metallurgy	436	1,195	2,111	1,511	1,150	931	1,169	863	1,191	1,379
Various industrial techniques	315	757	1,492	915	716	667	835	691	815	1,337
Electricity	69	218	485	369	381	373	439	437	385	447
Mechanics, lighting, heating, blasting, armament	224	272	550	350	310	271	336	222	297	296
Physics	63	171	388	275	276	255	322	286	282	266
Fixed constructions	71	107	206	205	103	94	96	140	81	104
Textiles and paper	43	62	180	104	75	80	87	84	98	88

n.a. Not applicable.

.. Not available.

Source: WTO Secretariat, based on IMPI, *Informe de Actividades 2000*, (available at <http://www.impi.gob.mx/>).

216. Between 1996 and 2000, patents were granted mostly on inventions related to chemistry and metallurgy (28% of all patents), various industrial techniques (22%), and consumer goods (20%). These percentages also characterize patents granted by nationality of holder, with certain exceptions such as the greater weight of patents for chemistry and metallurgy inventions held by German, Italian, Swiss and United Kingdom holders, or for consumer goods by French holders.

217. Despite the overall increase in patents issued, the output of inventive activity in Mexico appears to have stagnated in recent years. Indeed, over the 1990s the number of patents issued to Mexicans applicants remained largely unchanged, amounting to an average of 3.2% of the total (this may underestimate recent output given the substantial lags between inventing and patenting). The Instituto Mexicano del Petróleo is the domestic institution with the most consistent record of patenting success, with intermittent participation by higher education institutions. In general, however, most

Mexican patent holders are individual inventors; this characteristic, seen in many developing countries, suggests a national innovation system dependent on personal creativity rather than an institutionalized technological innovation process.

218. The number of applications for utility model registrations fell between 1996 and 2000 (Table III.12). Mexican inventors, mostly individuals, were responsible for most of the applications, supporting the view that utility models are well suited to protect the simpler innovations more easily accessible to individual inventors and small and medium-size firms. Nevertheless, the number of models granted remains modest. In contrast, applications and grants for industrial designs increased during the same period, but with Mexican holders accounting for only a small percentage of the total.

**Table III.12**  
**Other industrial property: applications and registrations granted, 1991-00**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Utility models<sup>a</sup></b>										
Applications	49	203	342	419	413	507	400	379	370	375
Models granted	n.a.	38	99	140	220	20	64	83	90	106
to Mexican applicants	n.a.	33	74	95	160	16	54	68	62	83
to foreign applicants	n.a.	5	25	45	60	4	10	15	28	23
<b>Industrial designs</b>										
Applications	621	846	1,001	1,264	1,267	1,310	1,279	1,306	1,584	1,900
Designs granted	732	1,030	617	1,171	439	574	603	654	1,153	1,106
to Mexican applicants	200	453	203	359	103	126	139	81	273	260
to foreign applicants	532	577	414	812	336	448	464	573	880	846
<b>Trade marks</b>										
Applications	26,279	27,572	28,920	33,803	30,201	32,336	35,426	40,042	46,156	59,721
Trade marks granted	14,237	25,467	20,893	33,988	29,954	25,983	27,821	28,362	40,321	45,483
to Mexican applicants	8,026	13,974	11,557	17,985	15,229	14,562	16,761	16,775	23,242	26,568
to foreign applicants	6,211	11,493	9,336	16,003	14,725	11,421	11,060	11,587	17,079	18,915

n.a. Not applicable.

a Available since the entry in force of the LPI in June 1991, see Table AIII.11.

Source: WTO Secretariat based on IMPI, Informe de Actividades 2000, (available at <http://www.impi.gob.mx/>).

219. Trade marks represent a particularly active and rapidly growing area of IPR activity in Mexico, largely on account of growing interest by pharmaceutical firms. Almost 60% of trade mark registrations granted during 1996-00 were issued to Mexican applicants; other registrations went mostly to U.S. applicants, followed far behind by German, French, and Swiss nationals.

220. The relatively low number of patents and utility models applied for and held by Mexican inventors suggests a national system of technological innovation still in the early stages of development. Efforts to address this issue began several years ago, notably through the establishment of the National Council for Science and Technology (CONACYT) in 1970. The Council aims to foster Mexico's scientific development and technological modernization through human capital development as well as the promotion and support for specific research and development (R&D) projects. CONACYT's programmes mostly target educational institutions, and small and medium-size enterprises; special attention is also being given to strengthening linkages between R&D and production activities.<sup>88</sup>

<sup>88</sup> Programmes for which CONACYT has responsibility include the Technological Modernization Programme (PMT), the Support Programme for Joint R&D Projects (PAIDEC), the Support Programme for Linkage Projects with the Academic Sector (PROVINC), the R&D Fund for Technological Modernization (FIDETEC), and the CONACYT Registry of Technology Consultants (RCCT). Details on these programmes may be found in CONACYT's online information.

221. Incentives offered for R&D activities include financial support for expenses related to technological modernization programmes, income tax credits of up to 20% of the annual increment in eligible R&D expenses, income tax credits for contributions made to R&D funds up to a limit of 1.5% of gross income, financing facilities granted through the development banks, and duty-free importation of inputs for research by institutions dedicated to scientific and technological activities (see also section (4)(iii) above).

222. Budgetary expenditure for CONACYT reached just under Mex\$3 billion in 2000, representing an increase in real terms of almost 9% relative to 1997.<sup>89</sup> Also, federal expenditures classified under science and technology have tended to increase in real terms, reaching Mex\$22.9 billion in 2000 (equivalent to 0.42% of GDP); this amount was mostly used for general knowledge advancement (50% of total expenditure), energy (28%), and industrial development (9%).<sup>90</sup> Despite the efforts made, science and technology expenditure in Mexico has remained well below the level in other OECD countries; Mexico also has the lowest gross domestic expenditure on R&D as a percentage of GDP at 0.4% in 1999, compared with 2.2% for the OECD as a whole.<sup>91</sup>

223. In contrast with the modest results of its national innovation system, Mexico's efforts to improve IPR protection appear to have paid off in the form of considerable technology transfers, a process that has gone hand-in-hand with its closer integration into the global economy. Mexico acquires disembodied technology through, among others, the purchase or licensing of IPRs, a process that appears to have accelerated in recent years. Thus, direct commercial transactions related to international technology transfers to Mexico were valued at some US\$454 million in 1999, up from US\$347 million in 1996.<sup>92</sup> These transfers are likely to be related to the strong presence of foreign affiliates in Mexico, which appear to acquire technology actively from their countries of origin. Foreign sales of Mexican technology are much smaller; at US\$64 million in 1999, such sales represent a sharp fall from US\$128 million in 1998 and US\$97 million in 1996.<sup>93</sup>

224. Foreign innovations also reach Mexico embodied in new plant and equipment, which in recent years has arrived in significant volumes together with foreign direct investment (Chapter I(5)(iv)). In addition, Mexico has an active and growing trade in IPR-intensive goods such as information technology (IT) products, pharmaceuticals, beverages and "cultural goods". Thus, to the extent that IPR protection is justified in part by its positive impact on the transfer of knowledge, and that this both encourages and results from investment and trade flows, Mexico's efforts in IPR would seem to have been rewarded.

225. Trade in IT and pharmaceutical products, in which patent and trade mark protection plays a key role, has risen much faster than overall merchandise flows, which themselves have expanded sharply (Chart III.6 and Chapter I(5)(ii)). For IT products, intra-industry and intra-firm trade, and IPR transfers would seem to be dominant and explain in large part the simultaneous increase in imports and exports. The same is likely to be true for pharmaceuticals, particularly with respect to trade with the United States, Mexico's largest trading partner in this product-group; Mexico's second most important supplier is Switzerland, while its second largest export market is Bermuda. Although the recent export surge in IT and pharmaceutical products is indicative of Mexico's growing technological capacity, it is in all likelihood also closely related to growing international sourcing and involvement of foreign affiliates in Mexico, partly encouraged by a stronger domestic IPR regime.

<sup>89</sup> Deflated using Banco de México's National Consumer Price Index (INPC).

<sup>90</sup> Poder Ejecutivo Federal.

<sup>91</sup> OECD (2001).

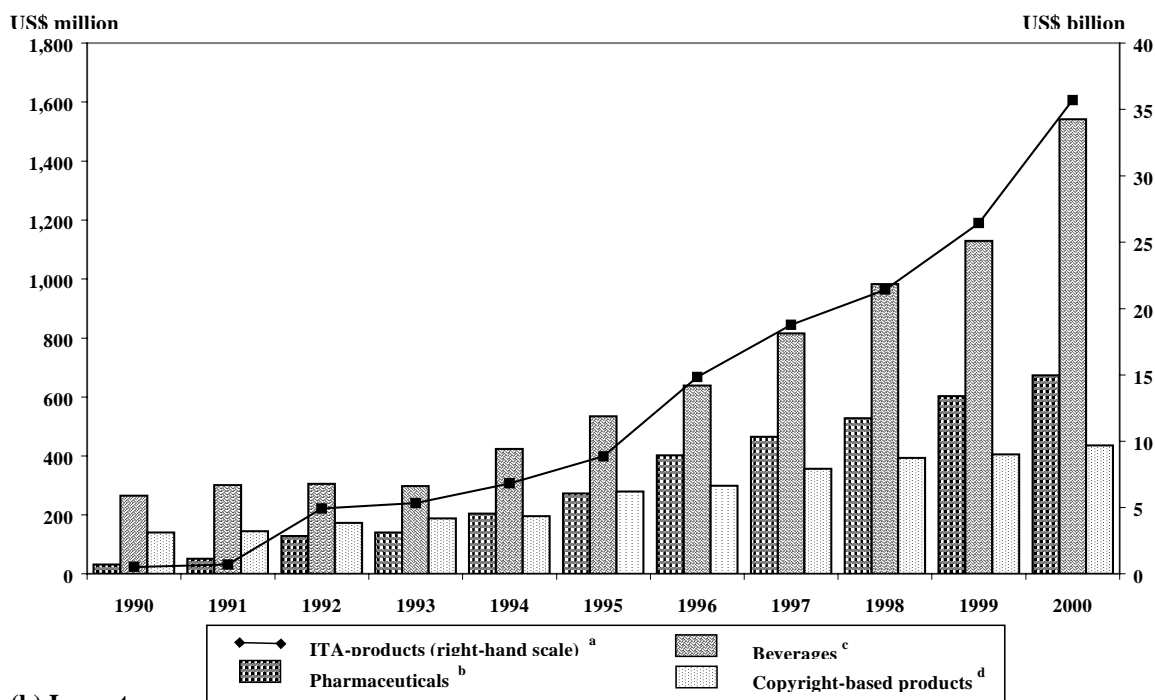
<sup>92</sup> The estimates refer to money paid for the acquisition or use of patents, licences, trade marks, designs, know-how and closely related technical services (OECD, 2001).

<sup>93</sup> In nominal pesos, as published by the OECD, payments amounted to Mex\$4,339 million in 1999 and Mex\$2,736 million in 1996; receipts were Mex\$610 million in 1999, Mex\$1,265 million in 1998 and Mex\$926 million in 1996.

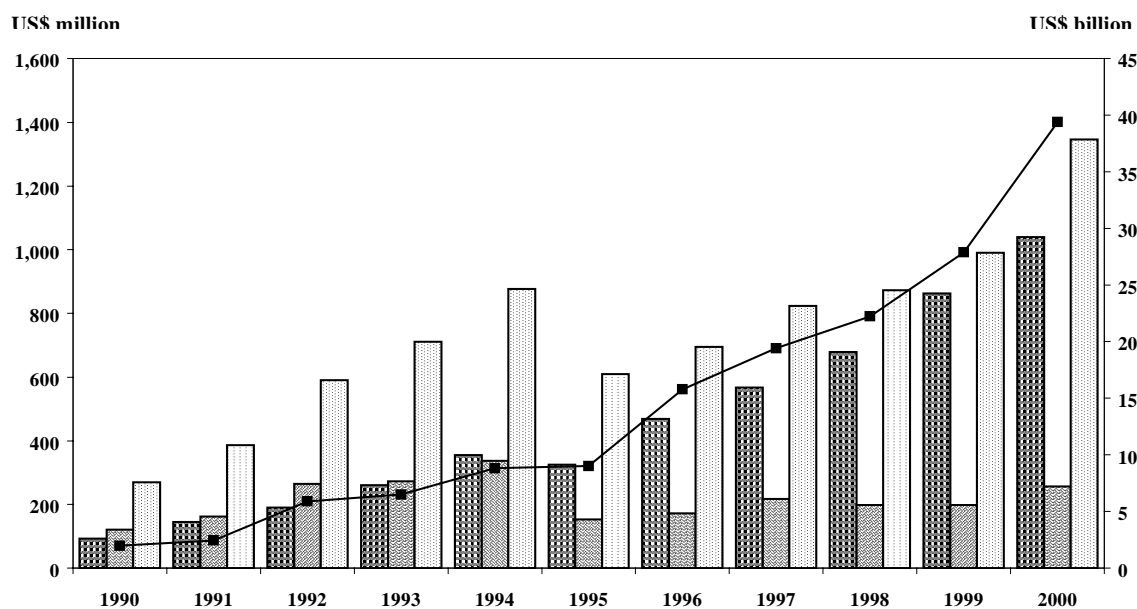
## Chart III.6

## Trade in selected IPR-intensive products, 1990-00

## (a) Exports



## (b) Imports



a Items in Attachment A of the Ministerial Declaration on Trade in IT Products, with no adjustment for partial coverage of sub-headings; HS 8524.31 and 8524.91 excluded.

b HS 30 (pharmaceutical products); these figures include trade in generic products.

c HS 22 (beverages, spirits and vinegar) excluding 2209 (vinegar).

d HS 49 (books and other printed products); 3706 (motion-picture films); 3705 (other developed films); and 8524 (records, CDs, software, and other recorded media).

Source: UN, COMTRADE database.

226. Mexico's alcoholic beverages industry, an intensive user of trade marks and geographical indications, has developed into one of the country's most dynamic export activities. Mostly due to beer and spirits sales, which account for almost 64% and 26% of beverage exports, Mexico enjoys a wide and growing trade surplus in this product group. This is in part the result of concerted efforts by the authorities to ensure that Mexican denominations of origin receive adequate protection in foreign markets, where the authorities have waged a vigorous campaign to eliminate in particular fake Tequila. The authorities have also taken steps to ensure that Mexican spirits enjoy appropriate access conditions in export markets, for example by participating as a third party in the disputes brought to the WTO regarding Chile's and Korea's taxes on alcoholic beverages (Table II.2).

227. Mexico's experience with regard to Tequila is a prime example of the considerable financial benefits that can arise from the exclusive rights granted through geographical indications: increased Tequila exports combined with the production monopoly inherent in geographical indications have increased the price of domestic inputs sharply (notably that of agave) and, thus generated considerable windfall profits (economic rents) for Mexican producers.

228. Mexico's trade in copyright-based products, such as books, films, and recorded music, is significant but has increased at a slower pace than total trade, with imports considerably exceeding exports. These patterns reflect a stronger preference by domestic consumer for foreign "cultural goods" than by foreigners for equivalent Mexican goods, the dominant position of foreign producers in key cultural areas, as well as a robust but domestically oriented local industry. For example, the Mexican music market is estimated to be the world's eight largest, worth almost US\$670 million in 2000, with local artists accounting for some 60% of the total repertoire. Mexico has also developed an active cinematography industry, which has enjoyed government support for decades, including in recent years through fiscal incentives for movie theatres showing Mexican films or helping to diversify the supply of foreign films.<sup>94</sup> As in most countries, Mexico's trade in cultural goods is likely to underestimate the actual international flow of cultural content, which often involves neither the physical movement of merchandise nor its outright sale.

(c) Enforcement

229. Mexico is required by the TRIPS Agreement and under the preferential agreements it has entered into, including the NAFTA, to ensure that enforcement procedures permit effective action against IPR infringements. This is reflected in the number of legislative changes made since 1996, notably the sharp increase in fines, and the re-definition of IPR infringement as a "serious crime". Industrial property violators may now suffer up to ten years of imprisonment; fines may also be imposed of up to 20,000 times the daily minimum wage in Mexico City (some US\$4.40 in mid-2001). Copyright violations for commercial purposes may lead to up to six years of imprisonment and fines of up to 15,000 times the daily minimum wage in Mexico City may also be imposed; this represents a trebling of fines under the previous law.

230. Both the IMPI and INDAUTOR have responsibilities for IPR enforcement, the first concerning industrial property and the two agencies jointly as regards copyrights. Although the multi-agency arrangement for copyright enforcement might prove burdensome, considerable efforts have been made to strengthen both institutions and, particularly, their enforcement capacity. This is illustrated by the two- and almost five-fold increases in nominal budgetary expenditures for, respectively, the IMPI and INDAUTOR over 1998-00 (in comparison, overall Federal Administration expenditures rose by half). In part as a result of these resources, the IMPI was able to increase considerably the number of inspections related to possible violations of IPRs, from about

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<sup>94</sup> Incentives based on Articles 31 and 32 of the Federal Cinematography Law. See also Table III.9.

1,500 in 1997 to 4,200 in 2000.<sup>95</sup> The authorities also noted that non-coercive methods are being used to enhance the awareness and use of IPRs through initiatives such as workshops, training, and information dissemination.

231. Right-holder representatives acknowledge the authorities' IPR-related efforts but argue that enforcement and, thus, actual IPR protection remain weak. For example, software piracy rates are claimed to exceed 50%, resulting in annual financial losses of more than US\$100 million.<sup>96</sup> According to recording industry sources, piracy levels for recorded music have increased, to just over 60% in 2000, costing the legitimate industry some US\$300 million annually and depriving the fiscal authorities of about US\$80 million in tax revenue.<sup>97</sup> These relatively high estimates result from the large size of the Mexican music market, and the possible over-estimation of the market value of infringing goods.<sup>98</sup>

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<sup>95</sup> IMPI (2000).

<sup>96</sup> For further details, see the Business Software Alliance and the International Intellectual Property Alliance online information. Available at: <http://www.bsa.org/> and <http://www.iipa.com/>.

<sup>97</sup> See IFPI online information. Available at: <http://www.ifpi.org/>, in particular the 2001 IFPI Music Piracy Report, June 2001, and IFPI Press Release, 17 May 2001.

<sup>98</sup> Moreover, available industry estimates would correspond by chance to the net cost to the Mexican economy of IPR infringement; infringement estimation requires accounting for the interaction between producer and consumer interests, the international distribution of costs and benefits, and static and dynamic considerations. For an example of the complex issues involved see "Governments share interpretations on TRIPS and public health", available at: [http://www.wto.org/english/news\\_e/news01\\_e/trips\\_drugs\\_010620\\_e.htm](http://www.wto.org/english/news_e/news01_e/trips_drugs_010620_e.htm).