REVIEW OF TRADE AND INVESTMENT LIBERALIZATION MEASURES BY MEXICO AND PROSPECTS FOR FUTURE UNITED STATES-MEXICAN RELATIONS

Investigation No. 332-282

PHASE I: Recent Trade and Investment Reforms Undertaken by Mexico and Implications for the United States

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This report was prepared principally by

Constance A. Hamilton,
Project Leader

Scott Andersen
Gerald Berg
Marc Bernstein
Susan Bloom
Catherine DeFilippo
Janice Fair
Magdolna B. Kornis

Assistance was also provided by John England. Data assistance was provided by Dean M. Moore. Supporting assistance was provided by Paula R. Wells and Linda Cooper.

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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EXECUTIVE SUMMARY

This report covers the first phase of the Commission's investigation of Mexico's trade and investment reforms and the implications of those reforms for the United States. On October 18, 1989, the Commission received a request from the House Committee on Ways and Means to provide a comprehensive review of Mexico's recent trade and investment reforms and to explore experts' views on prospects for future U.S.-Mexican relations. In response to the Committee's request, the Commission instituted a two-phase study, investigation No. 332-282, under section 332(g) of the Tariff Act of 1930. Phase II, *Prospects for Future United States-Mexican Relations,* will be submitted to the Committee in October 1990.

Overview: The Mexican Economy

- *Prior to its recent reforms, Mexico's economic policies during the post-war era were highly interventionist and protective.*

  Like many other developing countries, Mexico pursued industrialization through import substitution. It imposed formidable tariffs and nontariff barriers on imports and subsidized manufacturing industries. Moreover, the Government restricted direct foreign investment and foreign ownership of assets, controlled the peso exchange rate, restricted access to foreign exchange, assumed direct control of more than 1,000 business enterprises, and established complex regulations for others. These policies helped to develop the manufacturing sector, but they also created problems that contributed to the economic crises Mexico faced in the 1980s.

- *By the late 1970s, Mexico had accumulated a sizable debt that it could not service without additional loans.*

  The world's commercial banks stopped lending to Mexico in the summer of 1982. On August 8, 1982, Mexico announced that it could not make scheduled payments on its $86 billion debt and turned to the IMF for assistance.

- *After the 1982 debt crisis, the Mexican economy began to expand in 1984, but the improvement was short-lived. By 1985, economic stagnation had again set in. New international financial agreements were reached in 1986.*

  Major shocks, including a devastating earthquake in 1985 and dramatic declines in world oil prices, virtually halted Mexico's economic growth. Mexico obtained new agreements with the IMF, World Bank, and commercial bank creditors in 1986. In exchange, Mexico agreed to major reforms of its economic policies, including reductions in tariffs and restrictions on trade, liberalization of foreign investment, reductions in public spending, tax reform, divestiture of state-owned enterprises, and reform of domestic price controls.

- *On July 23, 1989, Mexico became the first country to reach a tentative new debt agreement under the Brady Plan.*

  Mexico's commercial bank creditors agreed, for the first time, to forgive part of Mexico's medium- and long-term debts to them. The agreement also provides for a substantial reduction in interest rates on part of the debt, and for several billion dollars in new loans and other assistance.

GATT Accession and Other International Developments

- *On November 26, 1985, President Miguel de la Madrid announced that Mexico would begin negotiations with GATT for membership. In August 1986, Mexico became the 92nd Contracting Party.*

  Mexico first attempted to join the GATT in 1979. However, on March 18, 1980, President Jose Lopéz Portillo announced that Mexico would delay its entry to GATT, based on various internal political and economic considerations.

- *Mexico agreed to become a signatory to five of the Tokyo Round Codes: licensing, customs valuation, antidumping, standards, and subsidies.*

  Mexico signed three of the codes on July 26, 1987; the Standards Code was signed in January 1988. The Subsidies Code has yet to be signed.

- *Two "Understandings" between the United States and Mexico have emphasized the importance of liberalized bilateral trade.*

  Most analysts agree that the 1987 Framework Understanding was a catalyst that improved U.S.-Mexican bilateral relations. The 1989 consultative Understanding Regarding Trade and Investment Talks created a parallel mechanism for industry-specific and cross-sectoral negotiations. Negotiations on various topics will be completed over the next several years; standards and petrochemicals have been chosen as the first topics.

- *Mexico is viewed as a moderate in the Uruguay Round; it has offered highly regarded proposals in three traditionally controversial areas.*

  In the services negotiating group, Mexico has advocated the principle of "relative reciprocity." In intellectual property rights discussions, Mexico has proposed a balance between protection and development. In investment, it proposed a study of trade-related investment measures. During the investment discussions, Mexico was singled out by U.S. representatives as an example of a country that has eased investment restrictions without hampering development.

Deregulation and Privatization in Mexico

- *Based on the premise that excessive and obsolete regulations were largely responsible for inefficiency in the use of Mexican resources, Mexico has implemented a far-reaching program of deregulation.*

  The Mexican Secretariat of Commerce and Industrial Development (SECOFI) has been given the mandate to make new rules that are simpler, less pervasive and rigid, and that allow more room for private initiative and competition. The extensive regulatory revision currently underway in Mexico amounts to a deregulation of the economy as a whole and paves the way for privatization in many areas.

- *Over 25 different areas of the Mexican economy have been deregulated or are currently being reviewed for deregulation.*

  These areas include domestic motor carriers, telecommunications, petrochemicals, standards and packaging, the financial system, insurance, customs brokers, certain commodities (sugar, cacao, coffee), fishing, technology transfer, trade secrets, and agriculture.

- *Although many of the deregulations have been implemented only very recently, some implications are already emerging.*

  For example, the liberalizing effect of the new trucking rules on the maquiladora industry is likely to reduce costs and improve economies of scale. Better opportunities for sales by U.S. agricultural exporters could result from the reorganization of Mexico's farm sector.

- *The Government of Mexico is proceeding with a program of privatization with the clear objective of divesting public enterprises in favor of private, including foreign, investors.*

  Mexican policymakers have stated their intention to reduce the public burden of subsidizing unprofitable enterprises and to generate revenues by the sale of state-owned entities.

- *As part of the privatization process, the Mexican Government has partially scaled down its participation in some sectors and completely withdrawn from others.*

  For example, the Mexican Government has scaled down its participation in such areas as food processing, production of textiles, secondary petrochemicals, wood and paper products, and construction materials. The Government has reduced its presence in the automobile industry by selling Renault de Mexico. Sales of state-owned enterprises producing trucks, buses, tractors, motor, and autoparts have also taken place or are in progress.

- *In December 1982 the Government of Mexico owned 1,155 entities. As of February 1990, 801 of those entities had been divested or authorized for divestment.*

  As of February 1990, the privatization process had been finalized for 619 companies and was still in progress for 182 companies. The companies that are yet to come up for sale are of larger size and complexity than those for which transactions have already been completed. Also, some of the new candidates for privatization operate in noncompetitive markets. Therefore they will require regulatory, financial, and operational adjustments before being offered for sale in a competitive market.

- *Mexican officials have encountered difficulties in selling a number of companies earmarked for divestment at a price they consider fair.*

  This problem explains the relatively large number of entities for which authorized divestment has not yet been completed. A notable example of a difficult privatization effort is the Compania Minera de Cananea, Mexico's largest copper company and one of the largest copper mines in the world. Private investors are reluctant to assume Cananea's huge debts.

Mexico's Trade Regime

- *Mexico has reduced its maximum import tariff from a level of 100 percent in 1986 to a current level of 20 percent.*

  This exceeds Mexico's commitment to the GATT to reduce its maximum tariff to 50 percent. Mexico's trade-weighted average tariff is currently about 11 percent—low by developing country standards.

- *As a result of major trade liberalization measures begun in mid-1985, Mexico has moved from an extremely restrictive import regime in which almost every item was subject to an import permit, to a regime in which quantitative restrictions now apply in only a few selected sectors of the economy. However, Mexico continues to maintain import permit requirements for roughly 330 items (about 3 percent of total number of tariff items).*

  For example, quantitative restrictions continue to apply for oil and oil derivatives, motor vehicles, pharmaceutical products, footwear, electronic equipment, and certain agricultural products. About 59 percent of the value of U.S. agricultural exports to Mexico require import permits. According to a recent GAO report, these requirements are significant barriers to U.S. agricultural exports to Mexico.

- *Mexico is currently considering or is in the process of liberalizing its rules regarding the three sectors that are regulated by industrial development plans.*

  New rules regarding the automotive, pharmaceutical, and electronics sectors will open these traditionally protected sectors to foreign competition.

- *In 1986, Mexico enacted a statute containing antidumping and countervailing duty laws. Mexico has initiated countervailing duty investigations very seldom, however, a recent study identifies Mexico as the 5th most frequent initiator of antidumping proceedings during the 1987-88 period, behind the United States, Canada, the European Community, and Australia.*

Foreign Investment

- *In May 1989, Mexico made sweeping reforms to its rules governing foreign investment.*

  Without changing the 1973 law that significantly restricts foreign investment, Mexico has promulgated new rules that provide for greater transparency, increased foreign participation, and greater efficiency in the application process.

- *Among other things, the May 1989 foreign investment regulations include provisions that allow up to 100-percent foreign investment in companies in unclassified activities.*

  The range of economic sectors expressly open to wholly foreign-ownership has been broadened significantly. Foreign investment of up to 100-percent is allowed in unclassified activities which account for 72.5 percent of the 754 economic activities that comprise the Mexican economy. Included are certain industries such as glass, cement, iron, steel, and cellulose for which administrative restrictions had previously restricted majority foreign participation. Of the remaining 207 classified activities, 40 more are open to 100 percent foreign investment, with prior approval. Moreover, majority foreign participation in many of the classified categories is possible through a temporary 20-year trust mechanism.

- *While the new foreign investment regulations affect a wide range of activities, the implications in several areas are especially noteworthy. For example, telecommunications is now considered a classified activity in which foreign investment is allowed up to 49 percent.*

  Prior to the 1989 regulations, foreign participation in telecommunications services was prohibited.

- *In an effort to deregulate the petrochemical industry and provide greater opportunities for private investment, on August 14, 1989, Mexico announced a major reclassification of petrochemicals.*

  Fourteen basic petrochemicals were reclassified as secondary, further reducing the list of basic petrochemicals from 34 to 20 products. In addition, the number of petrochemicals classified as secondary was drastically reduced from approximately 605 to 66 products as 539 products moved into the unrestricted tertiary category.

- *The limitation on foreign investment in the Mexican insurance industry has been relaxed.*

  A new insurance decree lifts the prohibition on new foreign investment in the insurance industry and raises the allowable level of foreign participation from 15 percent to 49 percent.

- *In December 1989, Mexico published new regulations which open state banks to limited foreign participation.*

  Under certain conditions, foreign investors are now able to obtain up to 34 percent ownership through new non-voting shares. Direct foreign participation is still prohibited.

- *In December 1989, a new maquiladora decree significantly changed the rules relating to the issue of maquiladoras selling products in Mexico.*

  Under certain conditions, a maquiladora may now sell locally an amount equal to 50 percent of its total export sales during the preceding 12 months. Local sales must be in addition to the maquiladora's pre-established level of exports. Therefore, to sell on the domestic market, a maquiladora must increase its production.

- *The 1989 maquiladora decree included significantly streamlined administrative procedures to encourage the expansion or establishment of a maquiladora.*

  A "single window" was created at SECOFI to handle all administrative details. Under the prior regulatory framework, negotiations with 9 different government agencies was required.

- *The 1989 maquiladora decree creates a more predictable environment for long-term investments.*

  The term for which maquiladora licenses are effective has been changed to an indefinite, open-ended period. Previously, such licenses (although routinely renewed) were valid for only 2 years. The new decree provides greater certainty for long-term investments.

Current Mexican Intellectual Property Protection

- *Mexican law and enforcement of intellectual property protection has undergone significant change over the past several years.*

  Mexico has announced plans to strengthen process and product patent protection and improve the enforcement of trademarks and trade secrets. As a result of this action, Mexico has been removed from the U.S. Special 301 "Priority Watch List."

- *Prior to 1987, Mexican law provided no trade secret protection. Amendments in 1987 to the 1976 Law of Inventions and Trademarks (LIT) provides limited protection of trade secrets.*

  Additional trade secret protection was provided in January 1990 with the promulgation of regulations liberalizing the registration of license agreements between foreign companies and Mexican subsidiaries.

INTRODUCTION

The geopolitical and economic importance of Mexico to the United States is underscored in a number of ways. Mexico is a significant member of the "middle income" group of developing countries and is an increasingly important global source for manufactured products. With a land surface of 764,000 square miles, Mexico is the 13th-largest country in the world. It ranks 11th in terms of population (almost 84 million in 1989) and has a relatively young labor force of almost 27 million. Mexico possesses the 4th-largest proven oil reserves in the world, and is a leading producer of silver, sulfur, lead, and zinc. It also produces copper, manganese, coal and iron ore, and has a diversified agricultural sector. In financial markets, Mexico's huge foreign debt of more than $90 billion has given the country a major role in the international financial system and in devising a strategy to solve the debt problems of developing countries.

Mexico's proximity also adds to its importance to the United States. A common border more than 2,000 miles long has promoted a complex set of cultural and economic interrelationships. Border trade, both in goods and services is substantial. Mexico ranks fifth as a source for U.S. imports and supplies almost 11 percent of U.S. oil imports. It is the 3rd-largest market for U.S. exports, after Japan and Canada. The United States is the principal source of foreign investment in Mexico, and the primary source of important tourism earnings. Moreover, there is a strong cultural connection between the two countries. Some reports suggest that by the end of the century, the Spanish-speaking population of the United States will be the world's second largest, exceeded only by Mexico.

Recently, Mexico has been in the process of formulating and implementing a new economic strategy, focusing on economic stabilization and internationalization. After a protracted period of growth, in 1982 the Mexican economy suffered a series of shocks that resulted in economic stagnation and virtually halted economic growth. Mounting external debt, and soaring inflation rates contributed to sharp declines in gross domestic investment, real personal income, job creation, and the general standard of living. Failed attempts to correct the situation through a series of minor adjustments, and an emphasis on economic reform from major creditors, convinced Mexican policymakers that only a long-term restructuring of the economy would bring about lasting solutions.

Mexico began formulating its new economic policy in 1985. Most analysts agree that Mexico's primary objective for pursuing trade liberalization is to improve the competitiveness of its domestic industry and, since late 1987, to fight inflation. Regardless of its motivation, Mexico unilaterally implemented substantial trade reforms pursuant to GATT accession and International Monetary Fund/World Bank programs. It has made a strenuous administrative effort to bring about important structural changes in the economy. The current administration of President Carlos Salinas de Gortari is continuing to pursue policies aimed at opening the economy as rapidly as possible by encouraging foreign investment and promoting nonoil exports, reforming its import policies, reducing the number of state-owned companies through increased privatization, and reducing government outlays as a proportion of GDP.

It is important to note, however, that most of Mexico's new policies are being implemented through executive decree. Its restrictive foreign investment law, for example, has not been changed, rather the rules implementing the foreign investment law have been liberalized through the decree. This type of administrative reform has raised concerns among some U.S. businesspeople about the permanency of the liberalizations. Mexican officials have indicated, however, that they wanted to move quickly to implement the reforms and, given the current political situation in Mexico, it would not have been expedient to attempt legislative changes. Nevertheless, the steps being taken by the Mexican Government have important implications for the United States and the international trading community. The purpose of this report is to provide a review of the recent trade and investment liberalization measures undertaken by Mexico and, to the extent possible, their implications for the United States.

The House Ways and Means Committee Request

On October 18, 1989, the Commission received a request from the House Committee on Ways and Means to provide the Committee with a comprehensive review of Mexico's recent trade and investment reforms.[1] As part of this investigation, the Commission was also asked to explore experts' views on prospects for future U.S.-Mexican trade relations. In response to the Committee's request, on November 8, 1989, the Commission instituted investigation No. 332-282, under section 332(g) of the Tariff Act of 1930. The Commission will submit its report to the Committee in two parts. Phase I, *Recent Trade and Investment Reforms Undertaken by Mexico*, reviews the liberalization measures undertaken since 1985 and implications for the United States. Phase II, *Prospects for Future United States-Mexican Relations*, will provide a summary of views from experts on U.S.-Mexican trade and economic issues on possibilities for the future direction of the bilateral relationship. Phase II is due to the Committee in October 1990.

Methodology

The information in this report was collected from a number of primary and secondary sources. A *Federal Register* notice was published announcing the investigation and soliciting public comment (see appendix B). The Commission received 15 written submissions and conducted a public hearing on the matter on December 5, at which 7 panels of witnesses presented their views (see appendix C for a list of hearing participants). Staff traveled to Mexico City for a series of meetings with Mexican Government officials, U.S. Government officials based in Mexico, U.S. and Mexican private sector businessmen, and with attorneys specializing in intellectual property rights issues. In addition, Commissioners Eckes, Newquist, and Rohr traveled to Mexico to meet with high-level Government officials and others for the purpose of gathering information relevant to the investigation. Staff also obtained information from relevant U.S. government agencies including the U.S. Department of Commerce, the Office of the U.S. Trade Representative, the U.S. Department of Agriculture, the Congressional Research Service, the U.S. Department of State, and the U.S. Department of Transportation.

Organization of the Report

This report is divided into six chapters. Chapter 1 provides an overview of the Mexican economy and examines the austerity measures the country has adopted to address its debt situation and to promote economic growth. Chapter 2 reviews Mexico's GATT accession package, the 1987 U.S.-Mexican Framework Understanding, the 1989 U.S.-Mexican Understanding Regarding Trade and Investment Facilitation Talks, and Mexico's position on major issues debated in the Uruguay Round. Chapter 3 presents Mexico's program of deregulation for the economy and reviews the steps it has taken toward privatization of state-owned enterprises. Chapter 4 examines Mexico's liberalization of its import trade regime. It also presents current developments regarding the sectoral development programs for automobiles, electronics, and pharmaceutical products. In addition, chapter 4 examines Mexico's antidumping and countervailing duty statutes and implementation procedures. Finally, the chapter looks at changes made in Mexico's provision of export subsidies. Chapter 5 reviews the liberalization of Mexico's foreign investment regulations and recent changes affecting the maquiladorá program. Chapter 6 examines Mexico's progress in the area of intellectual property rights protection.

[1] A copy of the Committee's letter of request is contained in appendix A.

Chapter 1
Overview: The Mexican Economy

The 1980s were a time of economic crisis for Mexico. Rapidly increasing foreign debts, high world interest rates, declining export prices, and the increasing ineffectiveness of Mexico's interventionist economic policies halted more than a generation of growth and left the country nearly insolvent. The economic situation produced a sharp decrease in per capita consumption and encouraged capital flight and outward migration. With the adoption of major policy reforms and rescheduling of Mexico's debt payments, economic performance began to improve late in the decade. This improvement, combined with a generous debt relief package negotiated in 1989, has caused many observers to be cautiously optimistic about Mexico's future.

Production and Trade

Mexico's gross domestic product (GDP) was $176.7 billion in 1988 or $2,116 per capita, compared with $19,646 per capita for the United States.[1] The largest sectors in Mexico's economy are commerce, which includes domestic wholesale and retail services and international trading services, and manufacturing. These sectors accounted for 25.4 percent and 22.2 percent, respectively, of Mexico's GDP in the first 9 months of 1989. Following them are financial services (10.9 percent of GDP), agriculture, forestry, and fishing (8.0 percent), and transport and communication (6.7 percent).[2]

Petroleum and refined petroleum products are Mexico's largest single industry and greatest earner of foreign exchange. Mexico produces 2.5 million barrels per day of crude petroleum and exports about half that amount. Hydrocarbon products overall accounted for 33.7 percent of total Mexican exports in the first 8 months of 1989. This is slightly greater than in 1988; however, hydrocarbons' preeminence in Mexico's foreign trade has diminished substantially since 1982 when they accounted for 79.0 percent of exports.[3]

A rapidly growing segment of Mexico's economy are in-bond plants, known as "maquiladoras." Maquiladoras were first established in 1965 under Mexico's border industrialization program. As of August, 1989, they employed 443,682 workers in 1,699 facilities.[4] Maquiladoras are engaged primarily in the assembly of manufactured components into finished and semifinished goods. Traditionally, most plants have located in the string of cities along Mexico's 2,000-mile border with the United States, but in recent years some have located in the interior as well. The United States provides the market for most of the maquiladoras' output. Major maquiladora industries include electronics, textiles and apparel, furniture, and transportation equipment. Maquiladora operations are Mexico's second-largest earner of foreign exchange.

Mexico had surpluses in merchandise trade totalling $14.8 billion in 1986-88, owing in part to its need to raise foreign exchange to make payments to foreign creditors. Mexico's current account, which includes interest payments on foreign debts as a debit, was in deficit over the same period by $0.6 billion.[5] Mexico's largest trading partner is the United States, which accounts for two-thirds of both exports and imports, followed by the European Community and Japan.

Mexico's currency, the Mexican peso, currently trades under three exchange rates, a controlled rate set by the central bank and two nearly identical "free" rates. The controlled rate applies to most exports and imports, debt payments, and maquiladora expenditures. The official free rate is determined by the transactions of commercial banks and applies to those transactions. The private free rate is offered in exchange houses and is used for most other transactions. Since the beginning of 1989, the government has devalued the controlled peso by about one peso per dollar per day, which has kept it roughly equal to the two free rates.[6]

Economic Policy

Mexico's economic policies have been highly interventionist during most of the postwar era. Like many developing countries, Mexico tried to grow and industrialize through import substitution rather than export promotion.[7] This strategy was based on the theory advanced by Raul Prebisch and others that over time world demand for primary goods, which developing countries traditionally export, would decline relative to the demand for manufactured goods, which developing countries traditionally import. In order to prevent impoverishment from declining terms of trade, Prebisch said, developing countries should restrict imports and encourage domestic production of manufactured goods, even at the cost of reduced standards of living in the short run.[8] Mexico imposed formidable

[1] American Embassy, Mexico, *Economic Trends Report*, May 1989, p. 6, and IMF, "International Financial Statistics," August 1989, p. 111.
[2] National Institute of Statistics.
[3] American Embassy, Mexico, *Economic Trends Report*, November 1989, p. 30.
[4] SECOFI, Office of Regional Development and Maquiladora Industry.

[5] International Monetary Fund, *International Financial Statistics*, August 1989, p. 273.
[6] American Embassy, Mexico, *Economic Trends Report*, Nov. 1989, pp. 23-24.
[7] The major alternative to import substitution as a development strategy is to encourage growth in industries in which the country is competitive in world markets, leading to greater exports and greater imports.
[8] Raul Prebisch, "Commercial Policies in the Underdeveloped Countries," *American Economic Review*, May 1959, pp. 251-273.

tariffs and nontariff barriers on imports and subsidized manufacturing industries. Mexico also sought to prevent what it feared would be foreign domination of its economy by restricting direct investment and foreign ownership of assets. In addition, the government controlled the peso exchange rate, restricted access to foreign exchange, assumed direct government control of more than 1,000 business enterprises, and established complex regulations for businesses it did not directly control.

These policies created incentives for expansion of Mexico's manufacturing sector, which led the country's impressive growth—among the highest in the developing world—in the three decades following World War II. They also created problems that contributed to the decline in growth and other difficulties in the 1980s.

The Mexican Government maintained a high level of social services and subsidized inefficient enterprises, which generated sizable fiscal deficits. It financed them by creating money, which led to high rates of inflation. In spite of the fiscal stimulus created by these deficits, Mexico has had a chronic problem with unemployment of its rapidly growing labor force.[9] Many displaced workers moved to Mexico's overcrowded capital city or emigrated to the United States. The overvalued peso led to balance of payments deficits, capital flight, and low levels of domestic investment. In addition, the high barriers to imports and a plethora of government restrictions and interventions in the economy led to a lack of competition and inefficiency in the allocation of resources in the domestic economy. Finally, Mexico borrowed large sums of money from foreign creditors that became a major burden on the economy.

Foreign Debt

Most analysts trace the origins of the debt problem to the oil price increases of 1973-74 and 1979-80, which generated large and sudden trade surpluses for many oil-exporting nations.[10] With limited opportunities for profitable investment at home, these countries deposited substantial sums in international commercial banks. The banks, in turn, sought worthy borrowers and thought they had found them in middle-income developing countries with stable governments. Some analysts suggest that had these countries invested their loans in projects that generated returns sufficient to repay them, there would not have been a debt crisis. However, most of these countries, including Mexico, used much of the money to support overvalued currencies, maintain high levels of consumption, finance private purchases of foreign assets, and finance unproductive investments.[11]

Spending by the Mexican Government increased copiously in the 1970s and early 1980s, far in excess of increases in revenues. It especially increased spending on subsidies and other support to domestic industries, which accounted for 61 percent of all government expenditures in 1975. It also increased spending on state-owned enterprises including the state oil company, Petroleos de Mexico (Pemex), and the state food distribution company, the National Popular Subsistence Company (Conasupo).[12] As a result, Mexico's fiscal deficit increased from 2.2 percent of GDP in 1969 to 10.0 percent in 1975 and 17.2 percent in 1982.[13]

The Mexican Government financed the growing deficit largely by borrowing and monetary expansion. Monetary growth led to inflation and an overvalued currency, which resulted in balance of payments difficulties and capital flight in anticipation of devaluations of the peso. The Government supported the overvalued peso prior to devaluations by borrowing readily available foreign capital and drawing down its reserves. In effect, it borrowed from foreign creditors to support a high level of consumption, to finance capital flight, and to support government spending. The Mexican Government also failed to address the structural problems in the economy. It took these actions with the expectation of vastly greater oil revenues in the future when new reservoirs discovered in the 1970s were developed. When oil prices declined, these expectations were not met.

Three other events in the early 1980s made it difficult for Mexico to repay its loans. One was a worldwide recession that reduced the demand for Mexico's exports. This affected nonpetroleum exports as well as contributing to the decline in petroleum prices. Another was the adoption of conservative monetary policies in many developed countries. These policies were meant to contain inflation but also had the effect of raising the rate of interest on Mexico's debts. The third event was the substantial appreciation of the U.S. dollar—in which most of Mexico's loans are denominated—which effectively increased the value of Mexico's debts.

By the late 1970s, Mexico had accumulated sizable debts that it could not service without additional loans. Initially, the lending banks were willing to roll over existing loans and sometimes make new ones, but by the summer of 1982, the world's commercial banks stopped lending to Mexico.

[9] The rate of unemployment was 18.0 percent in 1988. *Economic Trends Report*, May 1989, p. 6.

[10] Mexico was not among these countries. It was not a major oil exporter at the time of the first oil shock and it did not earn enough revenue during the second to generate a trade surplus.

[11] See USITC, "The Effect of Developing Country Debt Service-Problems on U.S. Trade," Pub. No. 1950, Investigation No. 332-234, March 1987.

[12] Ibid., p. 19.

[13] F. Gil-Diaz and R. Ramos, "Lecciones desde Mexico," in M. Bruno, et. al., editors, *Inflacion y Estabilisacion*, Fondo de Cultura Economica, 1988.

Mexico owed $86 billion to foreign creditors. Service of the debt required 34 percent of Mexico's export revenues. On August 8th, Mexico became the first developing country to announce that it could not make scheduled debt payments and turned to the International Monetary Fund (IMF) for help.[14]

The IMF agreed to sell Mexico SDR 3.4 billion on condition that Mexico substantially reduce its budget deficit, decrease foreign borrowing, raise taxes, reduce subsidies, and limit wage increases. Earlier in the year, Mexico had devalued the peso by 68 percent. The current account moved into surplus in 1983, while the economy contracted. In 1984, the economy began to expand again, by 3.5 percent. The Government also reached an agreement with its bank creditors to delay scheduled payments and reduce the interest rate on about half of Mexico's outstanding debt of $97 billion.[15]

The improvement in the economy was short lived. The Government increased spending and generated larger than planned fiscal deficits, provoking the IMF to suspend its agreement with Mexico in 1985. Mexico City suffered a major earthquake in the fall of that year with significant economic costs. Oil prices, which had been declining since 1981, declined dramatically in 1986, lowering export revenues and moving the current account into deficit for the first time since 1982.

Mexico again asked for help and obtained major new agreements with the IMF, World Bank, and commercial bank creditors in 1986. The IMF agreed to give Mexico $1.4 billion in credits; the World Bank provided $1.3 billion in new loans. The commercial banks made $6 billion in new loans and reduced the interest on $43.7 billion of existing loans. In addition, the banks and the IMF promised additional funds if oil revenues or growth fell below specified levels. In exchange Mexico agreed to major reforms of its economic policies including reductions in tariffs and restrictions on trade, liberalization of foreign investment, reductions in public spending, tax reform, divestiture of state-owned enterprises, and reform of domestic price controls.

Between 1986 and 1988 Mexico negotiated smaller agreements for additional loans and reduced interest on existing loans and began to implement the promised reforms. Some of the reforms were incorporated in the Government's Economic Solidarity Pact, which was initiated in December 1987.

Economic Solidarity Pact

The Economic Solidarity Pact (pact) is a cooperative agreement with labor, business, and other economic interests to implement reforms and achieve economic policy objectives. A major objective was to reduce the rate of inflation. The pact called for a freeze on prices for many goods and services and a freeze after some increase in wages, followed by restrictions on future wage and price increases. Addressing the underlying cause of inflation, the pact called for reductions in government spending and the public sector deficit. It also called for restrictions on credit expansion, as a means of slowing the growth of the money supply. The pact included measures to liberalize trade including substantial reductions in tariffs and quantitative import restrictions and greater flexibility in exchange rate adjustment. The pact also called for divestiture of many of Mexico's state-owned enterprises and liberalization of Mexico's restrictions on foreign investment.[16] The pact has been modified and extended several times and renamed the Pact for Stability and Economic Growth. It is currently scheduled to remain in effect through July of 1990.[17]

Since Mexico began making reforms, the performance of the economy has improved significantly. The rate of inflation decreased from nearly 160 percent early in 1988 to less than 20 percent in 1989.[18] Following a 3.8 percent decrease in 1986, real GDP increased by 1.5 percent in 1987, 1.1 percent in 1988, and 3.0 percent in 1989, according to preliminary estimates.[19] The Government's fiscal deficit decreased from 16.1 percent of GDP in 1987 to an estimated 6.3 percent in 1989 and is expected to decrease in 1990.[20]

At the same time, the Mexican Government and private debtors retired some of the debt. During 1986-88, the Government acquired at a discount several billion dollars of debt in exchange for pesos that were required to be invested in Mexico. These transactions, called

[14] "The Effect of Developing Country Debt-Servicing Problems on U.S. Trade," pp. 21-23.

[15] Ibid., pp. 23-26.

[16] U.S. Congress, Joint Economic Committee, "Economic Reform in Mexico: Implications for the United States," 1988.

[17] Major provisions under the pact's extension were (1) a 10-percent increase in the minimum wage, retroactive to Dec. 1, 1989; (2) a continuation in the rate of devaluation of one peso per day against the dollar; (3) an average 5-percent increase in prices for energy and certain other public sector goods and services; a commitment by the business sector to respect present price agreements and keep up supply levels; and (4) a commitment by the Federal Government to maintain strict discipline over public finances. American Embassy in Mexico, *Economic Trends Report*, November 1989.

[18] Testimony of Manuel Suarez-Mier, Minister for Economics, Embassy of Mexico, Washington, DC, before U.S. International Trade Commission, public hearing, Dec. 5, 1989.

[19] American Embassy, Mexico, *Economic Trends Report*, May 1989, p. 6, and *Latin American Regional Reports/Mexico & Central America*, Jan. 18, 1990, p. 6.

[20] American Embassy, Mexico, *Economic Trends Report*, Nov. 1989, p. 2.

"debt-equity swaps," allow Mexico indirectly to buy back its own debt at a discount and obtain foreign investment.[21] Private Mexican debtors prepaid at substantial discounts several billion dollars of their debts and exchanged debt for equity in their organizations. Between 1987 and 1989, private sector debt decreased almost $10 billion. Mexico's foreign debt overall decreased from $107.4 billion in 1987 to $96.3 billion in September 1989. Of the 1989 total, the Mexican Government owed $77.2 billion, banks owed $8.6 billion, private sector debtors owed $5.4 billion, and the Bank of Mexico owed $5.1 billion.[22]

The improvement of Mexico's economic performance renewed investor's confidence in the economy. Mexicans began to repatriate the assets they had sent abroad in the early and mid-1980s. The Government reported a return of over $2.5 billion in private capital in 1989 alone.[23] Part of the increase in confidence resulted from a major new debt agreement negotiated in 1989.

The Brady Plan and a New Debt Package

In 1989 President Bush's administration adopted a more lenient policy toward developing country debt. Under the "Brady plan," named after the architect of the policy, U.S. Treasury Secretary Nicholas Brady, the U.S. Government advocates reductions in principal as well as reductions in interest and the granting of new loans for developing countries that limit public sector spending, encourage foreign investment and the repatriation of capital, and minimize subsidies to domestic industries and other interference in their economies.[24] On July 23, Mexico became the first country to reach a tentative new debt agreement with its commercial bank creditors under the new policy. The agreement, which covers $48 billion in medium and long-term debts to commercial banks, provides for reductions of principal and interest on Mexico's foreign debts and some new loans. Under the agreement, each bank has three choices:

1. reduce the principal on outstanding loans to Mexico by 35 percent, with a rate of interest equal to the London Interbank Offer Rate (LIBOR) plus 13/16 percent, collateralized with U.S. Treasury bonds;
2. reduce the interest on outstanding loans to 6.25 percent collateralized in the same way; or
3. lend new money to Mexico in the amount of 25 percent of current debt exposure with a rate of interest equal to LIBOR plus 13/16 percent.

The maturity of loans under the first and second options would be increased from 20 to 30 years with all of the principal to be repaid at the end of the 30 years. The amortization period for new money under the third option is 15 years with a 7-year grace period.[25]

The United States and other creditor governments lent Mexico an additional $2 billion in bridging loans in 1989, while the individual creditor banks, which number more than 400, reviewed and approved the debt package and chose among the three options.[26] In addition, creditor governments agreed to reschedule $2.6 billion of interest and principal payments falling due over the next 3 years. The IMF made $3.6 billion in credits available to Mexico over 3 years. The World Bank agreed to make three development loans and an energy sector loan totaling $1.96 billion in 1989 and to provide additional loans in 1990-92. Japan agreed to lend Mexico $2.05 billion; and Spain agreed to provide $4.0 billion in credits and investment in Mexico under a new friendship treaty.[27]

Early in 1990 the banks approved the agreement. Banks accounting for 47 percent of the affected debt chose to reduce interest (second option). Banks accounting for 41 percent chose to reduce principal (first option). And banks accounting for the remaining 12 percent will make new loans (third option).[28] The new loans are less than Mexico needs to purchase Treasury securities for collateral of debt rescheduled under the first two options. Consequently, the United States agreed to sell Mexico $300 million worth of zero coupon Treasury bonds at a discount.[29]

The Mexican Government estimates that the reduction in debt resulting from banks choosing the first option will be approximately $7 billion and the reduction in interest under the second option will have a value equivalent to another reduction in debt of $7.75 billion. New loans from banks choosing the third option will total $1.5 billion between 1990 and 1992. The

[21] The investors who are Mexico's partners in these swaps also benefit because the discount they give the government is smaller than the discount they receive when they buy debt on the secondary debt market. During most of 1989 Mexican debt was selling in this market for 33 to 45 percent of its face value.

[22] *Economic Trends Report*, November 1989, p. 11.

[23] Secretariat de Hacienda y Credito Publico (Hacienda), *The Renegotiation of Mexico's External Debt*, February 1990, p. 20.

[24] The Brady plan replaced the "Baker plan," named after former Secretary of the Treasury and now Secretary of State James Baker, that called for new loans and rescheduling of payments, but not reductions in principal.

[25] Hacienda, p. 10, and *Economic Trends Report*, November 1989, pp. 9-10.

[26] *Latin American Weekly Report*, Aug. 3, 1989.

[27] *Economic Trends Report*, November 1989, pp. 9-10, *The News*, Jan. 12, 1990, and Hacienda, p. 11.

[28] Hacienda, p. 12.

[29] *Washington Post*, Jan. 9, 1990, p. C-5.

reduction in Mexico's net external transfers resulting from the agreement with commercial banks is expected to be just over $4 billion annually during 1990-94. The new debt agreements overall are expected to decrease Mexico's net external transfers from over 6 percent of GDP during 1983-88 to about 2 percent on average during 1989-94. With their implementation, Mexico's external debt is expected to be $93.6 billion in the spring of 1990, a decline of $2.7 billion since the fall, and with a lower average interest rate.[30]

[30] Hacienda, p. 14.

Policies and Prospects for the Future

Taken together, Mexico's reforms comprise a movement toward a market-oriented, open economy with a disciplined public sector. In its National Development Plan for 1989-94, the Government states as major economic objectives continued stability, increased resources for productive investment, and modernization of the economy.[31] These polices, the new debt package, and the improvement in economic performance, allow increasing optimism about Mexico's economic future.

[31] U.S. Department of Commerce cable, June 3, 1989.

Chapter 2
Mexico's Accession to the GATT and Other International Developments

Mexico's first significant act of modern trade reform occurred in mid-1985 when it instituted measures to liberalize its import trade regime. This was followed later in the year with the November announcement that it would reapply to enter the General Agreement on Tariffs and Trade (GATT). Observers generally viewed Mexico's decision to join the international trade rule-making body as a logical step once the country's trade liberalization process was begun. This chapter reviews Mexico's accession to the GATT, the 1987 U.S.-Mexican Framework Understanding, the 1989 U.S.-Mexican Understanding Regarding Trade and Investment Facilitation Talks, and Mexico's participation in the Uruguay Round of multilateral GATT negotiations.

GATT Accession

Mexico first attempted to join the GATT in 1979. It had participated in the Tokyo Round and received tariff concessions on 1,329 tariff items with trade value in 1976 of $2.5 billion. However, on March 18, 1980, President Lopez Portillo announced that Mexico would delay its entry into the GATT. Mexico's decision not to adhere to GATT was based on political and economic considerations.

Since the 1930s, Mexico depended upon an import substitution industrialization model that led to the development of a highly protected economy as well as to the growth of a burdensome bureaucracy responsible for controlling foreign trade through import permits, official prices, and a lengthy case-by-case approval system. Opposition to joining the GATT was voiced by several different representative groups: the intellectual left[1] maintained that Mexico would lose its autonomy if it joined GATT. An organization of small manufacturers—CANACINTRA[2]—felt that joining GATT would not improve employment or the distribution of wealth whereas labor groups believed that jobs would be lost if Mexico acceded to the GATT. Furthermore, with oil prices continuing to increase during this period, the need for the liberalization of manufactured trade was viewed as unnecessary, or at a minimum, as an issue that could be postponed.[3]

Circumstances changed abruptly with the fall in oil prices in mid-1981, and the consequent collapse of the Mexican economy in 1982. Within this context, Mexican policymakers began looking for long-term solutions, including trade reforms, to its economic problems. On November 26, 1985, President Miguel de la Madrid announced that Mexico would begin negotiations with GATT for membership.

Mexico was the world's thirteenth largest economy and the largest market economy country outside of GATT in 1986. Many GATT members wanted Mexico to join the international trade rule-making organization, and their influence helped expedite the negotiations for accession.[4] Mexico acceded in August 1986, and was thus able to participate actively in the Uruguay Round of GATT multilateral trade negotiations launched in Punta del Este, Uruguay in September 1986. At the time, experts predicted that Mexico would be "an aggressive participant in the new GATT round."[5]

1986 Accession

To become a member of GATT, a working party is appointed to examine the application of accession and to submit to the GATT Council recommendations for the accession. On February 12, 1986, a working party was established for Mexico and met four times. By August 24, 1986, the protocol of accession took effect and Mexico became the 92nd Contracting Party.

As part of the protocol of accession, Mexico was able to accede to GATT as a developing country. Therefore, Mexico "shall enjoy the special and more favorable treatment"[6] accorded to developing countries through Part IV of the General Agreement.[7] In addition, the protocol included a reference to Mexico's energy resources. Mexico would continue to exercise its sovereignty over natural resources, in accordance with its political Constitution. Certain export restrictions related to the conservation of natural resources, especially in the energy sector, would be maintained by Mexico on the basis of its social and development needs.

For agriculture, the protocol recognized the priority status which Mexico accords to this sector in its economic and social policies. In this context, Mexico would continue implementing its program of gradual replacement of import permits by tariff protection "to the extent compatible with its objectives in this sector."[8]

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[1] Their viewpoint was represented by the Colegio Nacional de Economistas.

[2] Camara Nacional de la Industria de Transformacion.

[3] For more information on Mexico's decision not to join the GATT in 1980, see Sidney Weintraub, *Free Trade between Mexico and the United States?*, (Washington, DC: the Brookings Institution), 1984, pp. 84-94 and *Domestic Trade Politics and the Uruguay Round*, Henry R. Nau, ed., (New York: Columbia University Press), 1989, pp. 167-172.

[4] *Domestic Trade Politics and the Uruguay Round*, Henry R. Nau, ed., p. 173.

[5] Ibid., p. 174. See "Uruguay Round" section later in this chapter.

[6] GATT, *Basic Instruments and Selected Documents*, "Protocol for the Accession of Mexico to the General Agreement on Tariffs and Trade", L/6036, 33rd supplement, 1985-1986, pp. 3-6.

[7] A developing country does not have to extend reciprocity of a negotiated concession to a developed country.

[8] GATT, *Basic Instruments and Selected Documents*, p. 4.

As part of its contribution to GATT, upon accession, Mexico agreed to make tariff concessions. It agreed to bind its entire tariff schedule, including industrial and agricultural products, to a maximum tariff level of 50-percent ad valorem. In addition, Mexico agreed to reduce, over a period of 30 months, the tariffs on the majority of its import classification headings to levels of 20 to 50 percent.[9]

In the protocol of accession, the Working Party recommended that Mexico be allowed to accede under article XXXIII of the General Agreement but took note of certain Mexican activities, such as tariff surtaxes, additional charges on imports, customs valuation, import permits, the National Development Plan, unfair trade practices, government procurement, and certain nontariff measures addressed in the Tokyo Round codes. During the Working Party's examination of these aspects of Mexico's trade regime, Mexico provided additional information on its economic and commercial policy.

Mexico informed the Working Party that in nine sectors subject to development plans, surtaxes would be applied to the general tariffs on a temporary basis for a period not exceeding 8 years.[10] These tariff surtaxes would not exceed 50 percent and were considered by Mexico as transitional measures necessary to allow domestic industries time to adjust to international competition. The surtax was to be reduced to zero in 8 years.

Mexico informed the Working Party that it would continue to subject its imports to various additional charges. The revenue raised from its 2.5-percent additional charge on certain imports would assist specific domestic economic activities and export promotion. The 0.6-percent federal fee offset the cost of services for importers to obtain import permits. The 3-percent additional duty contributed to the financing of the wide range of additional services provided by local customs offices, while the 10-percent surcharge was related to the cost of services rendered by the postal administration to classify a product, determine its value, calculate the duty, etc. The Working Party agreed that if the above-mentioned duties were still in effect by December 31, 1990, the Contracting Parties would review the matter.

Mexico agreed to bring all customs valuation procedures for imported goods into conformity with article VII of the General Agreement and to eliminate its official pricing system no later than December 31, 1987. Mexico signed the Customs Valuation Agreement on July 26, 1987.

[9] Concessions were granted on 373 categories (or 4-5 percent of total import categories), equivalent to 15.9 percent of total imports in 1985. *Domestic Trade Politics and the Uruguay Round*, Henry R. Nau, ed., p. 173.

[10] Mexico's National Development Plan singled out nine sectors to promote for development: petrochemicals, electronics, textiles, footwear, capital goods, pulp and paper, foodstuffs, iron and steel, and electrical household goods.

Mexico informed the Working Party that it would continue the gradual elimination of import permit requirements "to the fullest extent possible."[11] The Mexican representative declared that residual quantitative restrictions and import permit requirements would be notified and justified in accordance with the relevant provisions of the General Agreement.[12] For its industrial development program for pharmaceuticals, Mexico stated that import permits would be maintained in the pharmaceutical program until December 31, 1989.[13] At the time of accession, Mexico gave no date for the elimination of import permits for its automobile sector, also regulated by a development plan. No expiry date was given for the local content requirements established in these two programs.

During the working party meetings, Mexico declared that it intended to implement its National Development Plan and its sectoral and regional programs in accordance with the General Agreement. In addition, Mexico confirmed that the trade policy instruments used to implement future Sectoral and Regional Programs deriving from the National Development Plan would be consistent with the General Agreement. In the protocol, the Contracting Parties noted that they were aware of Mexico's intention to implement the National Development Plan in conformity with the General Agreement.

Mexico's Foreign Trade Law was enacted in January 1986 to counteract dumping and subsidization.[14] Mexico assured the Contracting Parties that articles 14 and 15 of the Foreign Trade Law provided for the material injury test for the application of countervailing duties and anti-dumping duties as established in article VI:6(a) of the General Agreement. As for safeguard measures, Mexico agreed to abide by the provisions of article XIX, including the serious injury test. For purchases by state-owned enterprises, Mexico confirmed that Mexican laws and regulations were fully consistent with the obligations of article XVII, including nondiscrimination and the application of commercial criteria for trade transactions.

Mexico agreed to become signatory to five of the Tokyo Round codes: licensing,[15] customs

[11] GATT, *Basic Instruments and Selected Documents*, pp. 56-87.

[12] See ch. 4, section on "Import Licensing Requirements" for more detailed information.

[13] See ch. 4 for more information on Mexico's industrial development plans.

[14] Article 131 of the Mexican Constitution allows duties to be imposed on dumped or subsidized goods.

[15] The Agreement on Import Licensing Procedures entered into force on January 1, 1980, committing signatory governments to simplify procedures importers must follow to obtain licenses. The code requires that signatories publish the rules for submitting import-licensing applications, and that they clarify the forms and procedures for obtaining licenses. The code also stipulates that licenses can be denied on the basis of documentation errors only when the errors are significant.

valuation,[16] antidumping,[17] standards,[18] and subsidies.[19] Three of the five Tokyo Round codes were signed on July 26, 1987; the Standards Code was signed in January 1988 and the Subsidies Code has yet to be signed.

In January 1988, Mexico enacted new legislation to bring its standards regulations in conformity with the Standards Code. Mexico notified the GATT Secretariat of its acceptance of the Customs Valuation Code in February 1988. However, Mexico has delayed the application of the agreement under the provisions of article 21.1, which allows developing countries to delay application of the code for a period not exceeding 3 years. Mexico completed acceptance of the Antidumping Code in February 1988.[20] At the April 1988 meeting of the Committee on Import Licensing, Mexico notified the Committee that the Agreement had been accepted by its authorities and entered into force on March 10, 1988.

Although Mexico has not yet signed the Subsidies Code, it has indicated that it will wait until the end of the Uruguay Round before making any decision on signing the code.[21] (Mexico did sign an understanding with the United States on subsidies and countervailing duties in 1985, which was a precursor to improved bilateral trade relations between the two countries.[22]) Mexico did not agree to sign the Government Procurement Code and has said that it is awaiting the results of the current negotiations before making a decision.[23]

1987 United States-Mexico Bilateral Framework Understanding

On November 6, 1987, the United States and Mexico concluded negotiations begun in 1985 on the "Framework of Principles and Procedures for Consultation Regarding Trade and Investment Relations." This bilateral understanding was considered a landmark in improving economic relations. The four-part understanding included a statement of principles, a consultative mechanism, data exchange, and an "Immediate Action Agenda." The understanding emphasized the importance of liberalized trade between the two countries.[24] In particular, it highlighted the need to eliminate nontariff barriers, the detrimental effects of protectionism, the impact of export earnings on the ability of Mexico to meet its foreign debt obligations, the role the GATT played in the bilateral trade relationship, and the increased significance of services in both countries. Prior to the understanding, Mexico and the United States had no formal bilateral mechanism by which to govern commercial relations.

The main element of the understanding was the establishment of a mechanism for both countries to consult on trade issues, to resolve disputes, and to negotiate the removal or reduction of trade barriers. Under the terms of the understanding, consultations on trade-related disputes are to commence 30 days after an initial request. If these discussions fail to resolve the dispute within 30 days, either country may resort to other means of dispute settlement, including the GATT's dispute settlement procedures. Additionally, bilateral negotiations began 90 days after the signing of the understanding on the following contentious subjects identified in the Immediate Action Agenda: textiles, agriculture,[25]

[16] The Customs Valuation Code establishes a uniform system of rules to determine the customs value for imported goods. The code provides detailed rules for determining the value of imported goods used as a basis for assessing ad valorem customs duties. The rules are designed to promote a fair, uniform, and neutral system of valuation and to preclude the use of arbitrary or fictitious values.

[17] The Antidumping Code prescribes the proper conduct for antidumping investigations and the imposition of antidumping duties based on the provisions of the General Agreement. It sets guidelines for the use of these measures and related practices such as retroactive application of antidumping duties and price undertakings. The code also obligates developed countries to give special consideration to the developing countries before applying antidumping duties.

[18] The Standards Code, formally known as the Agreement on Technical Barriers to Trade, establishes international principles by which signatories are to conduct their standards-related activities. Its aim is to ensure that technical regulations and product standards do not create unnecessary obstacles to trade. Whenever possible, standards are to be stated in terms of performance characteristics, rather than specific designs.

[19] The Code on Subsidies and Countervailing Duties elaborates upon provisions of the General Agreement concerning the use of subsidies and countervailing duties. It sets guidelines for resort to these measures and establishes agreed upon rights and obligations to ensure that subsidy practices of one party to the Agreement do not injure the trading interests of another party and that countervailing measures do not unjustifiably impede trade.

[20] Mexico notified GATT of its antidumping actions for the second half of 1988. See USITC, *Operation of the Trade Agreements Program* (OTAP) 40th report, 1988, Publication no. 2208, July 1989, Table B-2. See ch. 4 for more information on Mexico's antidumping laws.

[21] Testimony of Miguel A. Leaman, Minister for Trade Affairs, Embassy of Mexico, Washington, DC, before U.S. International Trade Commission, public hearing, Dec. 5, 1989.

[22] During the working party meetings, a Mexican representative assured the Contracting Parties that Mexico did not maintain export subsidies inconsistent with the General Agreement. See ch. 4, section on "Export Subsidies" for additional information on the understanding between the United States and Mexico.

[23] Testimony of Miguel A. Leaman, Dec. 5, 1989.

[24] In 1987, U.S. exports to Mexico totaled $14 billion, up 17.8 percent. Exports in virtually all major SITC commodity sections expanded in response to easier access to the Mexican market. Likewise, U.S. imports from Mexico increased in 1987 from a low of $17.2 billion in 1986 to a record $19.8 billion, up 14.9 per cent. See *OTAP, 39th Report, 1987*, USITC Publication no. 2095, July 1988.

[25] The 1987 framework agreement consultations on agriculture examined how the two countries could make their licensing procedures and health and sanitary regulations more compatible with increased trade. Complaints have been received by the U. S. Government describing the Mexican government's lack of guidance on the type of foreign documents necessary to meet their requirements for many agricultural products, particularly

steel, electronic products,[26] investment matters, technology transfer in relation to intellectual property rights protection, and service industries.[27] Each country also agreed to improve the exchange of bilateral statistical information and to participate in the GATT Tariff Study.

Most analysts agree that the 1987 understanding was a catalyst that improved U.S.-Mexico bilateral relations.[28] From January 1, 1988 to July 6, 1989, U.S. and Mexican officials held four consultations and three plenary sessions under the 1987 Framework Understanding. The first consultation and plenary session was held on February 21-22, 1988, in Mexico. At this session, U.S. and Mexican officials exchanged viewpoints on agriculture, the protection and enforcement of intellectual property rights, Mexico's electronics sector development plan, and foreign direct investment in Mexico. Both sides agreed to meet later to discuss the substantive nature and technical aspects of these issues. At the followup meeting in May, 1988, U.S. officials expressed a desire for the loosening of restrictions on the Mexican electronics sector to permit increased exports and foreign investment. Other topics addressed were recent changes in Mexican laws concerning the protection and enforcement of intellectual property rights and the continued cooperation on the gathering and exchange of data relating to foreign investment between the two countries.

[25]—*Continued*
processed foods. Other complaints have been received from U.S. growers who believe they face unfair competition from Mexican growers of broccoli, asparagus, and cauliflower. However, a 1988 USITC study did not find any obvious Mexican trade barriers or unfair subsidies (Inv. No. 332-253, USITC Publication no. 2136). Mexican concerns about U.S. trade barriers apply to avocados, peaches, and U.S. seasonal tariffs. Avocados are prohibited from entry into the United States because of various infestations. Peaches may only be imported if the Mexican plant protection service guarantees the absence of harmful insects. Lastly, the United States maintains a system of seasonal tariffs on some fruits and vegetables. These tariffs are higher during the U.S. growing season, as high as 25 percent ad valorem, but fall to as low as zero during the U.S. nonmarketing season.

[26] Mexico requires foreign manufacturers of electronic equipment to make local content commitments and expenditures aimed at local research and development and places limitations on foreign ownership of firms operating in Mexico.

[27] The agreement specifically singled out the services sector such that an exchange of information would enhance the work being undertaken in the Uruguay Round of Multilateral Trade Negotiations. See section below on "Uruguay Round" for more information on Mexico's role in the trade talks.

[28] Relations between the two nations had been strained over the last 2 decades. Presidents Luis Eschevrria (1971-76) and Jose Lopez Portillo (1977-82) introduced strong anti-US rhetoric into Mexico's official political vocabulary between 1970-1982. President Miguel de la Madrid (1983-88) attempted to improve relations but there were frequent clashes between Mexico's foreign minister and various U.S. State Department officials. *Latin America Weekly Report*, Sept. 28, 1989, WR-89-38, p. 8.

The second set of consultations and plenary session occurred on June 28-29, 1988. The dialogue covered investment issues such as exchanges of investment data, Mexico's investment regulations concerning small businesses, and the possibility of Mexico signing an agreement with the Overseas Private Investment Corporation (OPIC).[29] Other issues discussed during the session included the efforts by Mexico to improve its patent and copyright laws, regulations in both countries affecting transportation and insurance, U.S. laws and regulations pertaining to agriculture, Mexico's computer industry guidelines, and the status of pending unfair trade practice cases against Mexico.[30]

Working parties were established at the third set of consultations on August 18-19, 1988. These working groups permitted officials from both governments to maintain ongoing, less formal communications on a number of contentious trade and investment issues. Specific working groups were created for trade data collection and exchange, investment data collection and exchange, insurance, motor carriers, electronics, foreign investment, intellectual property rights, and general policy cooperation and coordination. U.S. and Mexican officials also agreed to keep each other apprised of their positions on issues being addressed in the ongoing Uruguay Round trade talks.

A third plenary session occurred on July 6, 1989. Dialogue continued on such themes as intellectual property rights, investment, motor carriers, steel and textiles, the generalized system of preferences, agriculture, and unfair trade practice cases pending against Mexico. Additional working group meetings were arranged to proceed on specific bilateral trade and investment issues.

In August 1989, the U.S. Department of Agriculture and the Mexican Ministry of Agriculture and Water Resources agreed to the creation of five binational technical groups for the purpose of promoting a closer bilateral working relationship and facilitating commerce. The five groups are organized into the following subject areas: technical and administrative programs, improvement of marketing, inspection and research, data collection, and harmonization of research programs.

[29] Mexican officials claim that the Mexican Constitution prohibits Mexico from entering into an agreement whereby OPIC would be a potential insurer of U.S. investors in Mexico. Article 27 of the constitution permits foreign firms to own property in Mexico, but requires foreign firms to renounce any right to invoke the protection of their government (such as an insurance coverage provided by OPIC) should any conflict arise as to that ownership. See ch. 5 on foreign investment.

[30] Additional topics included Mexico's licensing requirements for diesel engines to be used in trucks and buses, problems U.S. firms encountered in the Mexican soft drink market, discrepancies between the formulas used by the United States and Mexico to calculate subsidies, and the methodology used by Mexico to collect data on U.S. foreign investment.

Sectoral Accords

Since the signing of the 1987 Understanding, two sectoral accords have been reached. The first, signed on December 29, 1987, actually covered both steel (the Steel Agreement) and alcoholic beverages(the Alcoholic Beverages Agreement).[31] The 1987 steel agreement modified the 1985 agreement[32] between the United States and Mexico. Under the Alcoholic Beverages Agreement, Mexico opened its market for alcoholic beverages and other products.[33] The second accord—the Textile Agreement—(which was signed on February 13, 1988 and retroactively effective to January 1988) expanded textile trade between the two countries.

Steel Agreement.—Under the 1985 steel agreement, Mexico (along with six other nations) agreed to limit its steel shipments to the U.S. market for a 5-year period, beginning October 1985. Mexico agreed to restrict exports of finished steel to no more than 0.36 percent of U.S. consumption and to 100,000 tons of semifinished steel per year during this period. Under the 1987 steel agreement, the United States agreed to a one-time 12.4 percent increase in Mexico's steel quotas for 1988, accounting for 0.03 percent of U.S. steel mill supplies in 1987. Mexico agreed to limit its shipments of certain wire products. Steel wire products—such as steel fence panels, steel wire fabric, and welded wire mesh for concrete reinforcement—previously not subject to U.S. restraints, had quotas imposed under the new Steel Agreement. In addition, the agreement changed the basis for calculating adjustments in Mexico's export ceilings.

Mexico lowered its tariffs on steel imports from 38 to 20 percent ad valorem. In addition, to comply with its obligations as a new member of GATT, Mexico eliminated—as of December 31, 1987—all official steel reference prices used for customs valuation purposes.[34] It is estimated that the Steel Agreement resulted in an increase of more than 29,868 tons in Mexican steel imports into the United States in 1988.[35]

Alcoholic Beverages.—As part of the 1987 steel agreement, Mexico agreed to eliminate import quotas and licensing requirements for beer and wine, flowers, certain agricultural products, distilled spirits and other products.[36] Mexico lifted its $1 million annual quota on imports of beer and its $43 million quota on wine and certain distilled spirits. Import licensing requirements were also repealed for these items. Under Title XIX of the U.S. Trade and Tariff Act of 1984, the office of the U.S. Trade Representative (USTR) was required to negotiate with U.S. major wine-trading countries—including Mexico—to seek a reduction or elimination of tariff and nontariff barriers to U.S. wine exports. With the lifting of the Mexican wine quota and the substantial reduction of Mexican wine tariffs, the requirement to negotiate reductions was fulfilled with respect to Mexico.[37]

Textile agreement.—Effective January 1, 1988, the textile agreement raised U.S. import quotas on Mexican textile and apparel products and reserved a portion of the increased quota for a "special regime"[38] of textiles. (Under the special regime, a portion of each quota, ranging from 50 percent to 90 percent, is reserved for imports manufactured from U.S.-formed and U.S.-cut fabric.) The 4-year pact permits Mexico to augment its textile exports to the United States by 6 percent annually. In turn, Mexico agreed to lower its trade barriers to U.S. exports of yarns and "white goods" fabrics[39] and phase out import license requirements for all textiles and garments, except for carpets, tapestries, and used clothing.

The agreement, negotiated under the auspices of the Multifibre Arrangement (MFA), provided for controls on Mexico's exports of cotton, wool, and manmade-fibre textiles and apparel to the United States through 1991.[40] Mexico was the United States' sixth largest supplier of these products in 1987, accounting for almost 4 percent of total import volume. Mexico was the largest supplier of apparel under U.S. tariff item

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[31] The full title of the agreement was "Modification of the Understanding on Certain Steel Products between the United States and Mexico and Certain Trade Liberalization Measures by Mexico with Respect to Beer, Wine, Distilled Spirits, Agricultural Seeds, and Certain Other Products."

[32] Former President Reagan announced on September 18, 1984, the establishment of a U.S. Government policy for the steel industry. By December 19, 1984, the U.S. Trade Representative (USTR) declared that voluntary restraint agreements (VRAs) had been reached with seven major steel exporting countries to limit their steel shipments to specified shares of the U.S. market. Steel products manufactured in Mexico's in-bond plants (maquiladoras) remained outside the scope of restrictions. In exchange, the United States terminated the unfair trade investigations on steel items subject to the agreement. For more information on the steel program, see *OTAP, 36th report, 1984*, USITC Publication no. 1725, July 1985, pp. 16-26.

[33] As a new member to GATT, Mexico was obligated to eliminate or reduce its import licensing requirements to the greatest extent possible.

[34] See *OTAP, 39th Report, 1987*, USITC Publication no. 2095, July 1988, pp. 4-36.

[35] Guy C. Smith, "The United States-Mexico Framework Agreement: Implications for Bilateral Trade," *Law and Policy in International Business*, vol. 20, no. 4, 1989, p. 673.

[36] Other items included agricultural seeds, chocolate confectionery, perfumes, and lotions.

[37] USTR Press Release, 87/54, Dec. 30, 1987.

[38] The special regime is a subset of 807.00 and is referred to as "807 A." Special regime goods must be assembled in Mexico from U.S.-fabricated components, and the U.S. fabric must be wholly-formed and cut in the United States.

[39] The Mexican market was closed to imports of these products until this agreement. "White goods" fabrics include bleached cotton and linen used in the production of domestic products such as tablecloths, sheets, and pillow cases.

[40] The MFA expires July 1, 1991.

807.00.[41] During 1987, more than 80 percent of the total value of Mexico's apparel imports to the United States entered under TSUS item 807.00.

1989 Understanding Regarding Trade and Investment Facilitation Talks

On his first official state visit to the United States, President Salinas signed a joint understanding with President Bush that pledged more bilateral cooperation in trade and investment issues. During the October 3, 1989, visit, the two presidents signed the "Understanding Between the Government of the United Mexican States and the Government of the United States of America Regarding Trade and Investment Facilitation Talks" (TIFTs). The TIFTs builds on the continuing work of the 1987 Framework Understanding and its various working groups. However, unlike the 1987 Understanding which provided a consultative forum for resolving problems, the new TIFTs established a negotiating process for expanding trade and investment opportunities.

The TIFTs represent a significant milestone for bilateral commercial relations in several ways.[42] First, talks under the earlier Framework Understanding were held only as part of a consultative and dispute settlement mechanism. The mandate of the TIFTs goes further by providing for comprehensive trade and investment negotiations. Second, previous attempts by the Mexican Government to engage the United States in discussions on a sectoral basis have not been successful.[43] However, negotiations called for under the TIFTs will focus on specific product areas, as well as cross-sectoral issues such as services, intellectual property rights, technology, investment, distribution problems, and various tariff and nontariff barriers to market access.[44] Finally, the TIFTs marks a major departure in the methodology used to form the body of information used by both countries during negotiations. Rather than assemble for talks after each national team has independently collected and analyzed trade and investment data, binational teams of government experts will conduct intensive information gathering, analysis, and review of information prior to the start of negotiations. These mutual study groups should "facilitate a resolution of issues before negotiations are called to the table."[45] Previous rounds of negotiations under the 1987 framework agreement were based on binational teams independently collecting and analyzing trade and investment data. Often, an unwillingness to accept each other's premise resulted in hindered negotiations.

A final factor for facilitating discussions is the set timetable, guiding the talks through various phases. November 1989 was the deadline set for jointly deciding which specific topics would be covered in initial negotiations. At the November meeting, the United States and Mexico agreed to explore binational methods on formulating product standards[46] and to expand trade and investment in petrochemicals. A possible third topic was left open, however no suggestions have been brought forth.

1989 TIFTS Talks.—Under the new TIFTs accord between the United States and Mexico, product standards, testing, certification, and regulations were designated in November 1989 as one of two topics for initial negotiations.[47] In a mid-December meeting, the binational teams discussed each other's standards systems. Mexican officials explained the January 1988 law that incorporated the GATT Standards Code into Mexican law. Further talks have been scheduled but deferred. According to the mandate of the 1989 understanding, the binational team of experts are to issue a report in March 1990 that will initiate negotiations.

Other Accords

In addition to the TIFTs Understanding signed during President Salinas' October visit to the United States, U.S. Trade Representative Carla Hills and Mexican Commerce Secretary Jaime Serra Puche announced that agreements had been reached on an extension and expansion of Mexico's steel voluntary restraint agreement (VRA) with a bilateral consensus to eliminate trade-distorting practices in the steel sector. Ambassador Hills and Secretary Puche also announced an improved and constructive atmosphere existed to work on bilateral intellectual property rights issues.[48] In addition, both countries reiterated their commitment to the mutually beneficial expansion of textile and apparel trade, with possible substantive changes in their textile trade relationship in the near future.[49] Finally, during the early October state

[41] Under item 807.00, imported articles assembled wholly or partly with U.S. fabricated components are assessed duty on the total value of the articles less the value of the U.S. components (i.e., the duty is essentially assessed on the value added abroad.)

[42] See, *International Economic Review*, "New U.S.-Mexico Understanding signed at Summit", USITC, November 1989.

[43] U.S. officials have expressed concern over how bilateral sector arrangements would be treated under GATT. *Mexico Update*, June 1, 1988, p. 10.

[44] Negotiations are not limited to these issues.

[45] *Journal of Commerce*, Nov. 8, 1989.

[46] See section below on "Mexico's Standardization Practices."

[47] The other topic was petrochemicals. Preliminary talks were held in February with more discussions scheduled.

[48] Following a series of consultations spanning several months, Mexico was recently taken off the Special 301 "priority watch list" of countries with inadequate IPR protection. See section of "Intellectual Property" for more detailed discussion.

[49] On February 16, 1990, the United States and Mexico signed a Memorandum of Understanding that will liberalize textile apparel trade between the two countries. Under the new understanding, Mexico's access to the U.S. market will improve under the "special regime" provisions of the 1987 agreement.

visit, Ambassador Hills and Secretary Serra concluded discussions that were started during the August 1989 annual meeting of the U.S.-Mexican Binational Commission. Agreements stemming from these discussions suggest a deepening and broadening of the U.S.-Mexican commercial relationship.[50]

Two other agreements signed at the October 3, 1989, presidential summit established a Joint Committee for Investment and Trade and expanded a tourism pact which superseded a 1983 accord. The Joint Committee, as a twice-yearly forum, will review the status of joint trade and investment promotion activities. It will identify investment opportunities and barriers in each country, support promotion activities and facilitate coordination of these opportunities, and will cooperate in data collection related to investment flows.[51] The U.S. Department of Commerce and the Secretariat de Comercio y Fomento Industrial (SECOFI) will lead the sub-cabinet-level discussions.

The tourism accord encourages and expedites the expansion of tourism through the development of tourism infrastructure. Both countries will simplify and eliminate procedures and documents to facilitate tourist travel. The new tourism pact also encourages increased binational cultural events, improved exchanges of tourism statistics, and opened additional border-crossing points.

Mexico's Standardization Practices

Mexico's 1986 accession to GATT culminated in the signing of four main Tokyo Round nontariff agreements, one of which was the technical barriers to trade, or standards, code. On January 26, 1988, a new Mexican law—Federal Law on Metrology and Standardization—was published in Mexico's official journal *Diario Oficial de la Federacio (Diario Official)*. This law, which became effective on the date it was published, constitutes the legal structure to fulfil Mexico's commitments under the Standards Code. On April 20, 1988, Mexico published a decree in the *Diario Official* that incorporated the Standards Code into Mexican domestic law.

Mexico's Standards System.—The Mexican industrial standards system is maintained by SECOFI, Mexico's Ministry of Commerce and Industrial Development, through its General Directorate for Standardization.[52] The new standards law contained information on standards, regulations, metrology, and production controls/ certification of quality. It also defined the role of SECOFI in coordinating Mexico's participation in international standards organizations.[53]

Advisory committees comprised of representatives from both public and private sectors of producers, consumers, and academics develop Mexican standards. These committees study available sources, including applicable foreign national and international standards, on which to base the national standard. As a matter of policy Mexico attempts to base domestic standards on international standards in conformity with the GATT Standards Code. Also under the 1988 law, nondiscriminatory treatment is applied in regulations concerning health, safety, security, consumer information, and public interest. As decreed by the 1988 law, standards can be either voluntary or mandatory. Certification is mandatory only for those standards that are mandated by law. Mandatory standards, are for the most part, in areas that have a major impact on the Mexican economy or are in the public interest, such as those affecting life, safety, and health. Certification may also be mandatory for products designed for export. Certification to voluntary standards is conducted at the option of the manufacturer.[54]

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[49]—*Continued*
(Special liberalized quotas are accorded to textile products assembled in Mexico from U.S.-formed and cut fabric.) In addition, quotas on 52 product categories were dropped from the agreement, quotas for the remaining categories were increased by an average 25 percent, and additional flexibility was added in many product areas allowing more rapid adjustments to changing fashion design. USTR Press Release, 90/10, Feb. 16, 1990. Ron Sorini, the USTR textile negotiator, reportedly called the arrangement "the most liberal agreement we've ever negotiated in textiles." *Los Angeles Times*, Feb. 23, 1990. Textile experts predict that Mexican clothing and cloth exports to the United States could double to $1.3 billion over the next two years.

[50] At the Aug. 7, 1989 meeting in Mexico City, Ambassador Hills and Secretary Serra agreed to "accelerate the negotiations on tariff and nontariff measures within the framework of the Uruguay Round." *International Trade Reporter*, vol. 6, Aug. 8, 1989, p. 1045. Other agreements were signed to improve U.S.-Mexico trade on the Texas border, environmental cleanup of the Colorado River, maritime search and rescue cooperation, consular cooperation on immigration, and exemptions on international shipping and air transportation. Other issues discussed at the annual meeting were: the recent successful Mexican debt negotiations with commercial banks, drug trafficking and law enforcement cooperation, and promotion of tourism and cultural programs.

[51] Joint communique issued by Secretary Mosbacher and Secretary Serra on October 3, 1989.

[52] Other ministries involved in standards-related activities are the Ministry of Agricultural and Water Resources which sets standards for agricultural products and the Ministry of Health which regulates food and beverage products.

[53] SECOFI represents the official Mexican position in the international standards organizations of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Pan American Standards Commission (COPANT), and the Codex Alimentarius Commission. As the official representative for Mexico in all international standards, SECOFI is the official distributor for the above organizations' standards and documents, including those of other member bodies such as the American National Standards Institute (ANSI).

[54] In 1980 Mexico established the National Testing Laboratories Accreditation System (SINALP). This is a national network of some 60 laboratories accredited to ensure "reliable tests." The accreditation scheme will grant accreditation for all the test fields. (Test fields include acoustic and vibration measurement, biological, chemical, electrical, ionizing radiation, mechanical,

In the areas of standards, testing, labeling, and certification, U.S. exporters have cited several problems. For example, wine exporters have said alcoholic beverage imports have been hindered by Mexico's slow moving health bureaucracy. Despite a February 1988 agreement that removed import licensing requirements,[55] U.S. exporters continue to complain about a complicated process in securing necessary approvals from the Ministry of Health.[56] Another complaint in the standards area concerns overly stringent packaging rules. The U.S. soft drink industry complained that SECOFI packaging rules limit companies' ability to form appropriate marketing strategies for their products.[57]

U.S.-Mexican Standards Agreements.—During the first plenary session on February 22, 1988, of the 1987 framework agreement, the United States and Mexico announced the signing of a protocol[58] intended to establish common health standards and regulations affecting cross-border commerce in foods, drugs, cosmetics, medical equipment, and blood products and other biologics.[59] Under the protocol, Mexico's Health Secretariat and the U.S. Food and Drug Administration (FDA) agreed to share scientific data and to coordinate on product safety in each of these categories. The agencies will also correlate product approvals and revocations of marketing licenses for those products that fail to meet mutually approved standards.

The FDA and the Health Secretariat pledged cooperation in monitoring food contaminants, developing common standards for chemicals use in foods, and exchanging criteria and analytic methods used to evaluate food and cosmetics products. In addition, the FDA will help Mexico strengthen existing regulations for food quality.

Other agreements have been reached to standardize pesticides use, border testing of food products, and to cooperate in the eradication of the Mediterranean fruit fly. As a result of these efforts, the Department of Agriculture financed a $940 million FY89 program for the importation of U.S. agricultural products into Mexico.[60] In August 1989, a $1.225 billion FY90 program was offered by the U.S. Department of Agriculture's Commodity Credit Corporation to continue financing the importation of U.S. agricultural products into Mexico.[61]

Uruguay Round

Increased protectionism, greater use of nontariff barriers, and a global economic slump led both developed and developing countries to a realization that the world trading system needed updating. Debate developed over possible inclusion of "new areas" not traditionally covered by the GATT, such as services, intellectual property, and investment measures in the Uruguay Round of trade negotiations. Incorporating these areas under the General Agreement has proven to be complicated and controversial. The Contracting Parties have to address the question of whether GATT has the competence to make rules in these new areas.

Developing country positions.—During the Punta del Este Ministerial Declaration of September 1986, developing countries opposed the inclusion of the new areas. They claimed that they would receive fewer benefits due to the unequal distribution of technology, and that would lead to unequal access to markets.[62]

A separate negotiating group was created to address the concerns of the developing countries regarding services.[63] The developing countries'

[54]—*Continued*
metrology, nondestructive, optics and photometry, and thermal testing.) Mexico also participates in the International Laboratory Accreditation Conference (ILAC).

[55] See section on 1987 Bilateral Framework Agreement for discussion of alcohol agreement.

[56] Specific complaints by the U.S. wine industry include a perceived longer than necessary time frame for approval, a lack of clarity in the criteria for deciding when the Mexican Government grants authorization for wines, and the requirement of wine exporters to obtain certification from both the Mexican and the United States consuls. Unclassified cable from USTR to U.S. Embassy in Mexico, August 1989, 263204.

[57] Specific complaints lodged by representatives of the U.S. soft drink industry include the inability of foreign firms to package soft drinks in container sizes of their choice, the collection of "production taxes", and the pricing of sugar. Mexican officials assured the U.S. industry in 1988 that packaging applications to nationally distribute soft drinks in container sizes of their choice would be approved. As of August 1989, all applications to SECOFI have been turned down. Also, distributors of national soft drinks are entitled to a substantial rebate on production taxes applicable to their business. These rebates are not available to bottlers of international brands operating in Mexico. Finally, for sugar, all Mexican bottlers of soft drinks—national and international—must purchase their sugar requirements from the state run sugar company, Azucar, S.A. Domestic producers, though, obtained subsidized sugar at a cost of approximately 19 percent less that foreign producers. Even though this practice was officially terminated at the beginning of 1989, industry sources indicate that the practice has resumed unofficially.

[58] FDA Commissioner Frank E. Young and Mexican Health Secretary Guillermo Soberon Acevedo signed the accord in a Mexico City ceremony.

[59] *International Trade Reporter*, Mar. 3, 1988, p. 294.

[60] *International Trade Reporter*, Nov. 30, 1988, p. 1579. The major U.S. agricultural exports to Mexico are soybeans, corn, sorghum, cattle, swine, poultry, and dairy products. *U.S.-Mexico Trade Trends and Impediments in Agricultural Trade* (GAO\NSIAD-90-85BR, January 1990).

[61] Ibid., Aug. 9, 1989, p. 1045.

[62] The countries depicted in hardline opposition to inclusion of the new areas at the beginning of the Uruguay Round were Argentina, Brazil, Cuba, Egypt, India, Nigeria, Peru, Tanzania, Vietnam, and Yugoslavia. *Uruguay Round Papers on Selected Issues*, United Nations Conference on Trade and Development (UNCTAD), 1989, pp. 57-80, 129-181, and 203-219.

[63] Jagdish N. Bhagwati, "Trade in services and the multilateral trade negotiations," *The World Bank Economic Review*, no. 4, vol. 1, September 1987, pp. 549-569.

position was that the developed countries would "demand unrequited concessions"[64] in services even before the developed countries offered any concessions in the more traditional GATT areas of tariff reductions and market access.[65] Moreover, if a services agreement were formulated, there was a question as to how the right of establishment[66] would be balanced with the increased movement of labor across borders. Developed countries conceded the need for greater freedom of movement for professional and skilled workers, but developing countries, with their mainly unskilled labor forces, want greater labor mobility for all their workers—a goal that conflicts with most existing immigration laws.

Developed countries expressed the position that new technological innovations—such as computer software, biotechnological-derived inventions, and pharmaceutical products—should be protected from piracy and imitation.[67] Conversely, developing countries stressed the importance of access to new technology to promote industrial development. The developing countries were concerned that rising costs associated with increased standards and enforcement measures, would further restrain their economic development.[68]

The developing countries took the position that their investment requirements concerning local content, export performance, and local equity were efficient means for overcoming certain market imperfections (e.g., use of restrictive business practices such as centralized procurement practices and traditional supplier linkages)[69] that could impede the growth of developing countries.[70] Developing countries also took the position that convincing evidence does not exist to support the idea that investment performance requirements have significant effects on world trade.[71]

Mexican President Salinas has pledged his country's full and open participation in the multilateral trade talks.[72] Mexico, as both a new GATT member and a developing country, has played a moderating role in the ongoing Uruguay Round.[73] As representative of that role, the Mexican Government will host informal trade talks in April 1990.[74]

Mexico has surpassed the commitments it made as part of its GATT accession and, in addition, has instituted a program of major trade and investment reforms. Mexico has asked its trading partners for "credit" for this unilateral liberalization in the ongoing round of multilateral negotiations.[75] In a statement before the World Economic Forum, President Salinas maintained that "in bilateral and multilateral negotiations—such as GATT—we are seeking recognition for what we have already achieved."[76] In an address before the GATT, the Mexican president urged GATT members "to ensure countries such as Mexico, opening their economies to imports, receive full reciprocal treatment for their exports."[77] As a GATT moderate, Mexico has not sided with the hardline countries during controversial negotiations and has offered various proposals.[78]

Services.—In July 1988, Mexico argued that generally, any accord in services should aim to expand production, productivity, employment, and exports related to the service sectors of the developing countries. To enhance economic development, Mexico proposed several measures. First, the principle of "relative reciprocity" would recognize that there cannot be equal treatment among unequal partners. Other requirements to boost developing countries' economies would be the inclusion of labor-intensive services and labor flows, preferential arrangements for developing countries, and measures to speed up the transfer of technology to those countries. Mexico also suggested that the right of establishment or commercial presence of foreign direct investors should not be embraced in the negotiations. Finally, Mexico contended that certain laws and regulations relating to the development interests of developing countries should not be considered as barriers to trade in services.[79]

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[64] Ibid.

[65] Specific concessions the developing countries are seeking from developed countries concern increased market access for their tropical and natural resource-based products, agricultural goods, and textiles.

[66] This means a foreign country has a right to establish a service industry in a domestic market.

[67] Robert E. Baldwin and J. David Richardson, eds., *Issues in the Uruguay Round*, NBER Conference Report, 1988, pp. 65-69.

[68] *Uruguay Round Papers and Selected Issues*, pp. 129-180.

[69] Michael Finger and Andrzej Olechowski, eds. *The Uruguay Round A Handbook on the Multilateral Trade Negotiations*, World Bank, 1987, pp. 217-225.

[70] Ibid., p. 223.

[71] *Uruguay Round Papers on Selected Issues*, pp. 203-219.

[72] President Salinas addressed the Geneva based international trade body on February 1, 1990. *GATT Press Release*, No. 1474, Feb. 2, 1990.

[73] Interviews with Administration and GATT officials characterized Mexico's contributions to the trade talks as constructive and moderate.

[74] Tokyo held a similar informal gathering of trade officials in November 1989 that was characterized as a means for participants to discuss longstanding disputes outside of official negotiating sessions. For more information on the Tokyo meeting, see *International Trade Reporter*, vol. 6, Nov. 11, 1989 p. 1514.

[75] The "credit" that Mexico would like to receive would be in the form of benefits from its major trading partners for prior unilateral actions it has taken to improve market access. Mexico has not identified any specific benefits it would like to receive. According to U.S. administration sources, the United States is cautious about granting "credit" for unilateral liberalizing measures.

[76] Address by President Salinas at the annual meeting of the World Economic Forum at Davos, Switzerland, Feb. 1, 1990.

[77] Address before the members of GATT on Feb. 1, 1990. *GATT Press Release*, no. 1474, Feb. 2, 1990.

[78] Interview with U.S. official.

[79] *Uruguay Round Papers on Selected Issues*, pp. 99-101.

The Mexican proposal received support from many developing countries. Industrial countries welcomed it as a constructive contribution to the negotiating group and most were in agreement with the proposal's overall objectives. However, concern was expressed with some of the detailed measures. For instance, the inclusion of labor mobility may conflict with immigrations laws; the exclusion of right of establishment differs with the developed countries push for commercial presence in foreign markets; the interpretation of "relative reciprocity" would need to be determined; and the exclusions of laws and regulations regarded as development-based presents a possible "blank check" approach for superceding a services framework agreement.[80]

Intellectual Property.—Negotiations on trade-related intellectual property rights (TRIPs) revolve around standards and enforcement of intellectual property rights (IPRs). In this respect, Mexico presented its recommendations at the February 1990 TRIPs meeting. In its proposal, Mexico argued for a balanced approach whereby IPRs are counterbalanced with public interest and economic development. The U.S. delegate hailed the Mexican submission as giving "a new spirit to the TRIPs negotiations" and as such, should be incorporated into the negotiating pattern for the remainder of the year.[81] Other nations—the European Community, the Nordic countries, Austria, and Canada—also praised the proposal and stated that Mexico's contribution should be treated as a keystone of the negotiations.[82]

Specific aspects of the Mexican paper incorporate the governance of IPRs through existing GATT principles of transparency, national treatment, most-favored-nation, nondiscrimination, international cooperation, consultation, and dispute settlement. Of note, Mexico recommended using independent experts on the dispute panels instead of past or present delegates of GATT.

To equalize the new regime of protection, Mexico advanced special measures for developing countries. Special and differential treatment would consist of shorter terms for patents, with possible extensions or transitional measures; legal assistance for countries to improve their intellectual property systems; and financial resources to enable developing countries to modify patent and trademark regimes.

Investment.—Mexico proposed in July 1989 a testing procedure for a few trade-related investment measures to gain a better understanding of the issues and problems in this field.[83] An elaboration of the testing proposal was presented in the September meeting. In particular, two "pilot" TRIMs would be chosen and systematically analyzed for their effects and their relationship with GATT articles. Specific measures suggested were export performance and local equity requirements.[84] Some participants of the negotiating group argued that with the round finishing at the end of 1990, such a study was not feasible.[85]

Although Mexico's proposal was not implemented, Mexican investment liberalization was singled out as a role model. The group recognized that Mexico has eased its investment restrictions without any resulting decline in development.[86]

Other Negotiating Groups.—In the Textiles negotiating group, Mexico said it could gain greater market access for its price-competitive textiles if the MFA[87] is phased out and textiles returned to the GATT.[88] Mexico is a member of the International Textiles and Clothing Bureau (ITCB)[89] which represents Third World textile exporters in the Uruguay Round textiles negotiations.

Indonesia, as the main spokescountry, presented the ITCB proposal in May 1988. The proposal called for a multiple process to reintegrate textiles into the GATT through a reversal of the restrictive measures under the

[80] GATT, *GATT Focus*, No. 56, Aug. 1988.
[81] *International Trade Reporter*, vol. 7, Feb. 7, 1990, p. 193.
[82] Ibid.
[83] *News of the Uruguay Round of Multilateral Trade Negotiations (NUR)*, no. 33, Aug. 3, 1989.

[84] These two TRIMs were suggested because they represent the spectrum of proposed measures. Export performance requirements are generally considered trade distorting and should be disciplined under GATT while the connection between local equity and trade is somewhat tenuous. Export performance requirements typically oblige an investor to export a fixed percentage of production, a minimum quantity or value of goods, or some proportion of the investment's import balance. Local equity requirements typically oblige that a certain percentage of the equity of a company created by foreign investment be held or controlled by local investors.
[85] *NUR*, Oct. 16, 1989.
[86] *Inside US Trade*, Sept. 22, 1989. p. 1.
[87] The 42 parties to the MFA (European Community and its 10 member states counting as 1) are: Argentina, Australia, Bangladesh, Brazil, Canada, Colombia, Czechoslovakia, Dominican Republic, Egypt, El Salvador, EC, Finland, Guatemala, Haiti, Hungary, India, Indonesia, Israel, Jamaica, Japan, Republic of Korea, Malaysia, Maldives, Mexico, Norway, Pakistan, Peru, Philippines, Poland, Portugal on behalf of Macao, Romania, Singapore, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Kingdom on behalf of Hong Kong, United States, Uruguay, and Yugoslavia. The People's Republic of China became a party to the MFA in January 1984. The MFA has been in force since 1973. Since then it has been extended on two occasions: 1978 and 1981. It replaced the arrangement which, since 1962, covered a large part of world trade in cotton textiles. Its coverage is broader: yarn, woven fabrics, worsted and clothing of cotton, wool and manmade fibers, excluding handmade fabrics and clothing and those produced by traditional handicraft methods.
[88] *Mexican Update*, June 15, 1988, p. 11.
[89] Member countries of the ITCB are Argentina, Bangladesh, Brazil, China, Colombia, Egypt, Hong Kong, India, Indonesia, Jamaica, Republic of Korea, Macao, Maldives, Mexico, Pakistan, Peru, Sri Lanka, Turkey, Uruguay, and Yugoslavia. The ITCB—formed in 1986—is recognized as an United Nations international organization and is based in Geneva.

MFA; the elimination of GATT-incompatible concepts and practices currently existing under the MFA; the effective application of the GATT principles to trade in textiles and clothing; and the termination of the MFA and all associated bilateral agreements.[90]

[90] *NUR*, no. 16, May 31, 1988.

Chapter 3
Deregulation and Privatization

Mexican policymakers view deregulation and privatization as key instruments necessary to help restructure the Mexican economy and to promote growth. Deregulation and privatization, as used in reference to the Mexican economy, are complex concepts that embrace many different policies and measures.

On November 1 1989, in his first state-of-the-nation report, President Salinas declared that regulatory revision is a cornerstone of the nation's economic modernization program, and that clear rules and legal security for corporations are needed to provide incentives for foreign investment. Foreign investors had been discouraged in the past by the arbitrary manner in which certain rules were implemented. Mexico's most recent National Development Plan (1989-94) emphasizes the nation's need for a clear system of economic rules that will strengthen creative productivity.[1] Moreover, deregulation was presented as a means of promoting competition and eliminating unnecessary costs.

In February 1989, the Secretary of Commerce and Industrial Development (SECOFI) was given responsibility for the country's overall regulatory revision, most of which will affect areas controlled by agencies other than SECOFI. Based on the premise that excessive and obsolete regulations were largely responsible for inefficiency in the use of Mexican resources, SECOFI's mandate is to make the new rules simpler, less pervasive and less rigid, and to allow more room for private initiative and competition. The extensive regulatory revision currently underway amounts to the deregulation of the economy as a whole and paves the way for privatization of State-owned enterprises in many areas.[2]

Program of Deregulation

The Mexican Government has undertaken a major "Program of Deregulation." As part of this program, the Government has completed, or is in the process of preparing, deregulatory measures affecting most areas of the economy, including the financial system, insurance, standards for containers, agriculture, fishing, motor carriers, multimodal transportation, the petrochemical industry, refined petroleum products, rules regulating transfer of technology, telecommunications terminal equipment, customs brokers, and commodities (sugar, coffee, and cocoa). The following sections summarize the available information on the new regulations issued under this deregulatory program.[3]

Financial system.—Modifications to Mexico's financial system, effective January 1, 1990, give greater autonomy to the commercial banks.[4] Mexican banks have lost considerable competitiveness vis-a-vis nonbank intermediaries as a result of their nationalization in 1982. In 1987, banking was partially reprivatized as private groups were allowed to own various types of financial intermediaries, and provide integrated financial services.

The new financial regulations provide that the banks' capital will consist of "ordinary capital" and "additional capital." The Federal Government must own 66 percent of the "ordinary" capital ("A" stocks) and 34 percent may be privately owned ("B" stocks.) Foreign investors are excluded from ownership of "ordinary" capital, and no Mexican individual or company may own more than 5 percent. Foreign investors may, however, participate in the "additional" capital ("C" stocks,) but as a group may not own more than 34 percent. The reform package further includes measures to prevent insider trading and artificial manipulation of the markets.[5]

Earlier banking regulations, issued in April 1989, liberalized the banks' reserve requirements and the process of determining interest rates. The goal was to lower interest rates to stimulate the economy and open up competition in the banking system.

Insurance.—Regulatory changes affecting the insurance industry also became effective January 1, 1990. The new rules included a clear separation of insurance companies from the banks. The industry will be henceforth controlled by a new governmental entity named National Commission of Insurance and Bonds, replacing the Banking and Insurance Commission of the Secretary of Finance (SHCP) as the highest authority for insurance.

Another notable change amounting to deregulation allows the insurance companies to set their own rates for all lines of insurance they sell. The only restriction is that the new rates must be based on solid actuarial or loss data. Although the rates were uniform in the past, the new rules will allow rate competition among insurance companies. Minority ownership interest

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[1] *Plan Nacional de Desarollo*, 1989-94, para. 2.2, "La Estrategia: Modernizar a Mexico."

[2] The deregulation program was enacted by Presidential decree "Regulation for the Secretary of Commerce and Industrial Development to revise the regulations of national economic activity," *Diario Oficial*, February 1989.

[3] All regulatory changes that the Government of Mexico considers to have occurred under their "Program of Deregulation" are included here. Some of these changes may appear to some readers more as privatization than deregulation.

Much of the information on Mexico's deregulation measures was obtained directly from Mexican officials either through interviews or in Spanish-language documents and translations provided to Commission staff.

[4] *Diario Oficial*, Dec. 27, 1989.

[5] Department of State telegram #00387, "Financial reforms in Mexico," Jan. 1990.

will be permitted for private investors, including foreign insurance companies. In addition, on February 13, 1990, the Mexican Press reported that that the wholly government-owned company Aseguradora Mexicana (ASEMEX,) will be sold. The company ranked 23rd in 1988 sales in *Expansion* magazine's most recent list of the leading 500 Mexican companies, and was the sixth largest parastatal included in the survey.[6]

Standards for containers.—A 1989 decree issued by SECOFI abolished about 90 regulations that imposed restrictive packaging and labeling standards, superseding them with simpler and more liberal rules. Notably, restrictions placed on the type of material used for containers have been eliminated, as long as all health regulations are observed. Authorities hope that in many cases containers will be substituted with adequate but cheaper materials (for example, substituting plastic for glass) which could also reduce transportation costs. A reduction in container costs of almost 20 percent is expected. This could lower the price of a final product by almost 10 percent.

Agriculture.[7]—A major restructuring of the agricultural sector is being contemplated to resolve perceived problems of food supply. Agricultural parastatals (companies owned or controlled by the Government of Mexico such as Conasupo, the food supply company, or Anagsa, the parastatal agricultural insurance company)[8] are being analyzed as to their effectiveness in fulfilling the social objectives for which they were created; most important, providing inexpensive food for the urban population. Under consideration is the reorganization of agribusinesses and government agencies in charge of agriculture;[9] increased government spending in rural areas; a farm production plan to enable the Government to set higher guaranteed prices for basic commodities and staples; the sale of unprofitable state-run businesses with preference to be given to rural producers as potential buyers;[10] and the establishment of a training program for agricultural managers and supervisors.

The provision of financing for farm production of food and industrial raw materials has been a major agricultural regulatory activity in Mexico. Previously, much of the farm credit for operating costs has been provided by the National Bank for Rural Credit (Banrural), the parastatal rural credit bank. Banrural is currently being restructured to improve its operational efficiency. Banrural will henceforth focus on supporting low-income farmers; much of the financing provided heretofore by Banrural will switch to commercial banks. The restructuring of Banrural amounts to a major agricultural reform and deregulation measure in Mexico.[11] In addition, the Mexican Government is expected to issue a comprehensive plan for additional agricultural reform in the near future.

Fishing.—Amendments to Mexico's Federal Fishing Law (LFP) were published in the *Diario Official* on December 30, 1989. Prior to the new regulations, LFP restricted fishing rights for reserved species (abalone, clams, cabarilla, shrimp, lobsters, oysters, sea turtles and totoabas) to cooperatives only. However, procedures for the formation and operation of a fish-producing cooperative were complicated; to obtain a license from Mexico's centralized aquacultural authorities (Sepesca) could take 3 to 5 years. Moreover, private individuals or companies were excluded from joining the cooperative; only authorized users of public land--communities or state-owned entities--were admissible. These and other cumbersome restrictions reduced access to fishing in Mexico and boosted the price of all aquacultural products.

The new rules relieved the fishing industry from the burden of overregulation, as perceived by Mexican officials, abolishing licensing requirements for breeding and aquaculture in general, except when these activities are carried out in waters under Federal jurisdiction. Barriers to marketing (the requirement of using "fishing guides" for transporting fish) were also abolished. In addition, regulations now permit foreign investment in fishing up to 49 percent. The Government of Mexico expects that greater freedoms in breeding, producing, transporting and marketing will lower fish prices for the domestic market, and boost production and export revenues from reserved species, such as shrimp.

Motor Carriers.—In July 1989, the Government of Mexico relieved the domestic trucking industry operating on Federal highways from the overregulation it had suffered for several decades. Mexico's current General Communications and Transport Law, effective since 1940, has been revised several times over the years. This legal framework led to a complicated transportation system on Mexican highways.

Trucking is a very important industry in Mexico because the railroad network has not grown in decades. Eighty-two percent of freight is moved by road. Since 1982, trucking has been adversely affected by Mexico's economic crisis, and budget cuts. Highway construction came to a virtual standstill, and the replacement of trucks and trailers was grossly inadequate. Authorities tried to correct the inadequacy of highway transportation with regulatory measures but the resulting environment of overregulation caused problems of its own.

[6] The Survey was published in *Expansion* on August 16, 1989.

[7] Source for the following information is SECOFI, Deregulation Unit.

[8] See under "Privatization" later in this report.

[9] See section on "Privatization" for restructuring of Conasupo and Fertimex.

[10] See section on "Privatization".

[11] See section on "Privatization" for more additional information on the restructuring of Banrural, and its role in Mexico's agricultural reform program.

The new regulations for the Mexican trucking industry—amounting to its deregulation—were published in the Diario Oficial on July 7, 1989.[12] The decree went into effect on July 10, and coordinated major strategies for implementation between Mexico's Secretariat of Communications and Transportation (SCT), SECOFI, and the National Chamber of Transport and Communication.

Because trucks were expensive in Mexico, entry into the industry required a major intitial investment and was difficult to accomplish.[13] However, overregulation itself erected additional barriers to entry. Until the recent deregulation, trucking in Mexico was devided into ll routes nationwide.[14] The industry was managed by regional cartel-like organizations called "freight service centers" that determined cargo movement in their respective areas. These centers granted concessions to carriers and also allocated shipments of cargo between truckers. Each trucker was restricted to designated routes and types of cargoes. These limitations resulted in frequent empty return runs for truckers, who were also required to load and unload cargo at designated terminals.

The centers, in turn, were controlled by a small number of large truckers. These enjoyed oligopolistic profits and were, therefore, able to withstand the adversities of the macroeconomic environment such as price controls and increasing costs of operation.[15] Entry by outsiders was discouraged by the controlling firms' reluctance to let the centers authorize new concessions and permits.

On the users' side, shippers were adversely affected in many ways. Most importantly, they were not free to choose their carriers. Moreover, the oligopolistic nature of the system resulted in raising shipping costs considerably. It also contributed to the obsolescence of the trucking fleet, weakened the quality of services, and left certain areas without service. The unmet needs of shippers, and the barriers to entry on the supply side, fostered a sizable underground market for unlicensed carriers.

The new trucking deregulation decree addresses the provisions in the 1989-94 National Development Plan, which call for updating and modernizing pertinent institutions and regulatory mechanisms to make the country's transportation more efficient and competitive. The decree introduces fundamental changes, including expediting and simplifying the licensing of truckers and application procedures for permits.[16] All concessions and permits are now issued by the SCT in a streamlined procedure, with no involvement by the centers. Truckers are authorized to contract with users within or outside the jurisdiction of their centers, i.e. they may move, load, and unload any type of cargo anywhere in the country. The role of the centers themselves is slated to undergo a profound change. They will mostly retain functions such as housing, loading, and unloading activities, and provide a locus where transportation companies can be reached and hired.[17]

Access to extra-regional markets, previously closed to carriers, is expected to create a more price-competitive atmosphere for the industry. Rate controls established in 1987 will continue to provide a ceiling for trucking rates. Since truckers are now free to negotiate special rates with users, however, rates are expected to decline. The deregulation decree also eliminated a 15-percent tax on the transportation of imported merchandise.

Mexican officials hope that the relative freedom now granted in setting rates and the resulting price decline will reduce the excessive profit margins of carrier oligopolies. Officials also expect that a liberalized highway transportation market will encourage services to be provided for poorly served areas and generally increase the availability of trucking for users. The new, more competitive regime will supposedly also lead to the renovation of Mexico's obsolete trucking fleet.

In addition to the new rules issued for cargo transport, the SCT is presently developing a modernization program for Mexico's Federal Highway system. Among other provisions, the secretariat's annual program for 1989[18] for the first time authorizes private companies, including foreign investors, to participate in building highways and maintaining them. Until last year, the Federal Government had been the only authority in charge of planning and carrying out

[12] The rules contained in the decree were developed by the SCT, which has the authority under the law to formulate and implement transportation policies on Federal highways.

[13] This was especially true for those firms that relied significantly on imported equipment. Frequent devaluations of the peso following Mexico's debt crisis of 1982 made replacement of imports prohibitively expensive in terms of the peso.

[14] The source of most of the information for the discussion of Mexico's highway freight transportation system is the transcript of the 30th annual meeting of the Transportation Research Forum on October 13, 1989, in Williamsburg, Va. Mr. Alejandro Diaz Landero, a senior economic advisor to Mexico's Secretary of Communication and Transportation (SCT), and Mr. Jose Manuel Villavazo, founder and Director of "Grupo Bloquenal", a consulting conglomerate comprising 350 transportation firms in Mexico addressed the meeting.

[15] Mr. Villavazo observes that although there are over 3,000 small truckers operating in Mexico, 0.3 percent of the firms, representing a superior lobbying power, transported 13.9 percent of the cargo in 1988.

[16] The following discussion on the new highway trucking decree is based, among other sources, on U.S. State Department airgram, "New Mexican Transportation Regime," Mexico, 18741, July 1989.

[17] There are some exceptions from these new freedoms such as trucking hazardous products or food, fruits and vegetables, where special requirements apply.

[18] *Diario Oficial*, Jan. 23, 1989.

the coordination of the Federal deregulation program with Mexico's municipal authorities, including the application of the Federal system to roads that are under municipal jurisdiction.

In addition to SCT, the other two organizations that were signatories of the tripartite agreement on deregulation are also taking an active part in Mexico's new trucking regime. Among others, SECOFI will coordinate with Mexico's automotive industry, the changes in standards required to assure that truckers can acquire domestically produced vehicles and parts comparable to international products.

As providers of service, Mexican truckers have been beneficiaries of legal protections from international competition, but they have also been victims of protective measures as buyers of automotive vehicles and parts. Automotive import barriers, local content requirements, and the effect of frequent peso devaluations after 1982 on the prices of imported equipment, made vehicles and parts prohibitively expensive for the trucking industry. The absence of a free automotive market has contributed in large measure to poor replacement and maintenance of trucking equipment in Mexico.

The ongoing sweeping economic liberalization effort in Mexico stands to alleviate this situation. SECOFI's current transportation policies seek to provide truckers with access to equipment that is internationally competitive in terms of price, performance, and standards. Legislation signed by President Salinas in December 1989, effective November 1990, will give greater freedom to Mexican automobile manufacturers and distributors to import foreign-made (mostly U.S. or Canadian) tractors, trailers and parts.[19] Imported vehicles generally have a price advantage over their Mexican-made equivalents. Also, SECOFI's earlier-mentioned efforts to develop programs that adapt domestic automotive standards to international standards are likely to improve the conditions under which truckers operate.

The National Chamber of Transport and Communication will coordinate with SECOFI and its own members the implementation of several aspects of the deregulation program, especially those measures that concern the modernization of the trucking fleet. The Chamber will also actively encourage its member carriers to increase the efficiency of trucking services, to expand the scope of such services, and foster the necessary institutional changes.

Prohibitions affecting foreign trucking.— Mexico's Constitution restricts the commercial use of Federal highways to Mexican nationals, and the General Communications and Transport Law of 1940 prohibits foreign carriers from operating in Mexico. The July 1989 deregulation, although it aims at introducing competition on Mexican highways, does not apply to foreign-owned companies.

U.S. motor carriers have complained for some time about the difficulty of obtaining operating rights in Mexico.[20] The Ruiz Cortines Decree of 1955 eased access to Mexico's border zones for U.S. carriers, allowing them to drive 24 miles into Mexican territory. However, this decree falls under Mexican laws that leave the decree's interpretation to local officials along the border, and therefore the decree has been arbitrarily applied.

The transportation of U.S. nonagricultural trade with Mexico is dominated by Mexican shuttle carriers, i.e. for-hire transshippers. This includes about 90 percent of total shipments accounted for by the maquiladoras located in border communities. Mexican private carriers play a leading role in transporting agricultural trade through the border.

The longstanding Mexican discrimination against U.S. motor carrier operations led the U.S. Government in 1982 to retaliate against Mexican carriers. The United States imposed a moratorium on new permits issued by the Interstate Commerce Commission (ICC) for Mexican truckers of the "nonexempt" goods in the United States.[21] In section 226 of The Motor Carrier Safety Act of 1984, U.S. authorities expanded the limitations imposed in 1982 to include all private Mexican carriers (those of both nonexempt and exempt goods.) The 1984 legislation restricted the operation of Mexican truckers to the Commercial Zones adjacent to the border. To operate within these zones, private Mexican truckers must still obtain special ICC certificates of registration to prove that their trucks are properly insured, meet all U.S. safety standards, and are current in Federal highway-user tax payments. In order to improve enforcement of the ICC certificates of registration, in 1988, Congress extended this requirement to all Mexican commercial vehicles, including those entering the United States under lease agreements with U.S. firms. The universal application of the certificate requirement for Mexican trucks became effective January 1, 1990.

However, according to a 1988 report by the U.S. Department of Transportation:

> . . .Section 226 has had little or no impact on the transborder transportation system. . .The impact was nominal because the certification provision of the law was not widely enforced and the provision limiting Mexican trucks to

[19] See the section on Mexico's new automobile decree in ch. 4.

[20] Statement of the American Trucking Association before the U.S. International Trade Commission, public hearing, Dec. 5, 1989.

[21] The "exempt" products include agricultural and horticultural products, livestock, fish, pallets/containers (used/ empty), glass (powdered, crushed, broken,) and rock (decorative).

the commercial zone was not inconsistent with normal activities.[22]

The report emphasized that Mexican truckers continued to function as before because of the large amount of transport that took place wholly within the commercial zone.

According to the American Trucking Association (ATA), Mexican carriers continue to operate relatively unhindered in the United States.[23] ATA views the exclusion of U.S. truckers from the Mexican market as all the more objectionable because most of the increase in bilateral trade to result from the Mexican liberalization process will cross the border by truck.

Nonetheless, ongoing exchanges between the U.S. and Mexican Governments in the area of highway transportation are encouraging, and there are indications that resolution of the conflict may occur in the near future. The United States-Mexico Motor Carrier Working Group, one of the joint bodies established for consultation in the U.S.-Mexican 1987 Framework of Understanding, developed an "action plan" in 1989 and has held several reportedly productive meetings.

At the working group's last meeting in February 1990, both delegations recognized that the deregulation of the trucking industry was going to grant far-reaching benefits to the Mexican economy as well as overall to U.S.-Mexican trade.[24] One of the benefits affecting U.S. interests directly concerns the maquiladoras, which under the new rules are free to contract with any Mexican trucking firm on a competitive basis. Alternatively, maquiladoras can obtain permits to operate their own fleet of trucks as a private company transporting their own products and inputs.[25] The two delegations also made progress in areas such as upgrading customs services on both sides of the border; coordinating commercial drivers' license standards; and standardizing regulations and inspections on vehicle safety, weight and size.

Tour buses.—The Mexican Government has announced plans to formulate a simple and precise regulatory framework for tourism to introduce competition into this area and establish a better balance between supply and demand. The changes would include lifting current restrictions on the movement of U.S. passenger bus lines and chartered U.S. buses on Mexican highways. U.S. companies would be permitted to develop charter tours in Mexico through contractual relationships with Mexican business entities, or U.S. bus companies may establish tours independently. This is likely to enhance earnings from Mexican tourism and also benefit U.S. and Mexican bus, tour, and hotel operators.

Multimodal transportation.[26]—New regulations provided that the government-controlled entity, Multimodal Transportation Companies, give up their monopoly as intermediaries in helping traders gain access to ports. Instead, new regulations allow freight agents and consolidators to become multimodal transportation companies themselves; to use Mexican or foreign ports directly, and without prior authorization from SCT. Authorities expect that deregulation will lead to better coordination of the various modes of transportation, better use of containers and, in general, lower transportation costs.

Petrochemical industry.—The Government of Mexico found that the overregulation of the petrochemical industry, and restrictions on private participation in petrochemical production, have been counterproductive. These barriers drained Government resources, delayed or restrained investments, and hampered technological innovations. Overall, the Government believed that the flexibility of the industry and its vertical integration (which they perceive as the most efficient method of this industry's operation) were jeopardized.

In an effort to deregulate the industry, on August 15, 1989, the Government of Mexico redefined the criteria of "basic" petrochemicals. Authorities reclassified 14 items as "secondary", reducing thereby the number of basic petrochemicals from 34 to 20. At the same time, deregulators curtailed the previous "secondary list" from 800 items to 66. The reclassification of a total of 748 items into lower categories amounted to their deregulation, and opened opportunities for the private sector to invest in the production of these items.[27]

The Government of Mexico hopes that the new regulations will channel considerable private resources into petrochemicals.[28] As a result, resources of Pemex will be freed for additional investment in retained activities of exploration and refining.[29] Authorities believe that deregulation will introduce competition into the

[22] U.S. Department of Transportation, *Motor Carrier Safety Act of 1984: Its Effects on the U.S. Mexico Transborder Transportation System*, July 8, 1988, p. ii.
[23] Testimony of the American Trucking Association before the U.S. International Trade Commission, public hearing, Dec. 5, 1989.
[24] U.S. State Department telegram, "Framework: Transportation Working Group Meeting", Mexico 03325, February 1990.
[25] Ibid.

[26] "Multimodal" refers to the various means of transportation; air, water, motor, and rail.
[27] Previous reclassifications and Government efforts to encourage investment (specifically foreign investment) into the petrochemical industry, are detailed in the Government of Mexico's 1986 Petroleum Development Plan.
[28] See also section on "Foreign Investment" later in this report.
[29] Mexican regulations provide that refineries must be operated by Pemex but joint ventures with private companies—domestic or foreign—are welcome.

petrochemical industry, and lead to greater flexibility and technological innovation. The changes would benefit the entire industry, both the retained parastatal and the private portion.

Refined Petroleum Products.—The Government of Mexico found that restrictions affecting the basic derivatives of petroleum refining, such as lubricants, greases, asphalts, and special paraffins, impeded the development of the industry and limited the domestic supply of these products. Recent amendments to the law governing the petroleum industry eliminated the requirement for prior permits to produce these items. Private producers are still required, however, to supply annual reports to the Secretariat of Energy, Mines and Public Industry. The existing terms, conditions, and standards for producing lubricating oils for use in automotive vehicles will remain in force.

Transfer of technology.—The Government of Mexico is currently in the process of reducing the discretionary role of authorities in regulating the transfer of technology and the use of patents and trademarks. The objective of these efforts is to improve the flow of technological information to and between Mexican firms and encourage foreign companies with subsidiaries in Mexico to transfer technology. The adequate protection of industrial secrets is part of the Government's technology transfer program.[30]

Telecommunications terminal equipment.—The SCT issued a resolution on December 22, 1989 in the *Diario Oficial,* liberalizing authorization procedures for the installation and operation of telecommunications equipment. The list of equipment affected includes telefax; telex, and computer equipment; switches and multi-line equipment; other user terminals installed in buildings; ground stations for the reception of television signals and other mini-stations that share authorized main stations.

Customs brokers.—Amendments to Mexico's Customs Law, published in the *Diario Oficial* on December 28, 1989, aim at introducing competition in this service. The new rules are designed to facilitate customs clearance, improve the customs brokers' performance, make brokers financially more responsible, and make customs service more widely available at a lower cost.[31]

Prior to these new rules, brokers' licenses had to be obtained from SHCP, and there were only 500 customs brokers in Mexico. The brokers were appointed to specified customs houses, which created cartel-like structures for customs brokerage services. In addition, since brokers' fees were determined by the SHCP (based on the value of the merchandise and unrelated to the cost of the service,) there was no price competition in the industry. Corruption was rampant and many customs inspectors had to be replaced.

Recent amendments to the Customs Law authorize the hiring of customs agents by export and import companies, specifying as the only remaining condition that agents make a deposit to NAFINSA. The objective of this condition is to assure the brokers' financial responsibility.[32] In addition, the new rules provide that, effective October 1, 1990, the customs brokers' mandatory fee system will be eliminated. Also, brokers may now move freely between customs houses, and practice at customs houses other than they are appointed to. This latter provision is expected to prevent the creation of local monopolies.

Commodities.—On November 16, 1989, the Mexican Government reorganized the sugar sector with the participation of the sugar industry's workers' union. According to the Government of Mexico, the earlier framework excessively regulated planting, cultivation, delivery of sugar cane and relations between sugar mills and cane producers. Sugar mills had to guarantee yields, and systems of payment to growers were regulated. These rigidities lowered productivity and the supply of domestic sugar, because they acted as disincentives for planters and mills. They also interfered with the industry's vertical integration (which is considered desirable by the Government.) Furthermore, it is now believed that earlier provisions have granted excessive wages and benefits to workers.

The 1989 deregulation authorized the privatization of those sugar mills that were still in the public sector at the time;[33] established new pricing criteria for cane planters and sugar mills for the 1992-93 crop; and provided for the phase out of guaranteed payments for sugar over a period of 3 years. These and other measures—some of them considered temporary—have the objective of raising sugar production and domestic supply. Temporary measures provide that a prohibition on exports and a liberalized import regime should be maintained.

The Mexican Government also lifted burdensome regulations affecting the production and marketing of cacao beans and products. This market had been controlled by the National Cacao Commission (Conadeca,) which allocated the supply of cococa beans to processors, and determined prices. The arbitrary, allocation system of Conadeca forced some producers out of the market. In addition, the absence of competition in the highly regulated market

[30] For more information, see ch. 6.

[31] Mexico overhauled its system of customs' inspection because of concerns about corruption. It revised its procedures and replaced many of its inspectors.

[32] Companies with SECOFI-approved export development programs, in-bond industries, and foreign trade enterprises are exempt from posting this deposit.

[33] See section on "Privatization", later in this chapter.

resulted in high prices. The new rules eliminated the allocation system; repealed a 50-percent tax on firsthand domestic sale and imports of cacao and byproducts, and terminated the requirement for import and export permits for these products.

With regard to coffee, the Government of Mexico reviewed the functions of the Mexican Coffee Institute (Inmecafe) and provided for the gradual phasing out of the institute's control of production and marketing. The new measures eliminated supply quotas of domestic coffee beans, and some foreign trade restrictions. The Government also instituted transitional measures to support the marginal producers in the industry.

Privatization Program

The Government of Mexico's program of reducing the Federal or "parastatal" sector and shifting to a more market-oriented economy is generally referred to as "privatization." However, "disincorporation" is the preferred official term, since the process involves more than selling government-owned or government-controlled operations to the private sector. The Mexican Government also plans to liquidate parastatal operations in certain cases; merge some enterprises with other entities; and transfer others from the Federal Government to the "social sector" (municipal governments, workers' unions or cooperatives.)

Privatization (the term used hereafter in this report as a synonym for the process of reducing the Federal sector) is a politically charged issue in Mexico, where the Government's role in the economy has been growing for decades. While the business community of Mexico welcomes privatization, representatives of workers' interests have frequently opposed it since disincorporation might be accompanied by destabilizitation of wages and employment levels, and loss of union jobs.[34] However, in some instances, the unions themselves become the new entrepreneurs by purchasing the parastatals or forming joint companies with private individuals.

In part, the program of reducing the scope of governmental involvement in the economy serves the needs of fiscal austerity. Mexican policymakers have stated their intention to free public expenditures from the burden of subsidizing unprofitable enterprises and generate public revenues from the sales of the entities the Government owns.[35] The program of reducing the parastatal sector also aims at improving the allocation of the country's resources through privatization. However, the focus of privatization is clearly the divestment of public enterprises in favor of private investors and the consequent transferral of decisionmaking from the public to the private sector. This will reduce the role of the state and enlarge the scope of market forces.[36]

History of Government Ownership

The Constitution of 1917 assigns the federal Government a dominant role in managing and regulating the economy. The number of parastatal entities in Mexico—the ones federally owned or controlled—began to grow following the revolution.[37] The Government took control of certain economic activities, in part because they were designated to be of "strategic importance" on constitutional grounds.

However, many entities that produced goods or provided services have become parastatal for reasons other than fulfilling the Government's constitutional obligations. It was the policy of successive Mexican administrations to rescue certain bankrupt private companies to preserve employment, continue the supply of items deemed necessary for the economy and produce substitutes for imported products. As a result, the Government's control came to encompass widely diverse activities.

The parastatal sector grew especially rapidly in the 1970's. In 1970, there were 391 parastatals. By December 1982 the Government of Mexico had acquired or controlled 1,155 entities.[38] In 1983, parastatals produced 18.2 percent of the GDP. Pemex, the state oil monopoly, alone accounted for 7.5 percent of GDP.

After the 1982 financial collapse and bank nationalizations that occurred during the administration of President Jose Portillo,[39] new President Miguel de la Madrid sought to rebuild business confidence, attract foreign investment, and promote the return of massive funds that fled the country. A policy of disengagement from Federal involvement in the economy began in February 1985, when a communique of the de la Madrid administration announced that it would "consolidate and improve" its economic

[34] In some instances, however, trade unions endorse privatization plans. This has been the case when the privatization of Telefonos de Mexico (Telmex) was announced recently. According to President Salinas, workers became convinced that privatization served their interest.

[35] Only some 20 of Mexico's largest parastatal companies are subject to direct controls from the Federal Budget, i.e. the Secretariat of Finance and Budget (SPP.) The other parastatals are under the financial control of various government agencies. The largest parastatal, Petroleos Mexicanos (Pemex) has a separate budget of its own.

[36] *ASEAN Economic Bulletin*, vol. 5, no. 3, March 1989, p. 210.

[37] Throughout this report, entities owned or controlled by the Government of Mexico will be referred to as "parastatals" in conformity with the Mexican usage of the term. The Government may have majority or minority ownership in a parastatal or parastatal entities might be organized as decentralized entities or trusts. Some English language texts refer to the parastatals as "public companies."

[38] Of the 1,155 companies in the parastatal sector, over 700 were majority-owned by the Government, 80 were minority-owned, and the rest were decentralized agencies and trusts.

[39] Mexican presidents serve a single 6-year term known as a "sexenio".

management by disincorporating "nonstrategic and nonpriority" enterprises.[40]

In May 1986, the de la Madrid administration demonstrated the seriousness of its intentions to reduce the parastatal sector with the shutdown of the 79-percent government-owned Fundidora de Monterrey steel company. Fundidora, the oldest steel mill in Latin America, was deemed to lack economic viability. The operation employed almost 8,000 workers at the time of its closure.[41]

In December 1987, the de la Madrid Government launched its anti-inflationary austerity program known as "The Pact of Economic Solidarity." The Government announced that it would proceed to disincorporate nonstrategic enterprises as part of this program. On May 6, 1988, in a major public address, President de la Madrid reiterated this commitment. At the same time, he made it clear that provisions in the Consitution specifying ownership of certain natural resources and control of the strategic enterprises that directly exploit these resources were irreversible. Thus the Government would retain ownership and control of Pemex, radioactive minerals and nuclear energy, satellite communication, primary petrochemicals, the railroads (Ferrocariles Nacionales), mail service, electricity production (CFE), and basic institutions such as food distribution (Conasupo.) In the last 3 months of the de la Madrid administration, the sale of parastatal enterprises accelerated as new revenues were needed to reduce the public deficit.

According to some leading officials of the Mexican Government, the State's direct participation in the economy had been most important during the "import substitution" period of the Government's economic policy. Meanwhile, Mexico's integration into the world economy, which is currently underway, will be implemented primarily by the private sector.

Objectives

The National Development Plan (1989-94) and President Salinas' first state-of-the-nation report on November 1, 1989, reconfirmed that the disincorporation of nonstrategic and nonpriority parastatal entities will continue.[42] The three main objectives the Government will pursue in this process have been defined by Dr. Jaques Rogozinsky, General Coordinator, Divestiture Unit of the Ministry of Finance as follows:

Decrease the size of the parastatal sector while improving the efficiency of the Government as an economic regulator;

Generate savings for the Government by eliminating government subsidies that are not considered of social importance; and

Shift the task of production to the private sector in order to promote increased industrial productivity, implement the policy of industrial restructuring, and open markets to foreign competition.

The Government plans to withdraw entirely from certain industrial areas, including automobile production, secondary petrochemicals, chemicals and pharmaceuticals, airline service, textiles, cement, and domestic electronic appliances. Authorities also hope to reduce public sector ownership in the steel, mineral metallurgy, and tourism sectors.[43]

The Salinas administration professes that the size of the state is not the key to fulfilling the ideals of the revolution. On the contrary, administration officials have stated that management of too many parastatal entities has distracted the Government from concentrating on overall economic prosperity and meeting social demands. President Salinas, while reconfirming the strategic areas that must remain in the hands of the Government, also broadened the scope of economic activities open for private (including foreign) investment. For example, the Government now welcomes private participation in the financing of infrastucture projects and services, such as the building of toll roads, bridges, and hydroelectric dams. This policy would allow the Government to focus better on other areas of infrastructure such as education, health and social programs.[44]

The Privatization Process

The process of selling a parastatal entity begins with the selection of the enterprise by the appropriate secretariat. The Secretary of Finance (SHCP) then appoints a commercial bank to act as a sales representative. The bank is responsible for auditing the enterprise to be sold, and providing all pertinent information about the company to prospective clients who may then submit sealed bids. The bank passes all offers to the Government for a selection, along with its own recommendation.

The Government's decision-making process is complicated, as there are several secretariats and other governmental agencies involved in

[40] "Strategic" sectors reserved for the control of the Government are defined in article 28, paragraph 4 of the Mexican Constitution. They include oil exploration, refinement and pipelines, hydrocarbons, radioactive materials, electricity, basic petrochemicals, mail, satellite telecommunications, and railways. The Constitution also makes reference to "priority areas", where state-ownership is allowed. However, these priority areas are not defined in the Mexican legislation and have been interpreted widely.

[41] According to Mexican sources, a recent survey shows that 95 percent of Fundidora de Monterrey employees have found an alternative source of employment.

[42] *National Development Plan*, 1989-1994, June 1, 1989, art. 5.3.9.

[43] American Embassy Mexico, *Foreign Economic Trends Report*, November 1989, p.26.

[44] See ch. 5 for details on changes to Mexico's foreign investment regulations.

authorizing and implementing different stages of a sale.[45] SHCP holds ultimate responsibility for the sale and transmits the official decision to the sales agent bank. Finally, the bank draws up the sales agreement.[46]

The acceptance of the most appropriate bid is not necessarily based on the highest price offered. Officials also take into consideration criteria including the purchaser's plans for investment, employment, and exports and his experience in the industry. In addition, as mentioned earlier, the position of the purchase company in the Mexican market is analyzed so the Government can avoid, where possible, the creation of a monopoly as a result of the sale.

The Government seeks to sell parastatals at a fair market value. However, this value is sometimes difficult to determine because of the absence of needed appraisment parameters. Mexican officials encountered difficulties in selling a number of companies earmarked for divestment at a price they considered fair. For this and other reasons, authorized privatization has not yet been completed for a large number of entities. A notable example of a difficult privatization effort is the Compania Minera de Cananea, Mexico's largest copper company and one of the largest copper mines in the world. The Government would not accept the bids that were made by private investors, and the sale has fallen through twice. The company subsequently declared bankruptcy and is again on sale. Media reports have listed several possible buyers for the mine but investors are reportedly reluctant to absorb the nearly one billion dollar debt owed by Cananea.

Problems other than a disagreement on price or a huge debt burden of the parastatal may also slow the privatization process. For example, in privatizing sugar mills, uncertainty generated by labor disputes has discouraged investors.

Data on Government Divestment

The few years of experience during the de la Madrid and Salinas administrations shows notable accomplishments in the implementation of Mexico's privatization program, especially in the industrial and mining sectors. Of the 1,155 state-controlled enterprises that existed in 1982, as of February 1990, 801 were authorized for divestment. Moreover, the privatization process was finalized for 619 companies and was still in progress for 182 companies. The tabulation below shows the procedures by which the Government has divested itself of these entities.

Reduction of Government Ownership December 1982 to February 1990

Procedure	*No. of companies*
Sale*	194
Liquidation**	196
Merger	75
Transfer***	28
Elimination****	126
Total	619

* sale to private companies or the "social sector," such as trade unions or cooperatives

** applies to companies which have tangible assets to be liquidated, and employees to be settled with

*** transfer to state governments

**** applies to legal entities (such as holding companies) without tangible assets

Source: Mexican Government statistics and American Embassy, Mexico.

According to data published by Mexico's National Bank of Foreign Trade (Bancomex), industrial companies accounted for some 40 percent of all privatizations as of November 1988.[47] The number of industrial parastatals fell almost 63 percent between December 1982 and November 1988 as the Government ceased to participate in 22 areas of economic activity classified as industry in the Mexican Census.

Specifically, the Government partially withdrew from processing food, including sugar, bottling of sodas and mineral water, from fishing, and tropical products' agroindustries. The Government also reduced its presence in the automobile industry by selling entities such as Renault de Mexico. Sales of government-owned entities producing trucks, buses, tractors, motors and parts have also taken place or are in progress.

Federal authorities also scaled down their participation in producing textiles, chemicals, secondary petrochemicals, wood and paper products, and construction materials, including cement, and bricks. They also sold entities making basic metals or metal products.

The Government has made significant progress in reducing domestic subsidies as well. In 1988, fiscal transfers were made to only 22 companies compared to 49 companies in 1983. Furthermore, the size of these transfers has been reduced from 2.5 percent of the GDP to an estimated 1.3 percent. Subsidies are heavily concentrated in a few sectors of the economy including food, electricity, sugar, and fertilizer production.

[45] The Ministries of Energy, Mines, and Public Industry (SEMIP), Telecommunications and Transportation (SCT) and Agriculture and Water Resources (SARH) control the largest number of parastatals. In addition to the sectoral ministries, the Ministry for Programming and Budgeting (SPP) the Ministry of Finance and Public Credit (SHCP) the Comptroller General's Office (SECOGEF) and the Interministerial Committee for Expenses and Financing (CGF) are involved, among others.

[46] *Mexico Update*, June 15, 1989, p. 4.

[47] The source of this and most of the following information on privatization of specific industries is the U.S. State Department telegram 8058, "Post Reporting Plan: Parastatal Developments", March 1989; and Jose Gasca Zamora, "Sources for the study of Mexico's parastatal companies, 1983-88," *Comercio Exterior*, February 1989.

According to Mexican officials, privatization now enters into a new, more difficult phase of the process. The companies coming up for sale are of larger size and complexity than most for which transactions have already been completed. Also, some of the new candidates for privatization operate in noncompetitive markets, therefore they require regulatory, financial, and operational adjustments before being offered for sale in a competitive market.

Experience with Ownership Change

Of 176 companies whose sales had been completed by June 1989, 148 (84 percent) were sold to the private sector and 28 (16 percent) to the social sector (trade unions or cooperatives.) Ninety-four per cent of the buyers were Mexican nationals and 6 percent were foreign investors. Some of the private investors were existing stockholders of the formerly government-controlled enterprise, others were its private suppliers (e.g. Grupo Escorpion, a private soda bottler, purchased Atecingo, a parastatal sugar mill.)

However, the greater part of the parastatal entities were purchased by large consortia that produced the same goods as the sold enterprise. These buyers, monopolies or oligopolies, sought to consolidate their market through the purchase of the parastatal company. Industrial Durango, for example, the largest forestry consortium in the country, consolidated its market for cellulose, paper and certain manufactured wood products by acquiring 5 parastatal entities. Similarly, the transnational Eagle Cement Co. bought 3 parastatal cement producers. Mexican officials claim that the sale of parastatals will not create monopoly or oligopoly problems because each transaction is carefully analyzed and all efforts are made to keep the problem from arising.

As expected, the new private entities, freed from their earlier budgetary restrictions, began to adapt their price and salary structures to those prevailing in the free market, subject to price and wage controls in effect. Because only a brief time has elapsed since the change from public to private ownership has taken place, no conclusive data are yet available on the overall effect of privatizations on employment, production, and prices. There are indications, however, that investment in new technologies increased considerably in some enterprises following privatization, and technological processes were updated, resulting in higher productivity.

The Retained Parastatal Sector

The Government of Mexico aims at improving the competitiveness and profitability of those parastatals it retains. Improvement is expected in part from the macroeconomic adjustments currently being implemented in Mexico, including the overall trade and investment liberalization process, and in part from specific deregulatory and restructuring actions directly affecting the retained parastatal companies.

The program of improving parastatal performance involves phasing out subsidies enjoyed by parastatals and, by the same token, allowing prices for their products and services to settle more in conformity with market values. Previously, prices set artificially low have contributed to the poor financial plight of some parastatals. The disadvantage these companies suffered from repressed sales prices was sometimes offset by subsidized input prices and other forms of subsidies that bestowed preferential treatment.

Restructuring action involves giving financial and managerial autonomy to parastatals and demanding accountability from them.[48] The Government of Mexico has signed restructuring agreements with several large parastatals, including Sidermex (steel), Fertimex (fertilizers), Ferrocariles (national railroad), Azucar (sugar monopoly), CFE (electric power), and Conasupo (food and agricultural products.) In some cases, partial privatization was an element in parastatal restructuring or subsequently it was decided that the parastatal would be sold in its entirety.[49]

In September 1989, the number of entities designated to remain parastatal was 392. In terms of asset and production value, Pemex dominates the parastatal sector and utilities and infrastructure-related companies account for the bulk of the remainder.

Recent Examples of Major Divestments

An urgent need for expansion and modernization, and the necessity to reduce the public deficit, recently prompted a rush of major developments in the area of parastatal sales and restructuring.

Airlines.—On August 22, 1989, the long-expected privatization and restructuring of the country's largest air carrier, Compania Mexicana de Aviacion was announced. A recent survey ranked Aviacion the 9th largest Mexican company and the third largest parastatal, based on 1988 data.[50] The Mexican Government reached an agreement with a group of private investors, involving the injection of $140 million private capital.[51] The accord reduces the Government's share of the airline's equity from 58 to 40 percent, thus transferring majority control to private owners. The new investors, both Mexican nationals and foreign investors, get 25 percent control and former private

[48] In 1986, the "Law of Parastatal Entities" was enacted to foster autonomy and accountability for parastatal companies.

[49] For example, Sidermex, the massive parastatal steel enterprise, was offered for sale on March 7 1990.

[50] *Expansion* August, 1989.

[51] Department of State Telegram, "Non-sale of Mexicana", August 1989.

stockholders retain 35 percent.[52] The Government will retain 40 percent of the airline for at least 3 more years but reportedly plans to gradually divest its remaining interests in the company.

Mexicana is Mexico's eighth-largest public enterprise by sales value, and the first major privatization project under the administration of President Salinas. The privatization of Mexicana started under the de la Madrid administration but was stopped at that time because officials considered the earlier bids too low.

The Mexicana transaction follows the privatization of Aerovias de Mexico (Aeromexico,) Mexico's wholly government-owned and second-largest airline, in November, 1988. In the spring of 1988, Aeromexico declared bankruptcy, and the following summer the Government closed the company, dismissing a large part of the workforce. Shortly thereafter, the Government reopened some routes to foreign and private regional carriers alongside a shrunken but more efficient Aeromexico, thereby paving the way for selling it to the private sector. The purchaser was Dictum, S.A., a domestic investment group, to whom the Mexican Government released 100-percent control of the airline.[53] As the control of the country's commercial airlines is being transferred to the private sector, the Government is able to greatly reduce the fiscal resources channelled into this service. The private groups newly in control of the airlines have already announced ambitious development plans.

Telmex.[54]—On September 18 1989, the Mexican Government unveiled a plan to cede control of Telmex, Mexico's 56-percent government-controlled telephone monopoly, to private investors.[55] The announcement, emphasized that the Ministry of Transportation and Communication (SCT) will retain control of the country's telecommunications sector but will do so through legislation rather than majority ownership. Telmex is Mexico's fourth largest company and the second largest parastatal (after Pemex,) with 1988 sales of $1.5 billion. Presently, Telmex controls most of the basic switched telecommunications network, along with several other service and manufacturing ventures.[56] The telecommunications industry will be subjected to comprehensive deregulation—a condition for implementing the privatization process.

Mexican officials have reportedly said that the Government's stake in Telmex "could fall to zero" if offers from private investors are attractive enough. Mexico does not plan to break up the telephone monopoly once it shifts under private control; nonetheless, monopolies for some peripheral activities are scheduled for elimination. For example, private companies are now permitted to compete in the fast-growing cellular phone business.[57]

Foreign investors, who currently own 25 percent of Telmex, would be permitted to expand their collective holdings to up to 49 percent, but no individual foreign investor would be allowed a more than 10-percent share. According to Mexican officials, investors from the United States, Japan, and Europe have expressed interest in the plan. A 4-year expansion program of the new privatized telecommunications system would include doubling the number of phone lines by 1994 to 20 per 100 inhabitants from the prevailing about 10 per 100 inhabitants, and would bring phone service to every community of more than 500 people.

Food and agriculture.—In the fall of 1989 it became increasingly clear that the Government would attempt to sell or reduce the size of some important parastatals involved in agriculture. As part of this effort, the Secretariat of Agricultural and Hydraulic Resources (SARH) announced at that time that 36 agricultural parastatal companies will be completely restructured or sold off in order to reduce public deficit.[58]

According to SARH, several entities have already begun to feel the effects of these measures. Pronase, the parastatal for seed production, is expected to be eliminated or restructured and will cease to have a major role in the production and distribution of seed in Mexico.[59]

In October 1989, the Mexican press reported that the Government plans to close Tabamex, the tobacco parastatal, lay off 8,500 employees, and restrict the Government's role to regulatory functions. Tabamex has been experiencing problems due to heavy debt service, excessive administrative and personnel expenses, and low tobacco prices.

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[52] The new group of investors was led by the Chase Manhattan Corp., and included European, other Latin American, and Mexican investors.

[53] *Business Mexico*, "New Aeromexico taxis toward take off", June 1989, pp. 27-30.

[54] Telmex, originally a Swedish owned company, was established in 1881 and became 100-percent Mexican owned in 1958. In 1972, the Mexican Government became the majority shareholder. The company's stocks are traded on both the U.S. and Mexican stockmarkets. The company is reputed to provide poor service and to lag years behind international standards in terms of meeting demand and updating technology.

[55] President Salinas' announcement on Sept. 18 was followed by SCT's announcement of the official terms of the transaction on Sept. 20.

[56] Telmex has operated by way of a concession granted by the Secretariat of Communications and Transportation (SCT) which is Telmex's majority owner since 1972.

[57] A Mexican company, Iusacell, recently began operating the country's first cellular network.

[58] U.S. Department of State, Telegram, "Recent GOM Agricultural Policy Changes," September 1989.

[59] According to U.S. observers, this could provide a good investment opportunity for U.S. companies that have subsidiaries in Mexico as well as an opportunity for direct seed sales to Mexico.

Another candidate for privatization in the food sector is the the Mexican Coffee Institute. The Mexican Government has had a coffee monopsony, but no longer wishes to be the single buyer and seller of coffee in the country.

The restructuring and streamlining of Banrural, announced on December 6 1989, is expected to have a profound effect on the Mexican system of financing agricultural production. Banrural, was established several years ago to serve the goals of agricultural development. Consisting of a national bank in Mexico City, 13 regional banks and several hundred branches, Banrural made loans to farmers nationwide and implemented the subsidization of Mexican farming.

Restructuring involves creating a leaner, more efficient structure and abolishing several hundred branches across the country. This will end the practice of bureaucratic centralized decision-making, as the remaining branch offices will gain much greater responsibility. After restructuring, farmers will be generally served by commercial banks; Banrural will no longer serve wealthy farmers or sustain insolvent farmers. Instead, Banrural will focus on supporting low-income farmers under special credit programs.[60] These changes are expected to weed out inefficient farming units and create a more efficient, competitive, and market-driven farm sector in Mexico.

As of January 1990, Mexico had a total of 64 sugar mills: 36 private, 26 state-owned, and 2 cooperatives. In 1987, Azucar, the government-owned sugar company owned 52 mills, which accounted for 70 to 80 percent of domestic sugar production. In that year, the Government of Mexico has announced that it would reduce its share of national production to 50 percent through the sale of 16 mills and also indicated it would modernize 30 others. However, the continuing need to cut subsidies, and a lack of funds for modernization, led the Government ultimately to decide to sell all its public sugar mills to the private sector within two years, including Azucar.

Like many other parastatals that have been offered for sale, the mills reportedly failed to fetch the price the Government originally targeted. Most sugar mills are in the process of being sold or liquidated as the Mexican Government plans to retire entirely from sugar production.

According to Mexican press reports, the National Popular Subsistence Company, (Conasupo) one of Mexico's largest parastatal companies, announced a series of measures involving restructuring and privatization. Conasupo plans to sell numerous midscale and upscale retail stores and some of its food processing subsidiaries. The company is presently involved in agricultural production, food processing, and distribution.

Established in 1937, Conasupo developed in a stabilizing factor for the supply and price of basic agricultural commodities. The institution's other important function was to provide low-cost food for millions of poor Mexicans. However, Conasupo has also been criticized through the years for waste and corruption.

The purpose of the restructuring and partial privatization is to eliminate general subsidies for food, and concentrate on supplies and subsidies to the poor. Conasupo will reduce its agricultural price guarantee program from 7 to 2 commodities: beans and corn. Restructuring is designed to bring Conasupo more in line with the overall economic goals of the Salinas administration of less government involvement and expense.

Fertimex.—In June 1989, some 2,000 workers lost their jobs at Fertimex as part of the Government's effort of creating a leaner, more effective operation. Fertimex, with 15 plants scattered across Mexico, is the Government's monopoly for producing and distributing fertilizers. The *Expansion* survey, ranked Fertimex 15th largest among all Mexican companies and 5th largest among parastatals, based on its sales in 1988.[61] The company employed 14,000 workers before its restructuring began.

Fertimex receives a significant portion of the Government's budgetary transfers to parastatals, in part, because fertilizer prices had been set below market prices. In order to generate more revenue, Fertimex increased its fertilizer prices effective July 31, 1989. Other problems prompting restructuring included (a) lack of raw materials such as ammonia and carbondioxide, (b) lack of financing due to budget restrictions, (c) high maintenance costs and obsolete equipment. The company's problems resulted in fertilizer shortages and increasing reliance on imports.

The Government of Mexico plans to partly privatize Fertimex, including the sale of some plants to foreign investors. It is expected that the sale of 5 Fertimex plants will be concluded soon.

Mining.—As mentioned earlier, Mexico's largest copper-mining company, Compania Mineria de Cananea, declared bankruptcy on August 21, 1989. Cananea, wholly owned by the Government, had been offered for sale to private investors under the de la Madrid administration, but no transaction was made. The bankruptcy, and especially the issue of severance benefits to be paid to Cananea's 3,770 workers became headline news in the Mexican press. Despite the numerous problems associated with Cananea (among others, the nearly one billion dollar

[60] Currently a large part of farm credit for operating costs was provided by Banrural.

[61] *Expansion*, August 1989.

debt owed by the company), authorities hope that its sale to private interests will be accomplished relatively soon.

Mexicana da Cobre, Mexico's second-largest parastatal copper-mining concern, was sold for $1.36 billion in Mexican Government foreign debt instruments. The difficulties experienced in selling these parastatals are attributed, among others, to the instability of the world copper market.

Steel.—Sidermex, Mexico's large parastatal iron and steel producer was offered for sale on March 7, 1990. Grupo Alfa, Mexico's principal privately-owned conglomerate and Sidermex's main competitor on the Mexican steel market, is considered to be the prime candidate to take over the parastatal. Whether a transaction will indeed take place principally depends of the bids of other interested parties and on how the Government of Mexico decides to price Sidermex. In addition, Alfa reportedly wishes to know what the conditions of protection would be in Mexico to assure a profitable operation after a takeover, and is also keenly interested in the prospects of U.S. steel trade policy.

Implications for U.S. Industry

Mexico's deregulation policy is designed, in part, to remove the arbitrariness of governmental authorities in implementing regulations. A more transparent legal environment, coupled with a more efficient executive apparatus (the result of both privatizations and the streamlining of the parastatal bureaucracy,) will create a considerably better atmosphere for U.S. (and other foreign) traders and investors in Mexico. Mexico's recent, more liberal foreign trade and investment regime, reinforced by the increasing importance of the private sector, opens up a range of new opportunities for U.S. investors. Mexico's deregulation program is fundamental for increasing investment opportunities for foreign investors through privatization or by creating new opportunities in previously restricted areas.

Although many of the deregulations have been implemented only very recently, some implications for U.S. industry are already emerging. For example, the liberating effect of the new trucking rules on the maquiladora industry is likely to reduce costs and improve economies of scale. However, the new rules, although aimed at introducing competition on Mexican highways, do not remove restrictions on operations by U.S.-owned or other foreign-owned motor carriers.

Mexico's program of deregulation should pave the way for increased foreign participation in a number of other sectors. For example, relaxation of the rules governing commercial banks means foreign investors will be allowed to participate, although in a very limited capacity. Changes to the insurance rules means that minority ownership will be permitted by U.S. and other foreign-owned companies. U.S. investors will also be able to take advantage of the new rules permitting minority participation in the fishing sector. Better opportunities for sales by U.S. agricultural exporters could result from Mexico's reorganization of its farm sector. Additionally, U.S. tour bus operators are now able to develop charter tours (in conjunction with Mexican companies) throughout Mexico.

The Government of Mexico's decision to reduce the parastatal sector opens up a number of opportunities for U.S. investors. For example, privatization of the Compania Mexicana de Aviacion, the country's largest air carrier, permitted participation by a number of new U.S. and other foreign investors. The recently announced Telmex sale will permit foreign investors to expand their holdings, and includes new investment opportunities in Mexico's telecommunications sector. The privatization of Fertimex includes the sale of some plants to foreign investors. In addition, U.S. investors will have the opportunity participate in the development of infrastructure projects and services, such as the building of toll roads, bridges, and hydroelectric dams.

Chapter 4
Mexico's Trade Regime

This chapter examines a number of issues in Mexico's trade regime. It reviews Mexico's liberalization of its import trade regime; presents current developments regarding the sectoral development programs for automobiles, electronics, and pharmaceuticals; examines Mexico's antidumping and countervailing duty statutes and implementation procedures; and finally looks at changes made in Mexico's provision of export subsidies.

Import Trade Polices

Like many other developing countries, Mexico has traditionally pursued industrialization objectives through import substitution. From the late 1930s, Mexican policies provided protection to local producers through enforced import licensing requirements, high tariffs, and official import reference prices. These measures, in combination with the provision of large domestic subsidies, encouraged foreign companies to construct plants in Mexico rather than serve the Mexican market with exports. One unfortunate effect of the import substitution policy was that it disproportionately encouraged those industries that manufactured consumer products.[1] It did not sufficiently encourage development of Mexico's raw materials or its agricultural sector. Moreover, the policy protected and promoted an industrial sector that was generally inefficient and therefore unable to compete in international markets.[2]

During the 1980s, a dramatic reassessment of Mexico's traditional policies was brought about by unfavorable characteristics within the national economy, resulting from the weakness of the world oil market and the 1982 debt crisis,[3] and a recognition of the need for greater economic efficiency. In 1983, President Miguel De La Madrid's administration announced its intention to open and modernize the Mexican economy and make the structural adjustments necessary to accomplish that goal. U.S trade officials were concerned, however, about the type of adjustments the de la Madrid administration had in mind.[4]

The de la Madrid administration originally proposed to "rationalize" protection, i.e., selectively permit imports for the short-term (by eliminating the import license requirement for intermediate and capital goods not already manufactured in the country) while maintaining protection through import license requirements for all remaining imports.[5] In the medium-term, tariffs would become the main instrument of protection, while import license permits would continue for strategic and other sensitive sectors.[6] As one former U.S. trade negotiator has expressed, Mexico's plans to initiate sectoral development programs, as well as the selective opening for imports, raised serious concerns among U.S. officials who were already frustrated in dealing with a large trading partner that remained outside GATT and inside walls of protection.[7]

Slowly, Mexican policymakers began replacing import substitution policies and reliance on oil exports for foreign exchange earnings with policies aimed at attracting foreign investment, lowering trade barriers and generally making the country competitive in non-oil exports.[8] It was not until mid-1985, however, amid slowed growth and rising inflation that major policy changes, including major trade reforms, were initiated.

As shown in table 4-1, trade liberalization was introduced in stages. The first stage (January 1, 1983 to July 24, 1985) saw a gradual opening of Mexican markets to foreign participation that began with a simplification of the import tariff schedule, moderate reductions in import license requirements, and some reductions in the number of items covered by official import reference prices. During this phase of the first stage, trade liberalization primarily eased the importation of goods not produced locally. Then in July 1985, an executive decree introduced major trade reforms that were aimed at rationalizing import policy in an effort to stimulate economic adjustment in the industrial sector and increase non-oil exports.[9] The first significant step was the removal of import license requirements from over 2,000 categories on Mexico's tariff schedule.

[1] Joint Economic Committee, "Economic reform in Mexico: Implications for the United States," Washington, GPO, 1988, p. 5.

[2] Ibid.

[3] See ch. 1 for a historical overview of the Mexican economy.

[4] B. Timothy Bennett, "Recent U.S.-Mexico Trade Relations: Positive results and increased cooperation," in *Mexico and the United States, Managing the Relationship*, edited by Riordan Roett, (Boulder: Westview Press), 1988, p. 89.

[5] Luis Rubio, et. al., "The making of Mexico's trade policy and the Uruguay Round," in *Domestic Trade Politics and the Uruguay Round*, edited by Henry R. Nau, (New York: Columbia University Press), 1989, p. 170.

[6] Ibid.

[7] B. Timothy Bennett, p. 89.

[8] Office of the U.S. Trade Representative, *Annual Report on National Trade Estimates*, 1985, p.151.

[9] The July 25,1985 executive decree was introduced when it became apparent that without fundamental changes in the economy, high rates of economic growth would not be forthcoming. Policymakers were concerned that continued protection was constraining the growth of nonoil exports. In 1985, manufactured exports dropped 12 percent in value from 1984. This was in sharp contrast to the growth that had been attained in 1983 and 1984 when manufactured exports increased 51 percent and 24 percent, respectively. Jaime Zabludovsky, "Trade liberalization and macroeconomic adjustment in Mexico, 1983-1988," draft, May 1989, p. 17.

Table 4-1
Import trade liberalization schedule in Mexico main events and characteristics (1983-89)

		First stage		*Second stage*		*Third stage*
	Financial crisis: import restrictions	*Gradual opening*	*July 1985 reform*	*Deepening of reform and entrance to GATT*	*Economic solidarity pact*	*Stability and economic: growth pact*
Concept	*Situation in December 1982*	*January 1, 1983 to July 24, 1985*	*July 25, 1985 to December 31, 1985*	*January 1, 1986 to December 14, 1987*	*December 15, 1987 to December 31, 1988*	*January 1989 to March 15, 1989*
Import license require-ments (LR's)	100% of imports brought under license requirements	Gradual liberal-ization begins, ex-tended to 16.4% of imports by Dec.1984[1]	July 25, 1985 decree: liberalization extended to 64.1% of imports	Liberalization extended to 73.2% of imports	Liberalization gradually to 78.2% of imports[6]	
Import Tariffs	(Dec. 31, 1982) Mean: 27.0% Wt. mean: 16.4% Levels: 16 Range: 0-100%	Simplification of tariff schedule (June 30, 1985) Mean: 21.8% Wt. mean: 8.2% Levels: 10 Range: 0-100%	July 25, 1985 decree: tariff increases to compensate reduction of license requirements (Dec. 31, 1985) Mean: 25.2% Wt. mean: 13.3% Levels: 10 Range: 0-100%	April 30, 1986 decree: March 6, 1987, decree: GATT tariff reductions (Dec. 4, 1987) Mean: 19.0% Wt. mean: 10.6% Levels: 7 Range: 0-40%	December 15, 1987 decree: Economic Solidarity Pact tariff reductions (Dec. 31, 1988) Mean: 10.4% Wt. mean: 6.1% Levels: 5 Range: 0-20%	January 11, 1989 & March 9, 1989 decrees: tariff increases to diminish dispersion (March 10, 1989) Mean: 10.1% Wt. mean: 9.8% Levels: 5 Range: 0-20%
Import Official Reference Prices (ORP'S)		ORP's for 4.7% of imports[2]	ORP's extended to 9.1% of imports	ORP's virtually eliminated. Reduced to 0.5% of imports[4]	January 11, 1988 ORP's eliminated	

[1] This gradual liberalization process continued throughout the first half of 1985 (711 more items liberalized). The aim was to extend freedom from license requirement to 35-45% of total imports by Dec. 1985. The July 25, 1985 Decree, however, abruptly changed the pace by liberalizing 3,064 items out of a total 8,068 tariff items.

[2] Data for Dec. 31, 1984. There were no changes in ORP's from this date until April 1985.

[3] Data for Dec. 31, 1987. The figure is representative for Dec. 15, 1987, since there were no changes in license requirements between those dates.

[4] Data for Dec. 31, 1987. The figure is representative for Dec. 15, 1987, since there were no changes in ORP's between those dates. Most of the dismantling of ORP's (from 960 to 53 items) occurred between March and July 1987.

[5] The collapse in oil prices in 1986 caused a change in the percentage share of individual export items within the export total. The percentage share of agricultural products (most of which have export restrictions) in total exports increased from 6.5% in 1985 to 13.1% in 1986, and later decreased to 7.5% in 1987, as manufactured exports requiring export licenses therefore rose from 14.8% in 1985 to 23.3% in 1986, and later decreased to 14.6% in 1987, without there actually being any policy changes.

[6] Calculations made with import/export data for the period July-November 1988, using the Harmonized Tariff System.

[7] There only remains 1 item with export ORP (male cattle up to a certain weight), with an export value of US 1.3 million in July-November 1988. Coffee products may be subject to ORP's depending on international prices.

Source: Direccion General de Politica de Comercio Exterior, SECOFI.

In the second stage, in November 1985, Mexico announced that it would reapply for entry to GATT. Mexico acceded to GATT in 1986, thus promising further liberalizations in its trade regime. According to the Office of the U.S. Trade Representative, Mexico's accession to GATT represented the country's decision to integrate fully into the international trading system. Moreover, GATT accession added momentum to trade reforms already underway in Mexico, particularly in the areas of removing import license requirements, reducing tariffs, and phasing out official import reference prices.[10] Finally, the Economic Solidarity Plan launched in December 1987 to control inflation and bring about a return to rapid output growth, also contained trade reforms.[11]

As a result of these measures, in less than 3 years, Mexico moved from an extremely restrictive import regime in which almost every item was subject to an import permit, to a regime in which quantitative restrictions applied only to a few selected sectors of the economy, e.g., oil and oil derivatives, motor vehicles, pharmaceutical products, footwear, and electronic equipment and certain agricultural products.[12] The use of official import prices was almost nonexistent by yearend 1987. Import tariffs were reduced from a 0 to 100 percent range in 1985, to a 0 to 20 percent range by the end of December 1987. (Table 4-2 provides a summary of these reforms.)

A third stage of trade reform is being pursued by the current administration of President Salinas. The goals for this stage are to consolidate and extend the reforms promulgated in the first and second stages.

In the following discussion, major elements of Mexico's import trade regime—tariffs, license requirements, official reference prices, designation of strategic sectors, standards, and anti-dumping and countervailing duty practices—are examined within the context of these stages of liberalization.

[10] Office of the U.S. Trade Representative, *1987 National Trade Estimate Report on Foreign Trade Barriers*, p. 217.

[11] See ch. 1 for a discussion of the Economic Solidarity Plan.

[12] Zabludovsky, May, 1989.

Import Tariffs

Mexico has reduced its overall tariff rate in recent years, but tariff protection remains an important element of the country's trade regime. Tariff levels are set after consideration of a number of factors, including the degree of processing and domestic production. Generally a greater degree of processing attracts a higher duty rate. Duties are highest for processed agricultural items, petrochemical-related items, consumer goods, and automotive products. However, certain other agricultural products such as basic grains, capital goods not produced in Mexico, raw materials for high priority sectors, and other items considered critical manufacturing components often enter duty-free.[13]

Mexico began its 1983 trade liberalization program with a reduction in import tariffs, while maintaining import licensing requirements for 100 percent of its imports. However, during the July 1985 to December 1985 period when import licensing requirements and official reference prices were eliminated for certain products, tariffs were raised to provide roughly equivalent protection.

Early in 1986, an across-the-board tariff reduction program was initiated. Major objectives of the program were to lower the costs of imported raw materials for domestic production and to provide a stimulative effect for domestic manufacturers through increased competition. The maximum tariff level was immediately reduced from 100 percent to 50 percent. Four subsequent rounds of tariff reductions were to reduce tariffs over a 30-month period from the 0- to 50-percent range in 1986 to a 0- to 30-percent range by November 1988. All 50-percent duties were scheduled to drop to 30-percent. Items with 40-percent duties would drop to 25-percent, 30-percent items to 20-percent, 25-percent items to 20-percent and 20-percent items to 10-percent. Elimination of the 5-percent duty category was planned, with most of the items from that category increasing to a 10-percent

[13] Office of the U.S. Trade Representative, *1987 National Trade Estimate Report on Foreign Trade Barriers*, p. 219.

Table 4-2
Recent trade reforms undertaken by Mexico, 1985-1989
(In percent)

	1985		1986		1987		1988	1989
	June	Dec.	June	Dec.	June	Dec.	May	March[3]
Items covered by import license[1]	92.2	47.1	46.9	39.8	35.8	25.4	23.2	22.3
Items covered by reference prices[1]	18.7	25.4	19.6	18.7	13.4	0.6	0.0	0.0
Maximum tariff	100.0	100.0	45.0	45.0	40.0	20.0	20.0	20.0
Average tariff rate[2]	23.5	28.5	24.0	24.5	22.7	11.8	11.0	12.6

[1] With respect to tradable output.
[2] Trade-weighted average tariff.
[3] Preliminary figures.

Source: SECOFI.

duty, while the remainder became duty-free. As part of its 1986 GATT accession, Mexico committed itself to tariff concessions on 373 import categories, and to reduce its maximum tariff to 50 percent. These bindings covered about 16 percent of Mexico's total 1985 import value.

However, because of the period of macroeconomic adjustment that began yearend 1987 with the Economic Solidarity Pact (pact), the process of tariff liberalization was accelerated. As part of the pact, in December 1987 the maximum tariff rate was reduced to 20 percent and the tariff schedule was consolidated into five categories: 0, 5, 10, 15, and 20 percent.[14]

The tariff reforms executed as part of the pact were continued in 1988 by eliminating the 5-percent import surcharge (which had been introduced in stages since 1985).[15] In December 1988, the tariff structure was further consolidated to raise revenues and reduce the variability of protection across sectors. In early 1989, Mexico imposed a 10-percent tariff rate on most products that formerly enjoyed rates of zero or 5 percent.[16] Most of the products receiving increased rates were raw materials and intermediate goods.

In November 1989, Mexico published executive decrees which adjusted tariffs, mostly downward, on about 150 product categories.[17] Although tariffs for the vast majority of Mexico's imports are bound at 50-percent, the actual tariff is far less. As of yearend 1989, Mexican tariffs fell into four general categories: 0, 10, 15, and 20 percent. (See table 4-3 below.) The maximum tariff is currently 20 percent and the trade-weighted average tariff is about 11 percent—low by most developing country standards. For certain imported agricultural commodities, however, the relatively high currently 20-percent tariff continues to make these products uncompetitive in the Mexican market (e.g., beer).[18]

Import Licensing Requirements

Quantitative restrictions enforced through import licensing requirements were the cornerstone of Mexico's import substitution policies. Licensing requirements served as Mexico's most effective method for curtailing imports during unstable financial periods. After the 1982 balance-of-payments crisis, 100 percent of Mexican imports were subject to import license requirements.

Licensing requirements discouraged trade by creating an uncertain situation for importers and exporters. Import license applications, approved on a case-by-case basis at the discretion of foreign trade officials, could be difficult or impossible to obtain. Applications were usually denied if acceptable substitutes were made domestically or if, for policy reasons, Mexican officials did not deem the import acceptable.[19] Today, import licensing restrictions are still an important element in Mexico's trade regime and are used to achieve both protective and macroeconomic objectives. (See table 4-4.) Licensing requirements continue to be the greatest impediment to foreign imports.

Table 4-3
Mexican Harmonized Import Tariff system, as of May 31, 1989

Total number of current tariff items	11,949
Prohibited	17
Duty-free	216
5-percent duty	92
10-percent duty	6,006
15-percent duty	3,251
20-percent duty	2,367
Total number of items that require import license	326
Duty-free	30
5-percent duty	9
10-percent duty	178
15-percent duty	13
20-percent duty	96

Source, American Embassy Mexico, July 20, 1989.

As part of the trade reforms introduced by the July 25, 1985 executive decree, extensive liberalization occurred in the import licensing requirements for certain products, particularly intermediate manufactured goods, but also some capital and consumer goods. There was less of a reform for agricultural products.

The July 25th decree removed 3,064 tariff classifications (from a total of 5,219 controlled categories) from the import licensing requirement.[20] Mexico continued to control the remaining categories (e.g. electronics, automotive goods, pharmaceutical raw materials and

[14] In contrast, in 1982 Mexico's tariff schedule had 16 tariff levels ranging from 0 to 100 percent.
[15] Zabludovsky, p. 22. See also, ch. 2 on Mexico's Gatt accession.
[16] On July 1, 1988, Mexico introduced the Harmonized System (HS) as a replacement for the customs cooperation council nomenclature (CCCN) system of merchandise classification.
[17] American Embassy in Mexico.
[18] The U.S. General Accounting Office reports that Mexican tariffs on bulk agricultural commodities are low, while duties for processed foods and specialty crops such as temperate climate fruits, nuts, and alcoholic beverages are high. U.S. General Accounting Office, *U.S.-Mexico Trade: Trends and Impediments in Agricultural Trade*, January 1990, p. 8.
[19] The licensing system effectively operated to ban certain products. In 1985, U.S. producers of wine, acoustical ceilings, building bricks, textile machinery parts, ferrosilcon, chemicals, active pharmaceuticals, canned soup, beer, portable aluminum ladders, specialty steel, apples, and pears were among the exporters pointing to the licensing system as a strict deterrent to their ability to export to Mexico. Office of the U.S. Trade Representative, *Annual Report on National Trade Estimates*, 1985, p. 152.
[20] Zadbludovsky, p. 17.

agricultural products such as fruits, vegetables, wine, seeds, and certain grains) through restrictive licensing. As Mexico began phasing out the licensing requirement, tariffs were raised to provide roughly equivalent protection.[21]

Table 4-4
Import licensing in Mexico, 1956-88

Years	Total import value	Controlled import value	Percent share
1956	1,071.6	189.7	17.70
1957	1,155.2	405.5	35.10
1958	1,128.6	479.7	42.50
1959	1,006.6	434.8	43.19
1960	1,186.4	448.4	37.80
1961	1,138.6	612.5	53.79
1962	1,143.0	600.0	52.49
1963	1,239.7	787.2	63.50
1964	1,492.9	977.8	65.50
1965	1,559.6	935.7	60.00
1966	1,602.0	993.2	62.00
1967	1,736.8	1,132.2	65.19
1968	1,917.3	1,234.7	64.40
1969	1,988.8	1,294.7	65.10
1970	2,328.3	1,590.2	68.30
1971	2,255.5	1,526.9	67.70
1972	2,762.1	1,831.2	66.30
1973	3,892.4	2,709.1	69.60
1974	6,148.6	5,041.8	82.00
1975	6,699.4	4,582.3	68.40
1976	6,299.9	5,695.1	90.40
1977	5,704.5	5,134.0	90.00
1978	7,917.5	6,041.1	76.30
1979	11,979.7	8,385.8	70.00
1980	18,896.6	11,337.9	60.00
1981	23,948.2	20,475.7	85.50
1982	14,437.0	14,437.0	100.00
1983	9,005.9	9,005.9	100.00
1984	11,254.3	9,397.3	83.50
1985	13,212.2	4,954.6	37.50
1986	11,432.4	3,532.6	30.90
1987	12,222.9	3,361.3	27.50
1988	18,777.0	3,699.1	19.70

Source: Direccion de Investigacion Economica- Banco de Mexico.

In 1986, licenses covered roughly 35 percent of Mexican import value. Although this marked a substantial improvement over previous years, licensing still affected many items of interest to the United States. For example, agricultural products and equipment, computers and electronic equipment, household appliances, consumer goods, auto parts, prepared foods and certain chemicals and pharmaceuticals continued to be restricted by the licensing requirement.[22]

In accordance with its GATT accession obligations, and as part of its policy to reduce the amount of protection afforded domestic producers, Mexico agreed to eliminate its previously universal regime of import licensing requirements.[23] Nevertheless, according to U.S. officials, as of yearend 1989, Mexico continued to maintain import permit requirements for roughly 330 items without having justified these before the GATT, as is required by the relevant GATT provisions.[24] Most of these permits cover "strategic and priority sectors"—agricultural, petrochemical, chemical, electronics (mainly computers) automotive, apparel and pharmaceutical sectors.[25] (In December 1989, the Mexican Government announced that imports in the automobile sector would be permitted under strictly controlled conditions. Further, in February 1990, a liberalization of the import requirements for the pharmaceutical and electronic sectors was announced. (See "Industrial Development Plans," later in this chapter.)

On December 29, 1989, the Mexican Government published a list of commodities subject to import permit requirements in the *Diario Oficial*. These requirements were made effective from January 1, 1990 through October 1, 1990, except for apples and peaches which are subject to seasonal import permits.[26]

According to a recent report by the U.S. General Accounting Office (GAO), licensing requirements are the most significant barriers to U.S. agricultural exports to Mexico. About 59 percent of the value of U.S. agricultural exports to Mexico are covered by Mexican licensing requirements.[27] Mexico requires licenses for 60 agricultural tariff categories, including grains, oilseeds, dairy goods, and certain horticultural products.[28]

The GAO report further notes that Mexico determines quotas for almost all major imported agricultural commodities. These quotas are determined by estimating the size of the domestic harvest and the amounts of imports necessary to bridge the gap between domestic production and demand. Import licenses are the mechanisms used to enforce these quotas.[29] The objective of

[21] Ibid., p. 16.
[22] Office of the U.S. Trade Representative, *National Trade Estimates 1986*, p. 185

[23] Mexico's GATT Accession Protocol contains a commitment to eliminate quantitative restrictions and import permit requirements to the maximum extent possible.
[24] In particular, arts. XI-XII, XVIII, and XIX-XXI.
[25] *Business Mexico*, March 1988, p.17.
[26] Imports of these controlled commodity categories to the free zones require a permit, but generally are not subject to import duties. The free zone areas include the states of Baja California, Baja California Sur, Quintana Roo, Northwest Sonora and the border regions. The area within 22 kilometers of the U.S.- Mexican border, and the Mexico Guatemala border is included in the free zones. U.S. Agricultural Affairs Office, Mexico City.
[27] Office of the U.S. Trade Representative.
[28] U.S. General Accounting Office, *U.S. Mexico Trade: Trends and Impediments in Agricultural Trade*, p. 11.
[29] Permit requirements affect different products in different ways. For example, grain imports must occur within a narrow timeframe between Mexican production seasons. Ibid.

the license requirement is to encourage domestic consumption of local products. During harvest for domestic crops, the government effectively closes the border to foreign suppliers. In some cases, the availability of permits for specific importers is based on the amount of domestic crop purchased.

Official Import Reference Prices

Until 1988, Mexico calculated import duties based on official import reference prices rather than the goods' normal transaction value. (Table 4-5 shows the incidence of official import reference prices since 1983.) The official price was usually set much higher than the product's fair value and appropriate production cost. In 1986, duties on approximately 1,000 items on the Mexican tariff schedule were calculated on an official price rather than the goods' normal transaction value. Mexico argued that such prices were needed to combat dumping or subsidized import competition.[30]

In practice, official prices were protectionist measures used to safeguard domestic producers. Past examples show that in some cases official prices for customs valuation purposes were set at 200 to 300 percent of an item transaction value.[31] U.S. producers of paper, plywood, steel, basic aluminum products, hand tools and some agricultural items claimed that duty calculations based on unrealistic official prices significantly increased the nominal duty rate, thereby decreasing their product competitiveness.[32] On January 13, 1986, Mexico's new foreign trade law

[30] Office of the U.S. Trade Representative, *1986 National Trade Estimate Report on Foreign Trade Barriers*, p. 184.
[31] Office of the U.S. Trade Representative, *1987 National Trade Estimate Report on Foreign Trade Barriers*, p. 219.
[32] Ibid.

Table 4-5
Official import reference prices, Mexico, by type of good
(Millions of dollars)

Market	Number of items	Percent share	Import value	Percent share
		1983		
Items with Official Reference Price	1,353	16.9	333.5	4.4
Consumer goods	471	5.9	126.4	1.7
Intermediate goods	634	7.9	115.4	1.5
Capital goods	248	3.1	91.7	1.2
No Official Reference Price	6,670	83.1	7,296.8	95.6
Total items	8,023	100.0	7,630.3	100.0
		1984		
Items with Official Reference Price	1,348	16.7	473.2	4.7
Consumer goods	469	5.8	70.4	0.7
Intermediate goods	627	7.8	313.9	3.1
Capital goods	252	3.1	88.9	0.9
No Official Reference Price	6,715	83.3	9,573.6	95.3
Total items	8,063	100.0	10,046.8	100.0
		1985		
Items with Official Reference Price	1,189	14.7	1,142.8	9.7
Consumer goods	131	1.6	102.1	0.9
Intermediate goods	834	10.3	777.7	6.6
Capital goods	224	2.8	263.0	2.2
No Official Reference Price	6,900	85.3	10,660.7	90.3
Total items	8,089	100.0	11,803.5	100.0
		1986		
Items with Official Reference Price	960	11.7	683.7	7.2
Consumer goods	66	0.8	59.0	0.6
Intermediate goods	734	8.9	492.0	5.2
Capital goods	160	2.0	132.7	1.4
No Official Reference Price	7,246	88.3	8,772.5	92.8
Total items	8,206	100.0	9,456.2	100.0
		1987		
Items with Official Reference Price	41	0.5	49.5	0.5
Consumer goods	5	0.1	4.0	0.0
Intermediate goods	27	0.3	41.5	0.4
Capital goods	9	0.1	4.0	0.1
No Official Reference Price	8,404	99.5	9,293.6	99.5
Total items	8,445	100.0	9,343.1	100.0

Source: Direccion General de Politica de Comercio Exterior, SECOFI, May 1989.

established antidumping, countervailing duty, and safeguard procedures.[33] Official import reference prices were eliminated at the end of 1987.

Industrial Development Plans

Mexico's accession agreement gave it the right to temporarily exclude sectors under industrial development programs—automobiles, pharmaceuticals, and electronics—from import license removal timetables. These sectors are under a different set of rules with respect to Mexican industrial policy and are regulated by specific government decrees. The decrees are generally designed to encourage development of the industries and to make Mexico more competitive in these markets.[34] The industrial development programs require that all firms within these sectors comply with specific import substitution goals, as well as with other performance requirements. The Mexican Government is currently considering or is in the process of liberalizing its rules regarding all three sectors. The programs regulating the computer, pharmaceutical, and automotive industries, are discussed below.

Electronics Industry

In August 1981, the Mexican Government drafted a decree for regulating the electronics industry.[35] The electronics plan was intended to encourage investment and promote the development of the Mexican computer industry.[36] At the time of this decree, there was virtually no Mexican production of computers.[37] Prior to the decree, computers were imported. After the decree, companies had to invest in local production facilities since they were no longer allowed to import computers to serve the domestic market.

One of the stated goals of the draft decree was to have 70 percent of Mexico's computer needs supplied by domestic production within 5 years. In 1987, another draft decree was introduced. Neither the 1981 decree, nor the 1987 decree were published in the *Diario Oficial*. There has never been an official decree that regulated the electronics industry, however, the draft decrees have been administered as though official.

1981 Plan.—In order to encourage participation in the 1981 program, the Mexican Government offered certain incentives. Firms taking part in this program received a 20-percent tax credit for their investment in the computer industry and for the amount of new jobs generated by this investment. Participants would also receive preferential pricing of energy products, preferential treatment in government procurement, preferential interest rates and financing, and tariff protection.[38] Protection was also offered in the form of quantitative restrictions on computer imports. These benefits have subsequently been eliminated.

Each company investing in the computer industry negotiated an individual agreement with the Mexican Government covering investment and operational issues. Among other things, these agreements included commitments on the use of Mexican-made components. Recommended local content percentages for individual types of computers and for certain peripherals varied from product to product and was determined by a rather complicated formula, the degree of integration (DNI) formula.[39]

The 1981 agreement also contained commitments on the relationship of the manufacturers' imports to their production. Manufacturers of mainframes and minicomputers could be 100-percent foreign-owned if their Mexican operations used a high proportion of Mexican-made components. As part of these agreements, new computer companies were required to have a minimum of 51-percent national capital. However, many firms were exempt from the general foreign investment limit.[40] Therefore, most mainframe and minicomputer manufacturers in Mexico are 100-percent foreign-owned.[41] Majority ownership of small business and personal computer manufacturing companies had to be held by Mexican persons.[42]

[33] See "Mexican antidumping and countervailing duty law" section, later in this chapter.
[34] These three sectors account for approximately one-fourth of the country's output. Zabludovsky, p. 23.
[35] This decree divided the computer industry into five sectors: microcomputers (personal), minicomputers, macrocomputers, peripheral equipment, and components.
[36] When Mexico joined the GATT in 1986, the electronics industry was among the sectors cited as in need of further development. The Government of Mexico contended that firms in this section were eligible to receive protection from foreign competition for a limited number of years.
[37] In 1989, the total Mexican computer industry was estimated to be $597 million. Many U.S. computer producers (i.e., about 80 percent) also operated in Mexico; these companies include Hewlett Packard, IBM, NCR, Honeywell, and Digital Equipment. Apple, however, left the Mexican market 2-3 years ago.
[38] The type of incentive an investor received depended upon the type of computer manufactured (Computer Decree of 1981).
[39] Computer Decree of 1981.
[40] Firms would submit a proposal to the Mexican Government which covered such issues as the amount of the investment, number of workers to be hired and amount of local content to be used. If the government approved the proposal, the company would be exempt from these restrictions.
[41] *Operations of the Trade Agreements Program (OTAP), 33d report, 1981*, p. 176.
[42] One exception to this requirement involved IBM. In 1985, the Mexican Government reversed an earlier determination and decided to allow IBM to build a plant for microcomputers which would be wholly-owned by the company. This decision came after IBM agreed to sharply increase its capital investment from $6.6 million to $91 million over the following 5 years (*The New York Times*, Jul. 24, 1985).

The 1981 program stipulated import quotas on manufacturers and distributors so that imports represented a small proportion of national supply. For manufacturers, the ratio of their import quotas to their production in Mexico was to be applied in 2-year interval periods, with the ratio declining over the period. The ratio was to be 4-to-1 in the first two years, 2-to-1 in the following two years, and 1-to-1 in the third 2-year period. The ratio for importers/distributors of import quotas to their sales of Mexican-made products was 3-to-1 for the first 2-years, 2-to-1 during the next 2 years, and less than 1 thereafter.[43]

1987 Plan.—In 1987, another computer plan was introduced that was stricter than the one of 1981, particularly in the areas of local content, export performance, and foreign exchange balance. Under the 1987 plan, each of these requirements were scheduled to increase over time during the period 1987-90. The most problematic of these were the local content requirements. For example, the minimum DNI for minicomputers was scheduled to rise from 30 percent in 1987 to 40 percent in 1989.[44]

The local content requirements constituted the most burdensome aspect of the 1987 plan as there are many steps involved in the process of domestic integration. For example, some of the conditions that had to be met included: assembly and testing by manufacturing companies in Mexico of the basic electronic modules; no importation of external equipment (i.e., terminals and printers) that is manufactured in Mexico at an internationally competitive level;[45] and importation of certain parts, such as floppy disk mechanisms, only until Mexican production becomes competitive.[46]

Since many companies were experiencing difficulty in satisfying the requirements of the 1987 plan, the Mexican Government has been less insistent that these rules be strictly followed. Generally, the less restrictive 1981 rules are those that have been followed. One reason that companies had difficulty meeting the high local content rule of the 1987 agreement was that not enough Mexican manufacturers supplied quality products.

1990 Proposals.—Currently, the Government of Mexico is developing a plan which will relax regulations controlling the computer industry with the goal of moving towards policies that are consistent with the direction of the overall liberalization movement in the economy. The Government is developing its plan in consultation with the companies comprising its computer industry; this plan is scheduled to take effect on March 31, 1990. The Mexican Government is attempting to establish a transition program that will give the domestic industry the opportunity to adjust to the change.

Under the new regulations, companies that made investments in Mexico under the previous rules will be allowed to import up to 80 percent of the value added by their Mexican facilities and up to 20 percent of technology investments (including software).[47] However, during an initial unspecified period of time, imports of used computer equipment will not be allowed. The new regulations also stipulate that computer equipment sellers and manufacturers are responsible for the warranty of the product.[48] Finally, import duties for computer products will be as follows: 20 percent on finished foreign products, 10 percent on parts and components, and 5 percent on scarce inputs.[49]

Responses to liberalization of the computer agreement vary. Companies that invested in Mexico under the protective regime are concerned about the recent liberalization efforts. These companies have large investments in Mexico and must weigh the incentives to stay after liberalization is introduced. Conversely, firms not already producing in Mexico are in favor of Mexico's liberalization attempts.

Pharmaceutical Industry

In February 1984, the Mexican Government issued a decree regulating the foreign-dominated pharmaceutical industry.[50] However, pharma ceutical companies filed suit and, as a result, amended regulations were published in 1985. Reportedly, the 1984 decree was issued to suppress domestic political pressures seeking the nationalization of the pharmaceutical industry.[51]

[43] *OTAP, 33d report, 1981*, pp.176 -77.

[44] Type A and B companies are excluded from the DNI requirement unless they want to import subassemblies that are generally manufactured in Mexico or are strategic subassemblies. Type A companies are small and medium companies whose imports do not $1.5 million. Type B companies are those with 100- percent Mexican capital, have their own computer trademark, and that have developed and use their own technology (Computer Decree of 1987).

[45] If there is no compatibility with Mexican peripherals, the company will be asked to cooperate with the manufacturer of the peripherals to solve this problem (1987 Computer Decree).

[46] Computer Decree of 1987.

[47] The amount of computer goods that a company is allowed to import will be computed by adding the value of Mexican labor to the value of the Mexican parts and components.

[48] This agreement on warranties was published in the *Diario Oficial* on Feb. 27, 1990.

[49] Mexican news sources, as reported in an unclassified U.S. Department of State cable (07199) on Mar. 22, 1990.

[50] Foreign companies reportedly supply 72 percent of Mexico's drug market (*OTAP, 36th report, 1984*, USITC 1725, p. 160)

[51] There are two pharmaceutical markets in Mexico: the private segment and the public sector. Approximately 70-80 percent of the private sector is supplied by corporations with a majority of foreign capital. The public sector (i.e., health system) is predominately supplied by majority-Mexican firms.

In order to encourage domestic participation, Mexican laboratories were given research and development funds, preferential financing, other tax and economic incentives, and were to be favored in government procurement of basic drugs.

The 1984 decree was designed to make the Mexican pharmaceutical industry more self-sufficient by increasing the contribution of Mexican-owned laboratories. Another objective of the pharmaceutical decree was to reduce the costs of raw materials and increase the supply of low-cost drugs. To achieve this, the decree required generic labeling of the drugs listed in the "Basic Table".[52] This required pharmaceutical companies to print the brand name on one side of the label and the generic name (and the code number in the Basic Table) of the principal ingredient on the other in the same size lettering.

The 1984 decree also required uniform pricing of drugs of equivalent value; these prices were set by SECOFI on the basis of cost-price studies. For essential medicines, the maximum selling prices to the public included reductions in the profit margins of producers, wholesalers and retailers to a maximum of 14 percent of their total sales. Pharmaceutical chemical companies were to increase exports to a minimum of 30 percent of their total sales.[53]

In addition, the 1984 decree placed a variety of requirements on all companies. Companies had to purchase at least 20 percent of their raw materials from domestic sources. This purchase requirement was to rise to 50 percent in 3 to 5 years. Companies were also supposed to increase their exports of pharmaceutical products, thus helping Mexico's balance of payments.[54]

Fourteen multinational companies immediately criticized the decree and filed an injunction with the courts against its imposition. These corporations complained that the decree interfered with their ability to respond to market forces.[55] On April 3, 1985, the Mexican Government published amended regulations which modified the terms of the 1984 decree. The revisions to the decree stated that controlled prices must appropriately reflect the research and development costs of the drugs. The changes to the decree also included measures that reauthorized companies to display their trademarks beside the generic name on certain packages. In addition, the regulations on mandatory disclosure of formula were eased.[56]

The Mexican Government instituted a development program for the industry, based on the decree and its amended regulations. Included in the development program were special manufacturing programs. For example, a company would enter a program to produce certain products and the government would provide incentives, such as 5-year protection from imports. As of 1 year ago, 81 pharmaceutical chemicals were being produced under manufacturing programs. Forty-six of these products were liberalized in 1989 as their programs expired. Twelve products are being produced under programs that will expire in 1990 and the remaining 13 have programs that will lapse in 1993.[57] The Mexican Government is allowing these programs to continue until expiration because it wants to honor the commitments it made to companies who based their investment decisions on the fact that these programs would be in effect.

Under the 1985 amended regulations, Mexican pharmaceutical companies received preferential treatment in the bidding process for government purchases by receiving an extra 15 points for being a Mexican firm. Under current proposals for liberalization of the pharmaceutical industry, this treatment will be phased out over the next 2 years with the extra points for Mexican firms decreasing to 11 in 1990, 7 in 1991, 4 by 1992, and finally disappearing altogether in 1993.[58]

The Government of Mexico is also considering eliminating the pharmaceutical decree entirely but wants to ensure that health and safety concerns are taken into account. Although no specific timetable has been set, the Government has announced it will remove the restrictions gradually, depending upon the type of product produced.

Automotive Industry

During the past 20 years, Mexico has implemented several decrees regulating the automotive industry. The first Mexican automotive decree was issued in 1962 and later amended in 1972 and 1977. These decrees were intended to improve the automotive trade balance through both import substitution and export promotion.

1983 Decree.—In September 1983, the Mexican Government issued another automotive decree. This decree was designed to increase the efficiency of production of automotives and the quality of these products. It separated the

[52] The Basic Table is a list of the essential health sector medicines published in the *Diario Oficial* on January 11, 1984, and medicines that are used in the livestock sector and are published by the Secretariat of Agriculture and Hydraulic Resources ("Decree for the Development and Regulation of the Pharmaceutical Industry").

[53] Decree for the Development and Regulation of the Pharmaceutical Industry.

[54] *OTAP, 36th report, 1984*, USITC 1725, p. 160.

[55] It was ruled that the decree imposed undue restrictions on the industry and violated the constitutional separation of powers.

[56] *OTAP, 37th report, 1985*, USITC 1871, p. 186.

[57] Expired commitments were based on the first company that produced a product.

[58] Interview with Mexican official.

automotive industry into two parts: (1) the terminal industry, which included companies that assembled autos, trucks, tractor trucks, and buses[59] and (2) the autoparts industry, which consisted of companies that manufactured autoparts.[60]

In order to achieve the goals of the decree, it contained restrictions on the number of lines and models that terminal industry producers could manufacture.[61] The number of lines declined from three in 1984 to two in 1985 and to one in 1986 and 1987.[62] Similarly, the number of different models that these manufacturers were authorized to make decreased from seven in 1984 to five during 1985-87.

The 1983 decree also contained restrictions on local content for the period 1984-87. One of the reasons for this restriction was to strengthen the national autoparts industry. The share of local content was calculated on the basis of a cost-of-parts formula and differed for autos, trucks, tractor trucks, and buses. For each type of vehicle the percent of local content was to increase each year during the period 1984-87. For example, the requirements for automobiles increased from 50 percent in 1984 to 60 percent in 1987. Vehicles that did not have the minimum level of local content were subject to the same taxes as imported vehicles. Vehicles that were produced for export could be authorized to meet lower local content requirements.[63] Autoparts companies were also required to maintain a minimum percentage of local content for each product line. These requirements increased from 50 percent for products in model year 1984 to 60 percent for 1987 and later.[64]

Also contained in the automotive decree were foreign exchange regulations. Each automotive manufacturing company was required to earn the net foreign exchange necessary to cover its imports and payments abroad. Fifty percent of this amount should by provided for by exportation of automotive components manufactured exclusively by autoparts companies that are registered with the Secretariat of Commerce and Industrial Development.[65]

[59] Currently there are five automotive manufacturers in Mexico: Chrysler, Ford, General Motors, Nissan, and Volkswagen.

[60] Foreign investment is limited in the autoparts industry to 40 percent. It is comprised mainly of Mexican- owned companies.

[61] A "line" refers to automotives that have the same front end platform, basic body, and drive train (Automotive Decree of 1983).

[62] Automotive manufacturers may receive authorization to produce additional lines as long as over 50 percent of the new line is exported and earns its own foreign exchange. In addition, the manufacturers must comply with other requirements, such as minimum production volumes (Automotive Decree of 1983).

[63] Automotive Decree of 1983.

[64] Ibid.

[65] Ibid.

1989 Decree.—On December 11, 1989, two new decrees affecting the automotive sector were published. In issuing the new decrees, the Mexican Government is trying to relax restrictive regulations that prohibited auto companies from operating efficiently, with the goal of making Mexican products more competitive in both domestic and international markets. The decrees incorporate a transition period in that certain provisions become more relaxed over a period of several years.

The decrees redefine the automotive sector by splitting it into two parts. The Decree for the Development and Modernization of the Automotive Industry regulates the autoparts industry and a newly defined automotive terminal industry that includes assemblers of autos, light-duty trucks, and medium-duty trucks up to 8,864 kilograms in weight. The Decree for the Development and Modernization of the Transportation Vehicles Manufacturing Industry regulates the transportation vehicle terminal industry comprised of producers of heavy-duty trucks (over 8,864 kilograms) and buses.

The 1989 automotive industry decree incorporates several major policy changes. Under the new decree, automakers will no longer be restricted in the number of lines and models they produce. Instead, assemblers will be free to decide which vehicles to produce based on the capabilities of their existing plants. Local content requirements were also liberalized in the new decree. For the terminal industry companies, local content must now account for 36 percent of the overall value added (labor and parts) in Mexico for the company. For each auto parts company, the average domestic value added must reach at least 30 percent. Under the 1983 decree, local content requirements on a cost-of-parts basis were 60 percent for autos and auto parts, 70 percent for light trucks, and 80 percent for medium trucks.

In another change, automakers with production facilities in Mexico will be able to import automobiles of their own manufacture and brand name to supplement their domestic production. Beginning in November 1990, companies will be able to specialize by producing some models and importing others.[66] Previously, importation of finished automobiles was effectively prohibited by the government's refusal to issue requisite import permits.[67] In order to be able to import vehicles, companies must maintain the following favorable trade balances: for each peso (or dollar) used for the import of new

[66] The number of vehicles to be imported by every companies during model years 1991 and 1992 cannot exceed 15 percent of the total vehicles sold in Mexico. For model year 1993, the percentage will be 20 percent (Automotive Decree of 1989) with no limitations applying thereafter (Interview with SECOFI official.

[67] There were permits for border towns to import vehicles.

vehicles, companies must achieve exports worth 2.5 pesos (or dollars) in model year 1991, 2.0 pesos in model years 1992 and 1993, and 1.75 pesos in model year 1994. Automotive companies with trade surpluses can either sell them to other companies in the industry or use them to import vehicles.

In order to open auto parts manufacturing to increased foreign investment, the 1989 automotive decree narrows the definition of an autoparts company. This will reduce the number of companies subject to the 40 percent limitation on foreign investment. The 1983 decree stated that the autoparts industry included those firms whose annual invoices of autoparts were greater than 50 percent of their total sales. In the 1989 decree, an autoparts company is defined as a firm for which annual invoices to the automotive industry (excluding those exported) account for over 60 percent of the total sales.

The new automotive decree will not become effective until November 1, 1990. In addition to giving the industry some time to adjust, a Mexican official noted that an earlier effective date was unnecessary since production decisions for model year 1990 had already been made.[68]

The decree regulating the transportation vehicle industry went into effect on January 1, 1990. Mexican policymakers believe that heavy trucks require faster liberalization because they are vital to the entire transportation system for goods and people.[69]

Under the 1989 transportation vehicle decree, manufacturers of heavy trucks and buses are now allowed to choose the vehicles that they manufacture. In addition, beginning in January 1992, transportation vehicle producers will be allowed to manufacture gasoline engines for heavy trucks; the 1983 decree had limited production to diesel engines. In addition, the 1989 decree eliminates the requirement that companies could not manufacture trucks unless they were majority Mexican-owned.

The 1989 decree also allows producers of transportation vehicles to complement their domestic production with imports. The yearly value of these imports for each company cannot exceed the local value added of the transportation vehicles that it produced in Mexico in the same model year. However, this rule will be dropped for buses on January 1, 1991, for tractor-trucks on January 1, 1993, and for heavy-duty trucks on January 1, 1994.

Another important change in the 1989 decree concerns local content requirements. Previously, local content requirements for heavy trucks and buses were 80 percent and 90 percent on a cost-of-parts basis, respectively. The 1989 decree no longer requires a set level of local content. Instead, transportation vehicle manufacturers are required to generate at least a total of 40 percent local value added in their production.

In addition, as a check on the industry's pricing policies the decrees allow for importation of vehicles by consumers. Both new decrees state that when domestic prices (before taxes) are above the corresponding international list price for equivalent vehicles, the Secretariat may authorize the importation of such vehicles by individual consumers.

Implications for U.S. Industry

Mexico has made significant progress in liberalizing its regime for import trade. Its tariffs are bound at 50-percent in the GATT, but are effectively reduced to a maximum of 20 percent. The trade-weighted average tariff is about 11 percent. U.S. exporters no longer must contend with Mexico's official import reference prices and the 5 percent export development tax has also been eliminated. These reforms should make U.S. exports to Mexico more competitive, however, the relatively high 20 percent tariff for certain imported agricultural commodities(such as beer) and other goods will continue to make those products uncompetitive in the Mexican market.

U.S. exporters to Mexico will find that import licensing restrictions, once the major impediment to U.S. exports to Mexico have been significantly reduced, but remain a barrier in certain areas (for example, certain agricultural products and sectors covered by development decrees). Licensing barriers now affect fewer than 3 percent of Mexico's tariff classifications but those categories represent 20 percent of Mexican imports from the United States.

The reforms recently introduced by Mexico in the electronics, pharmaceutical, and automobile sectors will have a major impact on those U.S.-owned companies based in Mexico and manufacturing these products. For example, these producers will have the option to source certain parts and materials from the United States. However, a disadvantage to these companies is that they will now face increased foreign competition in what has traditionally been a protected market.

Mexico's reforms will open up its pharmaceutical, electronics, and automobile sectors to imports, but with certain restrictions. In the electronics sector, for example, most major U.S. computer manufacturers also have operations based in Mexico. As a result of new reforms, these companies will now be able to import additional products not available in Mexico. The phase out of preferential treatment for Mexican pharmaceutical companies means that U.S.-owned companies will now have better opportunities to compete in the government

[68] The model year is the period between November 1 of a year and October 31 of the next (Automotive Decree of 1989).
[69] Interview with SECOFI official.

procurement process. When the new auto decree takes effect, U.S.-owned manufacturers based in Mexico will no longer be restricted in the number of lines and models they produce. In addition, they will be able to import automobiles of their own manufacture and brand name to supplement their domestic production. In late 1990, they will have the opportunity to specialize by producing some models and importing others.

Mexican Antidumping And Countervailing Duty Law

Shortly before acceding to the GATT in 1986, Mexico made major changes to its trade laws. One significant change was the enactment in 1986 of the Foreign Trade Regulatory Act (Act),[70] a statute containing comprehensive antidumping and countervailing duty laws.[71] Later in 1986, Mexico promulgated the Regulations Against Unfair International Trade Practices (Regulations), which further describe the conduct of antidumping and countervailing duty investigations.[72]

This section provides an overview of Mexican antidumping and countervailing duty law and procedure. Its first part discusses the prerequisites for imposition of antidumping or countervailing duties in Mexico. Its second part describes the procedures that Mexico follows in antidumping and countervailing duty investigations. Next, it considers whether Mexico's antidumping and countervailing duty law is consistent with the GATT. Its fourth part compares Mexico's antidumping and countervailing duty law with that of the United States. Finally, it provides statistical information about how often, and against what countries, Mexican antidumping and countervailing duty cases have been initiated.

Prerequisites for Imposition of Antidumping or Countervailing Duties

Mexican entities seeking imposition of permanent antidumping or countervailing duties must prove two elements. First, they must demonstrate the existence of an "unfair international trade practice." Second, they must show that the "unfair practice" has caused injury to the domestic industry.

[70] The English-language translation of the formal name of the statute is the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States.

[71] Prior to 1986, Mexico dealt with dumping and subsidization indirectly, through the use of import licensing requirements and official import reference prices. These topics were discussed comprehensively in this chapter's section on "Import trade policies".

[72] The source of the English-language provisions of the Act and Regulations discussed and quoted below is the translation prepared by the GATT Committee on Anti-Dumping Practices.

Unfair International Trade Practice

Dumping.—According to the Act, "[i]mportation of goods at less than the comparable price of identical or similar goods intended for consumption in the country of origin or provenance" constitutes an "unfair international trade practice."[73]

The Act and Regulations contain numerous provisions concerning calculation of the "comparable price of identical or similar goods." The Regulations state that the "comparable price" calculation is to take into account both physical characteristics and technical specifications of the goods being imported and price differentials attributable to conditions and terms of sale and taxes payable.[74] If there is no "comparable price," one may be constructed by utilizing either the highest export price for identical or similar goods in the country of origin or the sum of production cost, a reasonable profit margin, and shipping and selling costs.[75] For centrally-planned economies, "comparable price" is determined on the basis of the domestic consumption price of similar or identical goods in a market-economy third country.[76] For goods shipped to Mexico through a third country that is not the country of origin, "comparable price" is based on the third country price unless the goods merely pass through that country in transit, or similar goods are not made or sold there, in which case the "comparable price" may be based on the country of origin price.[77]

Subsidization.—The Act also states that "[i]mportation of goods which in the country of origin or provenance have been the subject, directly or indirectly, of export inducements, incentives, premiums, subsidies or other types of assistance, except where such practices are internationally acceptable" constitutes an "unfair international trade practice."[78] The Regulations further indicate that improper subsidization includes sales by foreign governments or their agents of "inventory or reserve stocks or agricultural or mining products" at a price considerably below that offered by other suppliers in the same market or under conditions having the effect of "capture of more than an equitable share of world export trade in a particular product."[79] In determining the amount of a subsidy, the total of export taxes, duties, or other charges payable on the export operation in the country of origin that are specifically designed to offset the subsidy is to be deducted.[80]

[73] Act, ch. II, art. 7(I).

[74] Regulations, ch. II, art. 5-6.

[75] Act, ch. II, art. 7(I).

[76] Regulations, ch. II, art. 3.

[77] Regulations, ch. II, art. 4.

[78] Act, ch. II, art. 7(II).

[79] Regulations, ch. I, art. 1(VI).

[80] Regulations, ch. III, art. 8.

The Regulations state that the practices identified in the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT will be presumed to constitute improper subsidies. The Illustrative List, however, is not regarded as exhaustive.[81]

Injury.—The Act provides an injury test which is applicable to, *inter alia*, "unfair international trade practice" proceedings involving products from countries that are GATT signatories.[82] In such proceedings, the Act states that antidumping or countervailing duties "shall be declared final only when complainants can demonstrate that import of the goods in question causes or threatens to cause injury to domestic production or hinders the establishment of industrial undertakings. . . ."[83] "Injury to domestic production" is defined as:

> the loss or impairment of a national asset or the closure of access to any licit, normal gain which one or several domestic producers, representing a significant part of national production, suffer or may suffer as an immediate and direct consequence of any of the unfair international trade practices envisaged in Article 7 of the Act and in these Regulations. This concept includes impediments to the establishment of new industries or to further development of existing industries as a direct result of unfair international practices.[84]

In making the injury determination SECOFI, the Mexican governmental agency that administers the antidumping and countervailing duty laws, is to apply injury tests articulated in the GATT. Additionally, it may consider (1) increases in volumes of imports; (2) effects on prices of identical or similar products on the domestic market; and (3) changes in output, market share, investment yield, capacity utilization, and employment of the domestic industry.[85]

Mexican Antidumping and Countervailing Duty Procedures

Filing of Petition.—Entities that are responsible, either singly or collectively, for at least 25 percent of domestic production of goods "identical or similar" to goods imported in circumstances involving "unfair international trade practices" may file a complaint with SECOFI. The complaint must describe the complainant's activity, identify the imports complained of, indicate the origin of imports and the identity of importers, provide facts and data describing the unfair practices complained of, and furnish information "tending to demonstrate" injury to the domestic industry. SECOFI may request supplementation of the complaint.[86]

Initiation of Proceeding.—The investigation formally commences when a complaint is acknowledged by SECOFI. According to the Regulations, acknowledgement is to occur no more than 5 working days after filing of a complaint conforming with regulatory requirements.[87] Mexican officials have indicated to the GATT, however, that the average period between filing of a complaint and formal initiation of an antidumping or countervailing duty proceeding is approximately 3 months. Those familiar with Mexican proceedings concerning "unfair international trade practices" have observed that SECOFI exercises considerable discretion in adjusting the deadlines provided in the Act and Regulations. As discussed further below, the amount of time that SECOFI actually takes to complete various phases of the proceeding is generally considerably longer than the statutory and regulatory deadlines would indicate.

Alternatively, SECOFI can determine to initiate an antidumping or countervailing duty investigation on its own initiative.[88] SECOFI has utilized the self-initiation provision only once.[89]

The Regulations require SECOFI, when it determines to initiate an investigation, to give notice to importers, exporters, and representatives of foreign governments. Notice to the general public is afforded through publication in the *Diario Oficial*. Interested parties are provided at least working days in which to file written responses.[90]

First Provisional Duty Determination.—The Act permits SECOFI within 5 working days of commencement of the investigation to impose a provisional duty if the information it possesses "tends to indicate the existence of one or more unfair international trade practices."[91] This requires a tentative determination of both an "unfair practice" (dumping or subsidization) and injury.[92] Any determination to impose a provisional duty must be published and identify

[81] Regulations, ch. III, art. 7.

[82] This is not expressly stated in the Act or Regulations. Mexico indicated to the GATT contracting parties, prior to its accession to the GATT, that the "injury" provisions of the Act were applicable to antidumping and countervailing duty cases involving GATT signatories. Report of the Working Party on the Accession of Mexico, par. 62, GATT Doc. L/6010, BISD, 33d Supp. 57, 79-80 (1985).

[83] Act, ch. II, art. 14; *see also* Regulations, ch. V, art. 12.

[84] Regulations, ch. I, art. 1(VIII).

[85] Act, ch. II, art. 15.

[86] Act, ch. II, art. 10. *See also* Regulations, ch. VI, arts. 13-14 (specifying SECOFI's authority to request supplementation of a complaint or to dismiss a complaint for insufficient information).

[87] Regulations, ch. VI, art. 13.

[88] Regulations, ch. VI, art. 15.

[89] Staff Interview with SECOFI official (February 1990).

[90] Regulations, ch. VI, art. 15.

[91] Act, ch. II, art. 11.

[92] Regulations, ch. VI, art. 16(b).

the product, domestic industry, type of industry, and estimated dumping margin or amount of subsidization.[93] Statistics generated by GATT and SECOFI indicate that the first provisional duty determination is generally issued within 1 week, and almost always within 1 month, of the date of initiation.

The Regulations contemplate that the notice of initiation and notice of any provisional duty imposition will be issued simultaneously.[94] Because foreign exporters and Mexican importers of the allegedly dumped or subsidized goods are not required to be notified of the filing of a petition alleging "unfair international trade practices" until SECOFI decides to initiate a proceeding, these parties do not generally have any notice of or opportunity to participate in the initial determination to assess a provisional duty. Moreover, SECOFI cannot determine a provisional dumping margin or subsidization amount on the basis of information obtained by those who produce or import the goods that are the subject of the investigation. It instead calculates the provisional duty based on a dumping margin or subsidy calculation imputed from "international data banks."[95]

Second Provisional Duty Determination.—SECOFI is required to make a second provisional duty determination shortly after commencement of the investigation. According to the Act, this deter-mination is to take place within 30 days after commencement of the investigation.[96] Statistics furnished by SECOFI, however, indicate that on average the second provisional duty determination is made approximately 5 months after the first provisional duty determination.

In making the second determination, SECOFI is required to consider information submitted by the domestic industry, importers, and exporters of the allegedly dumped or subsidized product (who by this time have presumably received notification).[97] It is to review any provisional duty that it imposed upon initiation of the proceeding. It may determine to confirm or to modify the amount of the first provisional duty. It may alternatively determine there has been no "unfair international trade practice," in which case the proceeding is terminated and any provisional duties revoked. In the event that the provisional duty is reduced or revoked, the amount of excess duty that had been paid is to be refunded within 10 working days of publication of the second determination.[98]

[93] Regulations, ch. VI, art. 18.
[94] Regulations, ch. VI, art. 16.
[95] Armando F. Ortega Gomez, El Sistema Antidumping Mexicano: Factor Critico de la Apertura Comercial, 39 *Comercio Exterior* 206, 214, 1989 ("Ortega").
[96] Act, ch. VI, art. 12.
[97] Regulations, ch. VI, art. 20.
[98] Regulations, ch. VI, art. 20(II).

If SECOFI did not impose a provisional duty when it initiated the proceeding, it may do so when it makes its second determination. Any duty soimposed is to be retroactive to the date of initiation. SECOFI may also decide to continue the investigation without imposition of a provisional duty.[99]

Conduct of the Investigation.—The investigation considers pricing data over a "representative" period prior to initiation of the investigation.[100] SECOFI may utilize questionnaires and conduct field investigations in the country of origin to obtain and verify information.[101] Information that SECOFI obtains in the investigation is available to any interested party except for internal SECOFI documents and documents that are "confidential;" confidential information may be released only upon the consent of the submitter.[102]

Final Determination.—According to the Act, SECOFI is to make its final determination concerning imposition of an antidumping or countervailing duty within 6 months of the first provisional duty determination, or approximately 190 days after initiation of the proceeding.[103] The actual time between initiation of an investigation and its resolution, however, is between 15 and 18 months.[104] The Act further specifies that the final determination is to be based on both evidence provided by the domestic industry and importers and information generated by SECOFI. The final determination is published in the *Diario Oficial.*[105]

Any antidumping duty imposed is to be equal to the difference between the Mexican price and the "comparable price" in the country of export.[106] Any countervailing duty imposed is to be equal to the amount of the subsidy.[107] SECOFI sets a recommended amount of duty, and transmits its recommendation to the Commission on Tariffs and Trade ("CACCE").[108] The Regulations state that

[99] Regulations, ch. VI, art. 20(I).
[100] Regulations, ch. VI, art. 19. The regulations do not currently specify the duration of the "representative" period. In their initial form, they indicated that the investigation period would encompass no more than the 6 months prior to the commencement of the investigation.
[101] Regulations, ch. VI, art. 21.
[102] Regulations, ch. VI, arts. 23-24.
[103] Act, ch. II, art. 13.
[104] The Mexican embassy gave a figure of 18 months. Mexico post-hearing brief, p. 3. Material obtained from SECOFI indicates the average time between initiation and resolution is approximately 15 months.
[105] Act, ch. II, art. 13.
[106] Act, ch. II, art. 8(I); *see also* Regulations, ch. VII, art. 29. The "comparable price" concept was discussed in detail above.
[107] Act, ch. II, art. 8(II).
[108] Regulations, ch. VII, art. 28; *see* Act, ch. I, art. 2. The Act describes CACCE as a "consultative organ of the Federal Executive." Act, ch. I, art. 3. It is an interagency working group composed of officials from SECOFI, the budget and finance ministry, and other Mexican executive agencies. USITC staff interview with Mexican attorney (March 8, 1990).

CACCE is to provide an opinion to SECOFI about the amount of the final duty, but do not otherwise specify its functions.[109] A Mexican attorney familiar with that country's trade laws indicated that CACCE tends to examine public interest factors and the interests of the Mexican economy in reviewing SECOFI's recommendations. SECOFI generally defers to CACCE's views in issuing a final duty determination.[110] That determination must contain both the specifics about the product and dumping or subsidization required of a provisional determination and "a reasoned statement regarding the factors taken into consideration in determining the existence of injury or threat of injury to domestic production or of impediments to the establishment or expansion of industry."[111]

In the event that an exporter adjusts its price to eliminate the dumping or subsidy, SECOFI, upon verification, may terminate any antidumping or countervailing duty that has been imposed.[112] The Regulations give SECOFI the discretion to review antidumping or countervailing duties that have been imposed "if there are justified causes for so doing."[113]

Orders imposing duties may be appealed by importers of the goods only "via administrative channels as provided in the Federal Taxation Code." The administrative appeal is subject to judicial review in the Federal Taxation Court.[114]

Conformity with GATT

Because Mexico is a signatory to the GATT, it is obliged to impose antidumping or countervailing duties only as permitted under Article VI of the GATT. The provisions of the Act and Regulations are generally consistent with the language of Article VI.

There is one area, however, in which the literal terms of the Act and Regulations deviate from the GATT. GATT Article VI requires that antidumping or countervailing duties may not be imposed unless dumped or subsidized imports cause or threaten material injury to an established domestic industry, or retard materially the establishment of a domestic industry.[115] The Act, by contrast, requires a demonstration "that import of the goods in question causes or threatens to cause injury to domestic production or hinders the establishment of industrial undertakings. . . ."[116]

[109] Regulations, ch. VII, art. 28.
[110] USITC staff interview (March 8, 1990).
[111] Regulations, ch. VII, art. 28.
[112] Act, ch. II, art. 19. If prices are adjusted during the course of the investigation, the investigation may be suspended or terminated. Regulations, ch. VII, art. 31.
[113] Regulations, ch. VII, art. 32.
[114] Act, ch. III, art. 24.
[115] See GATT, art. VI, par. 6(b); GATT Antidumping Code, art. 3(a).
[116] Act, ch. II, art. 14.

The failure of the Act expressly to require use of a "material injury" test was a source of concern to representatives of GATT signatories prior to Mexico's accession to the GATT. Mexico addressed these concerns by assuring that it would apply the Act in accord with GATT Article VI and its "material injury" test.[117]

With respect to antidumping cases, Mexico is now governed by the provisions of the GATT Antidumping Code as well as GATT Article VI. Mexico became a signatory to the Antidumping Code on July 24, 1987.[118] Unlike most signatories to the GATT Antidumping Code, Mexico has given the code treaty status.[119] Under domestic Mexican law, this means that the Antidumping Code is of equal authority to the Act.[120]

Apart from those matters discussed above in connection with GATT Article VI, no conflict exists between the provisions of the Act and Regulations and the additional requirements of the Anti- dumping Code. The provisions of Mexican law concerning initiation of proceedings, imposition of provisional duties, and when "unfair international trade practices" exist are not facially inconsistent with any Antidumping Code provision.

Comparison with U.S. Law

Mexican antidumping and countervailing duty law differs from its United States counterpart in a number of significant respects. The most striking difference is the provision in Mexican law permitting imposition of a provisional duty within five working days after initiation of a proceeding, before foreign exporters or Mexican importers have notice of or an opportunity to participate in the proceeding.[121] By contrast, the analogous provisional remedy found in U.S. law—requiring posting of a cash bond for each importation of allegedly dumped or subsidized merchandise—cannot be imposed until at least 85 days after filing of a countervailing duty petition or 160 days after filing of an antidumping petition.[122]

[117] Report of the Working Party on the Accession of Mexico, pars. 58, 62, GATT Doc. L/6010, BISD, 33d Supp. 57, 78-80 (1985). Additionally, as indicated below, Mexico has enacted the GATT Antidumping Code, which requires use of a "material injury" test in antidumping proceedings, as part of its domestic law.
[118] Mexico has not signed the GATT Subsidies Code.
[119] Ortega, note [267], at p. 209.
[120] *See* Ortega, note [267], at p. 209.
[121] A number of United States trade lawyers who served as co-counsel to United States or European respondents in Mexican antidumping proceedings initiated in 1987 and 1988 uniformly cited the provisional—duty which SECOFI invoked in their cases—as both a major difference between the U.S. and Mexican antidumping law systems and a major problem with the Mexican law. Staff Interviews.
[122] *See* 19 U.S.C. 1671b(d)(2), 1673b(d)(2). The bond cannot be ordered until both the U.S. International Trade Commission and the Commerce Department's International Trade Administration (ITA) have made preliminary affirmative determinations on the petition.

Because U.S. law requires that parties that may be adversely affected by any dumping or countervailing order be served with a petition for imposition of duties when it is filed,[123] U.S. importers and foreign exporters and manufacturers have notice of and an opportunity to participate in the dumping proceeding before imposition of any provisional remedy. U.S. law additionally provides parties to an antidumping or countervailing duty investigation a number of other procedural protections not found in Mexican law, such as access pursuant to protective order to confidential information submitted during the investigation,[124] and the ability to participate in public hearings.[125]

Additionally, U.S. proceedings are more rapid than their Mexican counterparts. The Commission and ITA are strictly bound by statutory deadlines which require that any final determination occur between 205 and 300 days after filing of a countervailing duty petition and between 280 and 420 days after filing of an antidumping petition.[126] Although Mexican law on its face requires proceedings be completed within 6 months of initiation, SECOFI does not strictly adhere to the deadlines of the Act and the Regulations. Thus completion of a Mexican proceeding requires an average of between 15 and 18 months from initiation of a case and 18 and 21 months from filing of a petition.

Other significant differences between U.S. and Mexican antidumping and countervailing duty proceedings include the following:

1. The class of entities entitled to file petitions is broader under U.S. law. Mexico, as indicated above, requires that the petitioners be responsible for at least 25 percent of domestic production of the product comparable to the one allegedly dumped or subsidized. Under U.S. law, by contrast, an antidumping or countervailing duty petition may be filed by (1) any U.S. manufacturer or non-retail seller of the like product; (2) any recognized union or group of employees of U.S. manufacturers or non-retail sellers of the like product; and (3) any trade or business association of manufacturers or non-retail sellers of the like product.[127]

2. U.S. law contains a provision permitting the volume and price effects of imports of like products from multiple countries to be analyzed cumulatively in determining whether a domestic industry is materially injured by reason of the dumped or subsidized imports.[128] Mexican law does not contain any similar provision and SECOFI does not cumulate multiple countries' imports.[129]

3. U.S. law requires annual review of antidumping duties.[130] Under Mexican law, review of such duties is discretionary.

4. U.S. law permits any interested party who was a party to an antidumping or countervailing duty proceeding to seek judicial review of factual findings or legal conclusions made by the Commission or ITA.[131] Thus, negative as well as affirm- ative determinations are subject to review. Mexico, by contrast, limits review to challenges of affirmative deter- minations by Mexican importers.

5. Under U.S. law one agency, ITA, determines whether subsidization or dumping has occurred and a second, the Commission, determines whether material injury exists. Under Mexican law the same agency, SECOFI, makes both the subsidization or dumping and the injury determination.

6. U.S. and Mexican practice concerning voluntary price undertakings to eliminate dumping duties varies. U.S. law contains a provision permitting suspension of an antidumping investigation in the event of such an undertaking, but suspension is contingent on the consent of the domestic industry and as a practical matter the provision is not utilized.[132] Under Mexican law, SECOFI and CACCE have the discretion either to suspend or to terminate an antidumping investigation in the event of a voluntary price undertaking and have in fact terminated investigations on such grounds.

Mexican Usage of AD and CVD Procedures

Mexico has initiated countervailing duty investigations very seldom. Statistics generated by SECOFI indicate that only one countervailing duty investigation, which was against Malaysian imports, has been initiated. Antidumping procedures, by contrast, have been used much more extensively. The tabulation indicates how

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[123] *See* 19 C.F.R. § 207.10(b).
[124] *See* 19 U.S.C. § 1677f(c).
[125] *See* 19 U.S.C. § 1677c.
[126] *See* 19 U.S.C. §§ 1671b, 1671d, 1673b, 1673d.
[127] 19 U.S.C. § 1671a(b)(1), 1673a(b)(1), 1677(9)(C) (G).
[128] 19 U.S.C. § 1677(7)(C)(iv).
[129] Staff Interview with SECOFI official (February 1990).
[130] 19 U.S.C. § 1675.
[131] 19 U.S.C. § 1516a(a).
[132] 19 U.S.C. § 1673c(b), (g).

often and against which countries Mexico has initiated antidumping proceedings:[133]

Country	*1987*	*1988*	*1989*	*Total*
United States	11	2	2	15
Belgium	2	0	0	2
Brazil	2	2	3	7
European Community	0	1	0	1
France	0	0	1	1
Germany (Fed. Rep.)	4	0	0	4
Japan	0	1	0	1
Malaysia	0	1	0	1
Spain	1	0	1	2
Taiwan	0	1	0	1
Total	20	8	7	35

As the tabulation indicates, considerably more antidumping cases have been directed against products of the United States than those of any other country. Both the relative and absolute number of proceedings against the United States decreased in 1988 and 1989 from the 1987 level, however. Over half the cases against U.S. products involved three product categories:[134] organic chemicals (four cases), inorganic chemicals (three cases), and plastics (two cases). No other product category involved more than one case.[135] A recent study identifies Mexico as the fifth-most-frequent initiator of antidumping proceedings during the 1987-88 period, behind only the United States, Canada, the European Community, and Australia.[136]

It should be emphasized that the figures above calculate only the number of antidumping proceedings initiated by SECOFI. The number of antidumping petitions actually filed is substantially greater. An article written by Armando F. Ortega Gomez, the then Director of Compensatory Duties for SECOFI, states that 75 antidumping complaints had been received through February 28, 1989. Of this number, 37 complaints were dismissed without investigation, 15 complaints were still in the process of being studied, and investigations were initiated in the remaining 23 complaints.[137]

Moreover, SECOFI does not impose final antidumping duties in all cases initiated. Mr. Ortega's article reports that of proceedings initiated as of February 28, 1989, 47.2 percent were still pending, 22.2 percent had been dismissed, and 30.6 percent had resulted in institution of duties.[138] Reports that Mexico has filed with the GATT Committee on Antidumping Practices indicated that, of 12 cases concluded in calendar year 1988, SECOFI reached negative determinations in 7 cases and imposed final antidumping duties in 3 cases. In one case, a voluntary price undertaking was reached; the disposition of the remaining case was listed as "other." Less detailed statistics generated by SECOFI indicate that Mexico imposed final antidumping duties in one of two cases concluded in 1987 and in four of seven cases concluded in 1989.[139]

Mexican Export Subsidies

Prior to 1985, in an effort to diversify its export structure, Mexico supported non-oil exports with a wide range of direct and indirect subsidies. The major Mexican export subsidies objected to by U.S. producers included preferential pre-export and export financing under the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX); tax rebates under the system of Rebate Certificates for Indirect Taxes (CEDI); tax credits and exemptions under the Certificates of Fiscal Promotion (CEPROFI); and preferential pricing of energy. Since 1985, Mexico has continued to promote exports, but has relied less on direct subsidy programs. The export subsidy programs cited above have either been terminated or the subsidy element has diminished.

Bilateral Subsidies Agreement

In April 1985, the United States and Mexico concluded a 3-year bilateral Understanding on Subsidies and Countervailing Duties (1985 Subsidies Agreement).[140] In the understanding,

[133] The table is based on a computer printout of antidumping proceedings prepared by SECOFI. "Year" refers to the calendar year in which a case was initiated, as reported in Mexico's semi-annual reports to the GATT Committee on Anti-Dumping Practices or derived from the SECOFI computer printout. No cases were initiated before 1987.

In calculating the number of proceedings, we have adhered to SECOFI's categorization of the product under investigation. In a few instances, proceedings characterized by SECOFI as involving a single product have been characterized as GATT as involving two or more products. Consequently, the number of proceedings is less than that reported in the table in J. Jackson & E. Vermulst, Antidumping Law and Practice 15 (1989) ("Antidumping Law"), which utilizes GATT's characterization of the product under investigation. The number of proceedings is greater than that reported by the Mexican Embassy in its post hearing brief because we, unlike the embassy, have characterized an investigation concerning a single product imported from two countries as two proceedings.

[134] For purposes of this analysis, a "product category" is equivalent to a chapter heading in the Harmonized Tariff Schedule of the United States (1990).

[135] These product categories were involved in one case each: measuring instruments, aircraft and spacecraft, wood pulp and paper board, machinery, tanning or dying extracts, and electrical machinery.

[136] Antidumping Law, note [305], at p. 15.

[137] Ortega, note [267], p. 212.

[138] Ibid. The Ortega article does not include a complete investigation-specific listing of dispositions and all figures provided in the article do not reconcile.

[139] The SECOFI statistics do not indicate whether those cases in which final duties were not imposed were concluded because of negative determinations, voluntary undertakings, or some other reason.

[140] U.S.-Mexican Understanding on Subsidies and Countervailing Duties, April 24, 1985. Mexico is not a signatory to the GATT Subsidies Code.

the United States agreed to conduct an injury test in countervailing duty (CVD) investigations of Mexican imports. In exchange for the injury test concession from the United States, Mexico agreed (1) to eliminate the export subsidy elements of its CEDI tax incentives program; (2) not to establish or maintain any pricing practice concerning energy or basic petrochemical products that was an export subsidy or that had the purpose or effect of promoting exports; and (3) to phase out the export subsidy element of its pre-export and export financing programs by December 31, 1986.

Compliance with the terms of the 1985 Subsidies Agreement required that Mexico (1) discontinue any remission or drawback of import charges under the CEDI program that were in excess of those levied on imported goods that were physically incorporated into an exported product; (2) pledge that any outstanding preferential prices for petrochemical products that were granted prior to November 30, 1982 would not include export requirements; and (3) raise the interest rate offered for pre-export and export financing to at least equal the government's cost of capital, defined as the yield on the most recent auction of 90-day Treasury Bills of the Government of the United Mexican States (CETES).

Pursuant to the 1985 Subsidies Agreement, Mexico phased in the CETES rate for pre-export and export loans by the end of 1986. In June 1988, the subsidy understanding between the United States and Mexico was extended through April 23, 1991, essentially unchanged. In order to more accurately reflect the Mexican Government's cost of capital, however, the rate formula for short-term pre-export and export financing was revised. Different formulas now apply depending on whether the loan is denominated in pesos or U.S. dollars. The minimum rate to be charged for peso denominated financing (principally pre-export financing) with a maturity of 2 years or less is now (CETES + CPP)/2.[141] Financing for short-term loans denominated in U.S. dollars (principally export financing) is to at least equal the 90-day New York Bankers' acceptance rate plus 75 basis points.

Implications for U.S. Industry

There have been a total of 36 U.S. CVD investigations involving Mexican products; the last case was decided in 1986. An injury test has been conducted in only one case involving a Mexican product; that case was ongoing at the time of the signing of the 1985 Subsidies Agreement.[142] At the beginning of 1989, there were 16 outstanding CVD cases involving Mexican products, i.e. the products were subject to countervailing duties based on an earlier affirmative finding or the cases were under suspension.

The Government of Mexico has requested that the U.S. Government conduct an injury test for each of its outstanding CVD cases. Mexico cites its accession to GATT in August 1986 and the 1985 Subsidies Agreement as the bases for its request. Mexico's accession to GATT entitles its products to an injury test as part of CVD investigations conducted by other GATT signatories, provided that the products are duty-free on a most-favored-nation (MFN) basis. Ten of Mexico's outstanding CVD cases in 1989 involved duty-free products. Findings in seven of the cases have since been revoked, including two that were partially revoked.[143] Revocation of the findings in the three remaining cases involving duty-free products is being considered.[144]

Mexico has also argued that the 1985 Subsidies Agreement should be applied retroactively, entitling it to an injury test in each of its outstanding CVD cases, even if the product involved is not MFN duty free and the case was decided prior to the signing of the agreement. The U.S. Government's position is that Mexico's compliance with the 1985 Subsidies Agreement entitles its products to an injury test only in future CVD proceedings. No injury tests are anticipated for Mexico's outstanding CVD cases that do not involve duty-free products. However, three such cases that are currently under suspension are in the process of being revoked under standard U.S. Department of Commerce CVD administrative review procedures.

Mexico claims that it "maintains no export subsidy program and is in full compliance with its obligations under the subsidy agreement."[145] Since signing the 1985 Subsidies Agreement with the United States, Mexico has complied with its terms by terminating the CEDI program, raising its pre-export and export financing rate, and terminating an energy rebate and discount program. In addition, it appears that Mexico's remaining export promotion programs

[141] Costo Porcental Promedio (CPP) is an average cost of capital to Mexican banks.

[142] U.S. Department of Commerce Case C-201-505, Porcelain-on-steel Cooking Ware from Mexico, resulted in an affirmative finding.

[143] U.S. Department of Commerce. The findings in the Certain Textiles and Textile Products (C-201-405) and Litharge, Red Lead (C-201-005) cases were partially revoked because only a portion of the products involved were MFN duty free. In 1989, the USITC conducted an investigation under section 332 of the Tariff Act of 1930, in lieu of an injury test, for lime from Mexico (C-201-402). In five other cases, the findings were revoked subsequent to a petitioning and notification of the U.S. industry. The seventh case had been under a suspension agreement and was revoked under standard CVD administrative review procedures that allow revocation after 5 years following notification of the interested parties.

[144] The USITC is currently conducting a section 332 investigation, in lieu of an injury test, involving auto glass from Mexico (C-201- 406).

[145] Post-hearing brief filed with the Commission on Dec. 18. 1989 on behalf of the Mexican Government.

are designed to encourage exports without conferring direct subsidies. Notably, no new CVD cases have been initiated against products from Mexico by U.S. industry petitioners since conclusion of the 1985 Subsidies Agreement.

Following is a description of Mexico's major programs that have been cited by petitioners in U.S. CVD proceedings.

Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)

Mexico views growth in exports as vital to its current development efforts. Most of Mexico's financing and promotional programs for exports are conducted by the Banco Nacional de Comercio Exterior (Bancomext), its national bank of foreign trade. Bancomext's programs are supposed to support the objectives set for the national economy by contributing to the gradual and sustained recuperation of the economy and to the consolidation of price stability.[146] Funding for Bancomext programs has increased dramatically in recent years. In 1989, funding for Bancomext financing and guarantee programs increased by 26 percent over the previous year to total $14.6 billion.[147]

Mexico's principal mechanism for providing credit to its export sector has been the FOMEX fund. FOMEX was constituted in 1962 and is a trust of the Mexican Ministry of Finance and Public Credit (Hacienda), with Bancomext acting as trustee.[148] FOMEX accounts for the bulk of benefits available through Bancomext. As of November 1989, funds for FOMEX financing and guarantee programs totaled $10.5 billion, a 40 percent increase over the same period in 1988.[149]

FOMEX provides an array of programs for Mexican manufacturers and exporters but its major offerings are pre-export and export financing. FOMEX does not generally give credits directly to firms, but operates through financial institutions or banks, which establish contracts for lines of credit with manufacturers and exporters. FOMEX financing is available at terms more favorable than those prevailing in the commercial capital market.

FOMEX offers pre-export financing for the importation of inputs (such as raw materials, spare parts, components and services) that are needed for the production of manufactured export products.

[146] Bancomext, "Programa financiero y de promocion, 1989," *Comercio Exterior*, March 1989, vol. 39, No. 3, p. 187.
[147] Bancomext.
[148] Secretaria de Programacion Y Presupuesto, *Diario Oficial*, Dec. 30, 1989. Prior to 1983, the Banco de Mexico acted as FOMEX trustee.
[149] Bancomext, "Informe del Director General Al H. Consejo Directivo, Sobre el Avance de las Actividades de la Institucion a Noviembre de 1989," December 21, 1989, p. 74.

FOMEX also provides export financing through both seller credit (financing to a producer after an order has been placed, but before the buyer has paid) and buyer credit (financing to the foreign importer for purchase of Mexican exports) programs. A company's products must incorporate at least 30-percent local content for it to be eligible for FOMEX export financing.[150] The amount of credit available varies according to the level of local content and the term of the loan.

FOMEX also provides export credit guarantees to exporters and intermediary credit institutions. FOMEX guarantees insure payment of loans that are associated with the acquisition of raw materials, semi-manufactured products, and manufactured products and services that are a part of export operations.[151]

Mexico has complied with the terms of the 1985 Subsidies Agreement and its extension by raising the rates on FOMEX loans to reflect the Mexican Government's cost of capital. FOMEX lending rates are currently based on the formulas contained in the 1988 revised agreement.[152] Although Mexico's compliance entitles it to injury tests in future CVD proceedings, it does not affect the method used by the U.S. Department of Commerce to calculate subsidy margins of preferential financing schemes. The subsidy margins are calculated based on a comparison of the actual lending rate received by a Mexican firm to commercially available rates. Since the FOMEX lending rates reflect the government's cost of capital, not commercially available rates, FOMEX loans are still susceptible to affirmative findings under U.S. CVD statutes. However, Mexico's compliance with the subsidies agreements has raised the FOMEX lending rate from pre-agreement levels which were below the Government's cost of capital.

[150] Ronald C. Ratcliffe, "Export Financing For All," *Business Mexico*, September 1989, p. 13. In the early 1980s, FOMEX opened its seller credit program to companies with majority foreign capital. However, the program's local content requirements for eligibility prevented participation by maquiladoras (in- bond operations) since local content for the maquila industry on average is very low. In mid 1988, financing under FOMEX's seller credit program was made available to maquiladoras. Staff telephone conversation with an official at Hacienda.
[151] Banco de Mexico, "New Financial Incentives and Export Guarantees,"(No date), p. 23. In addition to the programs noted above, FOMEX administers the Programa de Financiamento en Divisas para la Exportacion (PROFIDE), and the Investment Financing for Exporters (FIFE) program. The PROFIDE is another pre-export financing program. The FIFE program provides financing for the construction of new plants or expansion of plants that produce goods for export. Funds for the both PROFIDE and FIFE financing program are provided by the World Bank. Since the PROFIDE and FIFE programs are funded by an international institution, they have not been considered in U.S. CVD investigations of Mexican products.
[152] Staff interview with Mexican official.

FOMEX is scheduled to be merged with Bancomext in 1990.[153] After the merger, FOMEX will no longer exist as a separate fund; its programs will be incorporated into Bancomext programs. As a result, it is anticipated that the local content eligibility requirements for pre-export and export financing will be eliminated.

Export Promotion Through Tax Incentives

Until recently, several forms of tax incentives were offered by Mexico to encourage exports and import substitution to improve its balance of payments position. Two major programs, in effect since the 1970s, were the Rebate Certificates for Indirect Taxes and the Certificates of Fiscal Promotion.

Rebate Certificates for Indirect Taxes (CEDI).—The tax rebate that most affected exports was embodied in the system of CEDIs, which granted a tax rebate as a percentage of the f.o.b. value of an export shipment.[154] CEDIs were introduced in 1971 as nontransferable tax rebate certificates specially designed to promote exports of manufactured products.[155] Virtually all products were eligible to receive CEDIs.[156]

Prior to January 1, 1980, Mexico used a cascade system of taxes, most notably the mercantile tax, which were levied at successive levels of distribution. Thus, by the time goods were sold to consumers, the mercantile tax had had a cumulative effect.[157] Under the CEDI program, indirect taxes resulting from this tax system were rebated to the Mexican manufacturer when the product was exported. The rebate was in the form of tax certificates that could be used to offset the firm's tax liabilities.[158]

In 1980, Mexico changed its Federal cascade tax system to a value-added tax (VAT). Under the VAT system, Federal indirect taxes were rebated automatically upon export of a product, eliminating the central purpose for the CEDI.[159] However, the Government of Mexico continued the CEDI program, claiming that some Federal excise taxes and sub-national cascade taxes had remained. The program was restructured and eligibility requirements were established, including local content standards.[160] Under the revised CEDI program, in order for a firm to qualify for CEDI benefits, the exported products could not be subject to an export tax; could not be products imported for repair, conditioning or substantial transformation; and had to contain at least 50 percent domestic content. The tax rebate was 10 percent of the sales value when the domestic content exceeded 60 percent. When domestic content was between 50 and 60 percent, the rebate was 5 percent.[161]

CEDI benefits were valid for 5 years from the date of their issue and could be applied against a wide range of Federal tax liabilities, including payroll taxes, value-added taxes, income taxes, and import duties. The CEDI program was suspended under an executive order published in the *Diario Oficial* on August 25, 1982. However, companies that were issued CEDIs prior to the suspension were able to derive benefits for 5 years from the date of issuance.

Although rebate of indirect taxes is permitted by the GATT and under U.S. law, they must be nonexcessive (i.e., not be in excess of those levied on imported goods that are physically incorporated in the exported product) and meet a linkage test. In the 1985 Subsidies Agreement, Mexico agreed to eliminate the export subsidy elements of the CEDI program, that is, the excessive remission or drawback of import charges. The CEDI program was subsequently terminated by virtue of its removal from the Federal budget.[162]

Certificates of Fiscal Promotion (CEPROFI).— CEPROFIs were tax credits that were designed to foster a variety of industrial development objectives including export promotion.[163] CEPROFIs were awarded to companies satisfying criteria for promoting development in priority regions, engaging in priority economic activities, and meeting more general industrial goals.[164]

The CEPROFI tax credits ranged from 10 percent to 25 percent of federal corporate taxes. The amount of the credit depended upon (1) the location of the investment, (2) the type of industry, (3) the amount of employment

[153] Secretaria de Programacion Y Presupuesto, *Diario Oficial*, Dec. 30, 1989 and staff telephone conversation with official at Hacienda.

[154] USITC, *Operation of the Trade Agreements Program, 33rd Report, 1981*, USITC Publication 1308, p. 177.

[155] USITC, *The Impact of Increased United States-Mexico Trade on Southwest Border Development*, USITC Publication 1915, November 1986, p. 50.

[156] Charles M. Ludolph, "Subsidies and Countervailing Duties in U.S.-Mexican Trade," U.S.-Mexico Trade and Investment Law Conference, Federal Bar Association, September 1982.

[157] USITC, *Operation of the Trade Agreements Program, 32nd Report, 1980*, USITC Publication 1307, p. 160.

[158] USITC, *The Impact of Increased United States-Mexico Trade on Southwest Border Development*, USITC Publication 1915, November 1986, p. 50.

[159] Indirect taxes in Mexico include sales, excise, VAT, franchise, turnover, transfer, stamp and border taxes including import charges.

[160] The CEDI program was revised in a decree published on January 7, 1980.

[161] USITC, *The Impact of Increased United States-Mexico Trade on Southwest Border Development*, USITC Publication 1915, November 1986, p. 50.

[162] Staff interview with SECOFI official.

[163] The incentives offered by the program for regional industrial development were contained principally in a presidential decree published in *Diario Oficial* on March 6, 1979. Corresponding regulations were published on June 27, 1979.

[164] The incentives were increased by a decree published on June 11, 1981, which also extended them to non-priority industries.

generated, (4) the purchase of machinery and equipment made in Mexico, and (5) the size of the company (with small businesses favored).[165] CEPROFIs were nontransferable certificates that were valid for 5 years and could be used to liquidate any type of Federal tax. However, they could not be used in conjunction with other tax benefits with respect to the same investment.[166]

To receive the tax credit, Mexican industrial taxpayers had to satisfy a variety of obligations. As part of the registration process, the company had to commit to performance requirements related to increasing production, domestic content levels, production shares to be exported, as well as price commitments.[167] Companies also had to obtain the explicit approval of Hacienda.

CEPROFI tax credits were found to confer subsidies in U.S. CVD proceedings, because the benefits of the program were not uniform—they varied by industry and location—and thus accorded preferential treatment to certain companies. In 1987, 14 economic activities were eligible for CEPROFIs; in 1988, the number of eligible activities was reduced to 4.[168] Pursuant to a December 1989 decree, it appears that the CEPROFI program was terminated, effective January 1, 1990, with only a couple exceptions for certain activities in Mexico's border and free-trade zones. Applications for CEPROFIs that were pending as of January 1 will still be considered. Companies already holding certificates will be able to derive benefits for 5 years from date of issuance.[169]

Pricing of Energy and Petrochemical Feedstocks

Mexico's petroleum and natural gas industries operate under the sole purview of Petroleos Mexicanos (Pemex), the state-owned company formed in 1938 after Mexico nationalized the industry and expropriated foreign investments. The generation and distribution of electricity is also reserved exclusively to the state under Mexican law.

Discounts on industrial energy supplies and petrochemical feedstocks.—Firms constructing new industrial installations in certain geographic locations were eligible for discounts and rebates on energy and petrochemical feedstocks prices from the government-owned electricity, oil, and natural gas suppliers. This program was designed to promote the goals of Mexico's national development plans (NDPs), principally that of industrial decentralization. The benefits of this program varied according to location and energy source, but could be as high as 30 percent. These benefits were granted under a presidential decree that was published on December 29, 1978, modified on June 21, 1979, and modified again on August 3, 1981. A decree published in the *Diario Oficial* on December 28, 1987 terminated the availability of these discounts by annulling the three earlier decrees.[170]

Preferential pricing of petrochemical feedstocks.—Mexico's National Energy Program for 1984-88 stated that the domestic prices for hydrocarbons, such as natural gas and No. 6 fuel oil, necessary in the production of energy-intensive products, would be maintained at levels lower than the international market prices.[171] In responding to claims that its domestic energy prices are artificially low, Mexico claims that its comparative advantages in production costs permit lower consumer prices.[172] Moreover, although Mexican prices for petrochemical feedstocks remain below U.S. prices, the price is uniform for all domestic customers.

Since Mexico's two-tiered pricing policy does not provide preferential prices to exporting industries vis-a-vis other domestic industries, it has not been found to confer a subsidy under U.S. CVD statutes.[173] In addition, the trend of the last several years demonstrates a substantial narrowing of the difference between U.S. and Mexican consumer prices for energy products, particularly natural gas. In 1989, the Mexican consumer price for natural gas was estimated at 89 percent of the U.S. consumer price, compared to 78 percent in 1988 and 60 percent in 1987.[174]

Miscellaneous Export Promotion Programs

Two other export promotion programs cited in U.S. CVD investigations involving Mexican products are the Fund for Industrial Development (FONEI) and the Guarantee and Development Fund for Medium and Small Industries

[166] USITC, *Foreign Investment Barriers or Other Restrictions that Prevent Foreign Capital from Claiming the Benefits of Foreign Government Programs*, USITC Publication 2212, August 1989, p. 2-2.
[167] USITC, *The Impact of Increased United States-Mexico Trade on Southwest Border Development*, USITC Publication 1915, November 1986, p. 51.
[168] Ibid., p. 50.
[165] Ley de Ingresos de la Fedracion para el Ejercicio Fiscal de 1987, published in the *Diario Oficial* on December 31, 1986, and Ley de Ingresos de la Fedracion para el Ejercicio Fiscal de 1988, published in the *Diario Oficial* on December 31, 1987.
[169] Transitory art. 4, *Diario Oficial*, Dec. 28, 1989, p. 110.
[170] U.S. Department of Commerce, Preliminary Results of Countervailing Duty Administrative Review, Carbon Black from Mexico, C-201-012, 53FR15089 Apr. 27, 1988. The U.S. Department of Commerce has referred to this program as "NDP discounts."
[171] USITC, *Foreign Investment Barriers or Other Restrictions that Prevent Foreign Capital from Claiming the Benefits of Foreign Government Programs*, USITC Publication 2212, August 1989, p. 2-1.
[172] U.S. Embassy, Mexico City, 27835, Nov. 10, 1989.
[173] USITC, *Foreign Investment Barriers or Other Restrictions that Prevent Foreign Capital from Claiming the Benefits of Foreign Government Programs*, USITC Publication 2212, August 1989, p. 2-1.
[174] U.S. Embassy, Mexico City, A-15, Aug. 11, 1989.

(FOGAIN). The Bank of Mexico's FONEI is a specialized fund that provides long-term loans at preferential rates for the creation, expansion, or modernization of enterprises producing goods for export or to meet the development objectives of the NDPs. FONEI also provides loans for purchases of equipment, feasibility studies, research and development, and working capital. FOGAIN is a program that provides long-term loans to all small- and medium-sized firms in the manufacturing sector of Mexico. The program offers different rates of interest on long-term loans depending on the size of the company: micro, small, or medium.[175]

Both the FONEI and FOGAIN programs have been found to confer subsidies in the course of U.S. CVD proceedings. Although the programs' lending rates may still be below commercially available rates, they have increased over the last several years. For example, the rate charged for peso denominated FONEI loans to companies for the optimization of equipment, the purchase of fixed assets and working capital has risen from CPP plus 2 points for the period from February 1986 to April 1989 to CPP plus 12 points in mid-1989.[176] Lending rates for FOGAIN loans have also increased. For companies categorized as micro, the FOGAIN lending rate in 1989 was equal to CPP compared to 85 percent of CPP in 1987. For small companies, the rate has risen from 95 percent of CPP in 1987 to CPP plus 2 points in 1989; and for medium-sized firms from CPP to CPP plus 4 points. However, to the extent that these programs may provide financing at rates below the least beneficial market rate, they will continue to be considered countervailable under U.S. CVD statutes.[177]

Mexico's Highly Active Exporters Program (ALTEX) was established by decree on December 14, 1986 for firms already operating with a large volume of export sales. To be eligible, firms must have a favorable trade balance and have direct exports with a minimum value of $3 million or with a value of $1 million when that represents at least 49 percent of their total sales volume.[178] The benefits provided to firms in the ALTEX program include priority status treatment when seeking permits or authorizations, assistance from government officials in complying with reporting and other governmental requirements, customs verification at the corporation's domicile in Mexico, immediate credit of the VAT on export sales, and duty-free temporary imports.[179] The ALTEX program has not been considered in any U.S. CVD investigations or administrative reviews. The program's benefits are not in the form of direct financial support, but instead offer operational assistance.

[175] U.S. Department of Commerce, public version of Verification of the Questionnaire Response in the 1987 Administrative Review of the Countervailing Duty Order on Certain Textile Mill Products from Mexico—January 1, 1987 through December 31, 1987, signed Jan. 29, 1990. Firms employing 15 people or less with sales worth up to 300 million pesos are classified as micro; up to 100 people with sales worth 3.4 billion pesos are classified as small; and up to 250 people with sales worth 6.5 billion pesos are classified as medium.

[176] Ibid. The rate for loans denominated in dollars has also risen.

[177] Ibid.

[178] U.S. Consulate, Guadalajara, 07269, Mar. 28, 1988.

[179] Martin, Drought & Torres, *Maquilmex Briefs*, July 1989, vol.1, No. 2, p 3.

Chapter 5
Foreign Investment

Prior to the mid-1980s, direct foreign investment played a relatively small role in Mexico's total external financing.[1] That need was fulfilled principally by borrowing. However, when President Miguel de la Madrid Hurtado took office in December 1982, he faced a national economic crisis. The Mexican inflation rate was 99 percent, capital flight was acute, and international reserves had plummeted.[2] At this point the international banking community refused to loan any more funds to Mexico.[3]

In its search for alternative methods to provide economic growth, the de la Madrid Administration adopted less restrictive policies affecting foreign investment. Although according to law, a general rule limiting foreign investment to 49 percent still applied, Mexican authorities became more flexible in granting exceptions to the rule. Between 1985 and 1988, projects with 100-percent foreign-ownership were allowed in a number of sectors, including electric and nonelectrical machinery and equipment, electronic computer equipment, transport equipment, chemicals, high-technology services and the hotel industry.[4] In 1988, the Mexican Government approved the majority of requests by foreign firms to establish wholly owned manufacturing enterprises in Mexico.[5]

During the past several years, the Mexican Government has made a concerted effort to modernize its economy and attract more foreign capital.[6] Last year the Salinas Administration continued to relax the rules governing foreign investment, opening numerous sectors of the economy to 100-percent foreign-ownership. President Salinas has indicated that increased foreign investment will play a critical role in the future growth of the Mexican economy. This is a marked change from Mexico's historically restrictive approach toward foreign investment.[7]

Although Mexico is a federal republic with both federal and state levels of legislative jurisdiction, the overwhelming majority of the statutes affecting foreign investment are either federal or modeled after federal laws. Federal legislation is enacted by Congress, and to become effective, must be promulgated by the President and published in the *Diario Oficial*. In addition to the indirect control over the legislative process, the President has authority to enact general rules in the form of regulations.[8] Regulations must also be published in the *Diario Oficial* to become effective. To a large extent, Mexico's rules on foreign investment are the result of administrative policy, rather than the legislative process, and so are often established through regulation rather than through law. Mexico's 1917 Constitution also affects its policies toward foreign investment by providing the basic framework for all subsequent laws and regulations concerning foreign investment.

Overview of Foreign Investment in Mexico

Although foreign investment in Mexico has increased substantially in the last 10 years, total foreign direct investment has constituted a relatively small portion—less than 10 percent—of total gross fixed investment in the economy, and its share of GDP has been less than 5 percent.[9] However, the cumulative value of authorized foreign investment at the end of 1989 totaled $26.56 billion, almost four times the value at the end of 1979, (millions of dollars):[10]

Year	*New Investment*	*Accumulated Investment*
1979	810.0	6,836.2
1980	1,622.6	8,458.8
1981	1,701.1	10,159.9
1982	626.5	10,786.4
1983	683.7	11,470.1
1984	1,442.2	12,899.9
1985	1,870.1	14,628.9
1986	2,424.2	17,053.1
1987	3,877.2	20,930.3
1988	3,157.1	24,087.4
1989	2,475.4	26,562.8

New authorized foreign investment in Mexico grew rapidly in the 1986-89 period reaching over $11.93 billion cumulatively, compared to $4.62 billion in the previous 4 years. In 1989, new foreign investment in Mexico was $2.48 billion, down from $3.16 billion in 1988. However, the figures for 1986, 1987 and 1988 include foreign investment that entered Mexico under its debt-equity swap program.[11] New foreign investment in these years, net debt-equity swap investment, amounted to $1.32 billion, $2.03 billion and $2.23 billion, respectively.[12] Comparing the net investment figures for 1988

[1] U.S. Embassy, Mexico City, *Foreign Investment Climate Report June 1989, (Climate Report 1989)*, p. 4.
[2] Rosemary R. Williams, "Has Mexico Kept the Promise of 1984? A Look at Foreign Investment Under Mexico's Recent Guidelines," *Texas International Law Journal*, Summer 1988, vol.23, No. 3, p. 418.
[3] *Climate Report* 1989, p. 2.
[4] Ibid. pp. 6–7.
[5] Brian C. Brisson, "U.S.-Mexico Trade Continues to Expand and Improve," *Business America*, Dec. 4, 1989, p. 7.
[6] *Climate Report 1989*, p. 1.
[7] Ibid., p. 4.
[8] Sandra F. Maviglia, "Mexico's Guidelines for Foreign Investment: The Selective Promotion of Necessary Industries," *American Journal of International Law*, vol. 80, No. 2, April 1986, p. 284.
[9] *Climate Report 1989*, p. 2.
[10] SECOFI.
[11] Applications for debt-equity swap investments were reviewed from May 1986 through October 1987 when the program was suspended over concerns of its inflationary impact. Some debt-equity swaps may be allowed in the future for investments in infrastructure.
[12] For the years 1986, 1987 and 1988, foreign investment resulting from the debt-equity swap program totaled $3.87 billion. Staff telephone conversation with SECOFI official. Figures for 1989 are preliminary.

and 1989, new foreign investment in Mexico grew by 11.0 percent in 1989.[13]

Foreign investment in Mexico has been concentrated in the industrial sector. As of the end of 1989, the industrial sector accounted for 66.8 percent of the value of accumulated foreign investment, followed by the services sector (24.5 percent), the commercial or retail sector (7.1 percent), extractive industries (1.5 percent), and agriculture (0.1 percent). Recently, however, foreign investment has increased in other sectors. Of new foreign investment in 1989, the services sector accounted for 41.4 percent compared to 41.9 percent for the industrial sector. The commercial sector also increased its share of new foreign investment to 15.5 percent.

Based on investment values, the United States accounted for 63.0 percent of accumulated foreign investment at the end of 1989, followed by the United Kingdom with 6.7 percent, Germany with 6.3 percent, Japan with 5.1 percent and Switzerland with 4.4 percent (see Figure 1).[14] However, the United States accounted for an even larger share (72.0 percent) of the new foreign investment in 1989. The next largest investor in Mexico in 1989 was Switzerland (6.9 percent), followed by Germany (3.2 percent), France (2.0 percent), and Holland (1.8 percent). Japan ranked ninth in new investment in 1989 with a 1.0 percent share. As of the end of 1988, an estimated 8,420 foreign companies had operations in Mexico.[15]

Historical Legal Framework for Foreign Investment in Mexico

Foreign investment did not begin to flow into Mexico in significant amounts until the Porfirio Diaz Administration (1876-1910). He strongly encouraged foreign investment in Mexico in the belief that substantial investments in mining, utilities, and basic industries would bring Mexico into a position commensurate with that of industrialized countries.[16] By 1911 foreign investment had reached $1.4 billion. The favorable atmosphere toward foreign investment changed dramatically during the revolutionary period (1910-1925), however, and little new external capital entered the country.[17]

Developments from the 1917 Constitution to 1973

The 1917 Constitution of the United Mexican States forms the foundation for many aspects of Mexico's present regulatory regime for foreign investment. Although the civil guarantees provided for in the Constitution apply to foreign investors as well as nationals, the ownership of land and the rights to work and engage in business in Mexico were restricted for foreigners.

Article 27 of the Constitution reaffirmed the traditional civil law principle that all subsoil rights are vested in the nation, laying the basis for restricting the access of private investors to certain natural resources.[18] Although foreigners have the right to own property in Mexico,[19] in order to do so, article 27 of the Constitution stipulated that they must renounce the right to invoke the protection of their government should any conflict arise concerning the property.[20] Foreigners are also prohibited from holding title over land and water in the "Restricted Zone," a 100-kilometer strip along the country's borders and a 50-kilometer strip inland from its coasts.

Mexico's policies regarding foreign investment between 1917 and 1973 can generally be described as restrictive. Most large foreign-owned agricultural investments were expropriated between 1926 and 1940. In 1935, new direct foreign investment in the insurance industry was prohibited. Foreign companies in the Mexican insurance market prior to 1935 were allowed to remain but were forced to reduce their level of participation to below 50 percent; the limit on foreign participation was subsequently reduced further to 15 percent. In 1937, foreign-owned railways were expropriated followed by the nationalization of the foreign-owned oil industry in the following year.[21]

Following adoption of the Constitution, Mexico's policies toward foreign investment were implemented through a host of administrative decrees. In 1944, an emergency decree was enacted that granted extensive discretionary controls over foreign capital to the Secretariat of Foreign Relations. Under the 1944 decree, foreigners had to obtain permission from the Secretariat for the acquisition of a total or controlling interest in a range of activities including agriculture, cattle raising, forestry, mining concessions, real estate and, in general, industrial and commercial enterprises. In 1945, the Secretariat specified areas in which 51-percent Mexican capital was required, including radio, film, fishing, advertising, domestic air, and highway transport industries. Two years later the 51-percent rule was extended to the bottling and rubber industries.[22]

[13] Moreover, most foreign investment in 1989 transpired in the 7 months following the release of the new foreign investment regulations in May. In response to the new regulations, inquiries to the American Chamber of Commerce of Mexico concerning investment have reportedly increased by 60 percent.

[14] Ibid.

[15] Ibid.

[16] Maviglia, p. 283.

[17] *Climate Report 1989*, annex M, p. 44.

[18] Luis Miguel Diaz, "The Unavoidable Challenge," *Business Mexico*, June 1987, p. 45.

[19] Under agrarian land reform legislation promulgated in the 1920s and 1970s, however, foreign-ownership of agricultural land is effectively prohibited.

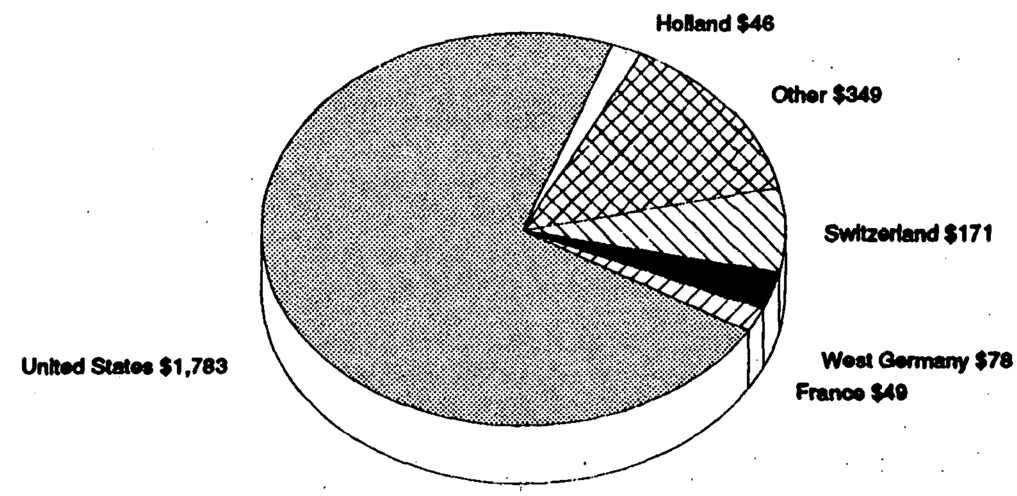
[20] This is the so-called Calvo Clause. *Climate Report 1989*, annex M, p. 44.

[21] Ibid.

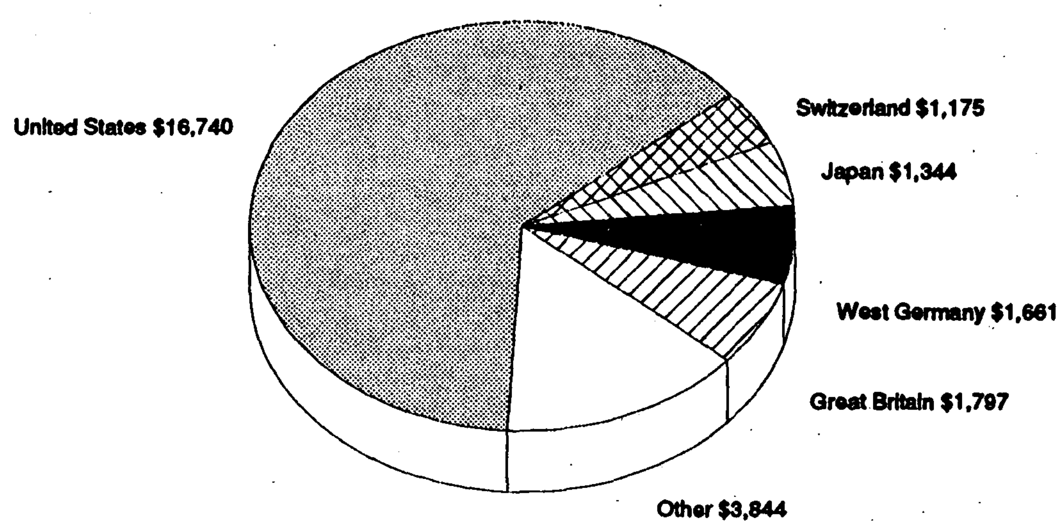
[22] Ibid., p. 44-45.

Figure 5-1

New foreign direct investment in Mexico, by country of origin, 1989 (In millions of U.S. dollars)



Accumulated foreign direct investment in Mexico, by country of origin, as of end of 1989 (In millions of U.S. dollars)



Source: SECOFI

In 1960, the timber industry was reserved exclusively for Mexicans. In 1961, foreign-ownership in mining was limited to 49 percent and in the case of some strategic minerals to 34 percent.[23] In 1965, legislation was enacted to limit foreign equity participation in banking and bonding businesses to a minority position.[24] In 1970 tighter restrictions were imposed on new foreign investments in steel, cement, glass, fertilizers, paper, and aluminum industries.[25]

Developments from the 1973 Foreign Investment Law to 1984

In 1973, all the laws and regulations governing foreign investment were codified in the Law to Promote Mexican Investment and Regulate Foreign Investment (LFI).[26] The LFI remains today the fundamental legal framework for foreign investment in Mexico. Two other laws affecting foreign investment in Mexico were promulgated in the 1970s: the 1973 Technology Transfer Law, and the 1976 Law on Inventions and Trademarks.[27] Together, these three statutes constituted Mexico's system for coordinating foreign investment as well as the licensing and sale of foreign industrial property and technology.

Foreign investment is defined by the LFI as investments made by (1) foreign corporations; (2) foreign individuals who are not bona fide permanent residents of Mexico, or those who due to their activities are tied in with or bound to entities or groups making their economic decisions abroad; (3) foreign legal entities without legal personality; and (4) Mexican enterprises in which a majority of their capital is owned by foreigners, or in which foreigners control management.[28]

For the purpose of defining permissible areas and limits for foreign investment, the LFI divided the Mexican economy into four broad categories of business activities:

- *Activities reserved exclusively to the Mexican State*[29]

  Extraction of petroleum and natural gas; production of basic petrochemicals; exploitation of radioactive minerals and generation of nuclear energy; certain mining activities; generation of electricity; railroads; telegraphic and radio communications; and all other activities that may be determined by specific laws.

- *Activities reserved exclusively to Mexicans or to corporations with an exclusion- of-foreigners clause in their articles of incorporation*[30]

  Radio and television; urban and interurban automotive transportation and federal highways transport; domestic air and maritime transportation; exploitation of forestry resources; gas distribution; and other activities established in specific laws or regulations.

- *Activities in which foreign investment was subject to specific percentage limitations*[31]

  Mining under ordinary concessions (49 percent), mining under special concessions for the exploitation of national mining reserves for such minerals as coal, iron ore, phosphoric rock, and sulfur (34 percent); production of secondary petrochemicals (40 percent); manufacture of automotive parts (40 percent); and any other activities for which percentages are indicated in specific laws.

- *All remaining activities*[32]

  Foreign investment was subject to a 49-percent limitation in all remaining activities.

The LFI provided that unless specifically authorized by the National Foreign Investment Commission (CNIE) or by special laws or regulations, investments by foreigners were not to exceed 49 percent of the corporate capital, and that foreign participation in corporate management was not to exceed the percentage of its investment. The CNIE was empowered to modify this general rule, however, and to grant authorization for a higher percentage of foreign participation when such an investment was

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[23] Ibid., p. 45.
[24] Ibid.
[25] Any expansion of companies in these activities required a permit from the Ministry of Foreign Affairs and the sale of majority interest (or the expansion) to Mexican investors. Ibid.
[26] The Law to Promote Mexican Investment and Regulate Foreign Investment (LFI) was published in the *Diario Oficial* on Mar. 9, 1973 and became effective 60 days thereafter.
[27] See the section on Intellectual Property Rights in ch. 7 for a discussion of these two laws.
[28] Ibid. art. 2. Most foreign investors operate in Mexico through corporations. Foreign-owned corporations are subject to the same laws as local companies as well as the regulations governing foreign investment. A Mexican corporation must have at least five shareholders and, except in certain sensitive sectors, usually can be established within 1-2 months. In most cases at least 20 percent of the capital stock must be paid immediately and the remainder within one year. *Climate Report 1989*, pp. 13-14.

[29] LFI, art. 4
[30] Ibid.
[31] Ibid., art. 5.
[32] Ibid., arts. 4 and 5.

deemed beneficial for the economy.[33] In some sectors of the Mexican economy, 100-percent foreign-ownership has been commonplace, particularly in those industries that are regulated under sectoral development programs.[34] However, the government's generally strict enforcement of the 49 percent rule led to a perception that it was immutable. Although the LFI did apply to all foreign investments at the time of its adoption, those businesses that were wholly foreign-owned prior to its enactment were allowed to retain their existing capital structure.[35]

Although foreign ownership of land in the Restricted Zone is prohibited under the Constitution, the LFI contained a mechanism that allowed foreign investors to gain temporary control over the land. Foreign investors may secure the rights to land intended for industrial and tourist activities in the border and coastal regions through a trust ("fideicomiso") with a Mexican bank serving as the trustee. The trustee holds only the bare title to the property, with all other rights vested with the beneficiaries who may build on the land, sell the rights to others, or instruct the trustee to transfer the actual title of the property to a qualified Mexican owner. The trust provides the foreign investor with beneficiary rights without granting ownership. The LFI stipulated that the trust should not exceed 30 years.[36]

The LFI also provided an institutional framework for governing foreign investment. The CNIE, a semiautonomous agency within SECOFI, was established to regulate foreign investment and approve or disapprove projects.[37] The CNIE was to consider 17 criteria in reaching its decision.[38] Generally, the criteria lacked specificity making their application unpredictable.[39] The most important of these criteria were that foreign investment should: (a) not displace national companies which are operating satisfactorily or be directed into areas adequately covered by national companies; (b) have positive balance of payments effects, particularly by expanding exports; (c) increase local employment opportunities; (d) incorporate local inputs into its products; and (e) offer technological assistance to the country.[40] Authorization by the CNIE was required for all investments with a majority of foreign capital.

The National Registry of Foreign Investments (RNIE) was also established by the LFI. The following entities were required to register: foreign individuals and corporations that make investments governed by the LFI, Mexican corporations with foreign capital, real estate trusts with foreign participation, certificates of capital stock owned by foreigners and transfers of these certificates, and resolutions made by the CNIE.[41] Foreign investors establishing a business with less than a 49-percent share of foreign equity needed only to register with the RNIE.

As a result of the LFI, investments structured with majority foreign equity faced several disadvantages, including the length of time required to obtain approval for either the formation or expansion of a company, and restricted sources of tax and other investment incentives. In contrast, an investment that was either wholly Mexican-owned or with minority foreign participation could be organized immediately, expanded into different areas or used for new product lines, qualified automatically for tax and other incentives, and usually provided easier access to administrative agencies and the various licenses required for imports.[42]

Between 1973 and 1984, the CNIE adopted a series of 17 general resolutions, which set forth criteria and clarified requirements for the application of the LFI.[43] In 1982, Mexico's commercial banking system was nationalized, with the exception of two private banks.[44] Foreign banks with representative offices in Mexico were prohibited from engaging in commercial banking activities. The prohibition on private (both

[33] Ibid., art. 5.
[34] Many companies in the electronics, automotive assembly, and pharmaceutical industries are wholly foreign-owned. These sectors are regulated by sectoral development decrees. See the section on "Industrial development plans" in ch. 4 of this report.
[35] Williams, p. 421, and Maviglia, p. 282.
[36] Ibid., arts. 18 through 22.
[37] Ibid., arts. 11 and 12. The CNIE is comprised of the heads of the following Ministries: State; Foreign Affairs; Treasury; Programming and Budget; Energy, Mines and Parastate Industry; SECOFI; and Labor. The private sector is not represented on the CNIE.
[38] Ibid., art. 13.
[39] For example, the CNIE was to consider the capital structure of the branch of economic activity while not indicating how differences in capital structure would affect its decision. Another criteria that lacked definition was that the investment should respect the country's social and cultural values.
[40] *Climate Report 1989*, p. 6.
[41] See *The Law to Promote Mexican and Regulate Foreign Investment*, art. 23.
[42] Maviglia, p. 293.
[43] Staff interview with SECOFI official.
[44] One of the two private banks not nationalized was the U.S.-owned Citibank. Citibank continues to operate in Mexico although it is constrained from opening new offices or becoming a multiple-service bank. Many foreign banks have representative offices in Mexico, but they are prohibited from engaging in commercial banking activities. U.S. Embassy, Mexico City, 27950, Nov. 4, 1989.

national and foreign) ownership of banks was incorporated into the Constitution by amendment.

Recent Liberalization Measures

In the past several years, the Mexican Government has moved away from a restrictive interpretation of the LFI, demonstrated by a relaxation of its regulations governing foreign investment. Following are summaries of Mexico's recent liberalization measures in this area.

Guidelines on Foreign Investment and Proposals for its Promotion

On February 17, 1984, the CNIE proposed the Guidelines on Foreign Investment and Proposals for its Promotion (1984 Guidelines). The 1984 Guidelines were aimed at systematically and selectively promoting foreign investment in specific priority activities. The promotion focused on those activities which generated positive foreign exchange balances, produced competitive exports and import substitution, contributed to national scientific and technological development, advanced Mexico's further integration into the international community, involved large investments, and created employment and geographic decentralization of industry.

While stipulating that foreign resources would be "used as a complement to the expansion and diversification of the national productive plant," in a significant departure from previous policy, the 1984 Guidelines endorsed majority foreign participation in 33 selected activities falling within 9 general areas of industrial activity.[45] The CNIE also stated that these activities were merely "indicative" and that proposals for majority foreign investment in other activities would be considered. Another significant aspect of the 1984 Guidelines was the absence of a requirement to "Mexicanize" (reduce foreign participation to a minority share) within a specified time period.[46]

The 1984 Guidelines did not, however, carry the weight of law. Instead of publishing the guidelines in the *Diario Oficial*, the government released them to the major newspapers and distributed them in the form of a pamphlet. Failure to publish the 1984 Guidelines in the *Diario Oficial* reinforced what was stated in the Guidelines, namely, that they represented a change in policy, not a change in the law.

General Resolutions

Subsequent to the 1984 Guidelines, the CNIE reorganized its set of General Resolutions. Some of the 17 existing general resolutions were amended or repealed, in order to update them in accordance with the economic priorities of Mexico's National Development Plan (1983-1988) and the 1984 Guidelines. The new group of general resolutions, reduced to 13, improved and expedited the application process for majority foreign investments. For example, the need for CNIE authorization was eliminated for foreign investment in in-bond companies (maquiladoras);[47] for the substitution of foreign directors (provided the ratio of domestic and foreign capital is not changed);[48] and under certain circumstances, for the opening or relocation of specified establishments.[49] The resolutions also included provisions that were expected to decrease significantly the amount of time required to complete an application for majority foreign capitalization.[50] Under General Resolution No. 1, applications were to be negotiated through the Executive Secretary, who would then submit them to CNIE for its formal acceptance within 30 business days of completion of the application.[51]

On September 2, 1986, the CNIE adopted two more general resolutions. General Resolution No. 14 was designed to promote a temporary injection of risk capital by permitting foreign capital from international financial development corporations (e.g. Japan's International Economic Cooperation Fund) to be considered "neutral capital," instead of as foreign investment, for the company's accounting purposes. The investing entity was to have a voice on the company's board of directors and be in a position to exercise all its corporate rights, although as a minority partner. The shares corresponding to this capital were to be sold to Mexican investors within 10 years from initiation of the project.[52]

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[45] The 9 areas of industrial activity were: (1) manufacture of nonelectric equipment and machinery; (2) manufacture of electric machinery and appliances; (3) the machine tools industry; (4) the electronics industry; (5) transportation equipment and materials (including motorcycles, internal combustion engines for boats); (6) chemical industry; (7) other manufacturing industries (including medical and photographic equipment and new high technology materials); (8) biotechnology; and (9) the hotel industry. See the 1984 Guidelines.

[46] Although the LFI did not include Mexicanization requirements, in almost every instance in which an exception for majority foreign equity participation was granted, Mexicanization had been required within 10 years. Maviglia, p. 297.

[47] General Resolution No. 2. Although approval for 100-percent foreign investment in maquiladoras had previously been granted on a case-by-case basis, this resolution explicitly eliminated any need for CNIE authorization.

[48] General Resolutions No. 3 and No. 5.

[49] General Resolution No. 9.

[50] General Resolution No. 1.

[51] Reportedly, prior to the issuance of the 1984 Guidelines, it could take up to 2 to 4 months for a foreign investment application to be analyzed by the technical committee and an additional 6 to 12 months to complete the negotiations and arrive at terms and conditions agreeable to both the investor and the CNIE. See Maviglia, p. 298.

[52] General Resolution No. 14, art. III, sect. 2.

General Resolution No. 15 relaxed the limitations for foreign investment in small- and medium-sized firms. According to this resolution, small- and medium-sized enterprises could be structured with majority foreign capital without prior authorization from the CNIE, provided they fulfilled certain requirements. One of the requirements was that the main office or economic group could not have annual net sales exceeding $8 million and could not have more than 500 employees.[53] In addition, the company constituted in Mexico was to employ at least 250 people; have net sales not exceeding 1,100 million pesos annually (at 1985 prices); export a minimum of 35 percent of their annual production either directly or through third parties and maintain a surplus on its import-export account; and not operate in the service and retail sector.[54] This resolution reflected a departure from Mexico's traditional resistance to investments with a majority of foreign capital, albeit one of limited scope.

1986 Petroleum Development Plan

Petrochemicals production in Mexico is classified in three sub-categories: basic, secondary, and tertiary petrochemicals. "Basic" petrochemicals are those petrochemicals that are the result of the first chemical or physical transformation of crude petroleum or natural gas. The 1958 Petrochemical Law grants Pemex the exclusive right to manufacture all basic petrochemicals. "Secondary" petrochemicals are usually made from basic petrochemicals, although some are manufactured directly from feedstocks obtained from crude petroleum and natural gas. The manufacturing and distribution of secondary petrochemicals is open to the private sector; however, foreign investors are limited to a 40 percent share of equity. Tertiary petrochemicals are usually derived from secondary petrochemicals and are comprised of all petrochemicals not identified as basic or secondary. Under the LFI, producers of tertiary petrochemicals are subject to the general rule limiting foreign participation to 49 percent of equity. Producers of secondary petrochemicals must secure a permit from the Petrochemical Commission, an office within the Secretaria de Energia Minas y Parastatales (SEMIP). The Petrochemical Commission also renders opinions on applications by foreign investors to manufacture petrochemicals in Mexico.[55]

In its 1986 Petroleum Development Plan, Mexico increased the opportunities for foreign investment in the petrochemicals industry by reclassifying 36 products from the basic to the secondary category.[56] The reclassification meant that production of the affected products would no longer be restricted to Pemex and that up to 40-percent foreign participation was possible. Products reclassified included carbon tetrachloride, polypropylene, and vinyl acetate.[57]

1988 General Resolution

On February 3, 1988, the CNIE published the "General Resolution that Systematizes and Updates the General Resolutions Issued by the Mexican Foreign Investment Commission." The 1988 General Resolution revised and incorporated the 15 previously existing general resolutions. Under the 1988 resolution, foreign investors were allowed to acquire up to 49 percent of the shares of an established Mexican company without prior approval of CNIE, unless the debt-equity swap mechanism was to be used.[58] Previously, CNIE approval was required for acquisitions resulting in foreign ownership of over 25 percent of the shares. In addition, foreign investors that already controlled more than 49 percent of the stock of a Mexican company were now allowed to expand their ownership to 100 percent without prior CNIE approval. In another effort to streamline the authorization process for foreign investments, the 1988 General Resolution also stated that the CNIE would make a determination on foreign investment applications within 30 working days of receiving the application from the Executive Secretary.

May 1989 Regulations

In May 1989, Mexico made sweeping changes to its rules governing foreign investment through the issuance of the Regulations of the Law to Promote Mexican Investment and Regulate Foreign Investment (May 1989 Regulations).[59] The regulations repealed all existing administrative regulations, resolutions, decrees and other provisions governing foreign investment and presented a more liberal interpretation of the LFI. It did not, however, affect the legal status of the 1973 LFI, which remained unchanged. As with other areas of the economy, the Salinas Administration opted for implementing changes

[53] General Resolution No. 15, art. 1, A.1. and A.2.
[54] General Resolution No.15, art. 1, B.1., B.2., B.3. and B.4.
[55] U.S. Embassy, Mexico City, A-006, Mar. 28, 1989, p. 3. Chapter two of the Law Regulating Article 27 of the Constitution contains provisions creating the Petrochemical Commission.
[56] U.S. Embassy, Mexico City, 22652, Nov. 5, 1987.
[57] For a list of the 36 basic petrochemicals that were reclassified as secondary and of the remaining 34 basic petrochemicals, see *Foreign Investment Barriers or Other Restrictions that Prevent Foreign Capital from Claiming the Benefits of Foreign Government Programs*, USITC Publication 2212, August 1989,, pp. 2-5, 6.
[58] Bryan, Gonzalez Vargas y Gonzalez Baz, "The Mexican In-bond Industry," November 1988.
[59] The Regulations of the Law to Promote Mexican Investment and Regulate Foreign Investment was published in the *Diario Oficial* on May 16, 1989 and became effective the following day.

in its foreign investment policies through administrative measures rather than the legislative process.

The intent of the May 1989 Regulations, as expressed in the preamble, was to increase the volume and accelerate the flow of investment capital by simplifying and clarifying foreign investment procedures and by providing secure and transparent legal rules for such investment, thereby supporting the modernization of the Mexican economy. The Mexican Government is hoping to attract $3.5 billion in new investment in 1990 and $25 billion over the next 4 years.[60]

For the purpose of establishing clear and nondiscretionary guidelines, the 1989 LFI regulations incorporated a table of "classified" economic activities based on the Mexican Catalog of Economic and Productive Activities. The table serves to differentiate activities that are subject to specific foreign investment restrictions ("classified activities") from those not so restricted and therefore not listed ("unclassified activities"). Classified activities are broken-down into six categories, four of which were defined previously in the LFI (See appendix D for a detailed list of classified activities.):

1. activities reserved to the state;
2. activities reserved to Mexicans;
3. activities subject to a 34-percent limit on foreign investment;
4. activities subject to a 40-percent limit on foreign investment;
5. activities subject to a 49-percent limit on foreign investment; and
6. activities in which foreign investment is allowed up to 100 percent with prior CNIE authorization.

In general, the May 1989 Regulations were constructed so as to standardize the requirements for foreign investment and increase efficiency in the application process. The regulations include provisions that allow up to 100-percent foreign investment in companies in unclassified economic activities; introduce a trust mechanism to allow temporary foreign investment in restricted sectors of the economy and in publicly traded Mexican stock; allow for the automatic renewal of 30-year real estate holding trusts; and provide for the simplification of the authorization process. Highlights of the May 1989 Regulations are discussed below.

Automatic approval of 100-percent foreign investment in unclassified activities.—Under the May 1989 Regulations, the range of economic sectors expressly open to 100-percent foreign-ownership has been broadened significantly. Foreign investors may now own up to 100 percent of businesses in all economic activities that are unclassified. Further, for many of these projects, investors may not be required to submit applications for formal review and approval by the CNIE. CNIE authorization for majority foreign participation in unclassified activities is automatic upon registration if the following criteria are met:[61]

1. The investment in fixed assets during the preoperative period does not exceed the peso equivalent of 100 million U.S. dollars.
2. The project is funded with financial resources from abroad.
3. The project is located in areas other than Mexico's three largest metropolitan areas —Mexico City, Guadalajara, and Monterrey. This applies only to industrial facilities.
4. Accumulated foreign exchange flows are anticipated to be at least in balance over the project's first 3 years.
5. The investment is anticipated to create permanent jobs and establish worker training and personnel development programs.
6. The project utilizes adequate technologies to satisfy environmental requirements.

New investments in unclassified activities that do not meet the above criteria or come under partial restriction because of specific industrial, sectoral, or investment considerations are required to obtain full authorization from the CNIE.[62]

Automatic approval of investment applications after 45 days.—In order to minimize uncertainty and quicken the process, approval of any foreign investment application will be automatic if the CNIE does not formally respond within 45 working days of the date of application.[63]

Acquisition of shares in an existing company.—Projects in which foreigners wish to acquire capital stock in an existing company in excess of 49 percent must receive authorization from CNIE. However, until May 16, 1992, authorization will not be required for acquisitions in unclassified activities that are not subject to regulation, if the foreign investors agree to increase the fixed assets of the company by at least 30 percent and meet the previously mentioned criteria for automatic approval of foreign investment in an unclassified activity.

Temporary indirect investment in certain classified activities.—Although direct foreign investment in classified activities is subject to restrictions, the May 1989 Regulations introduced a mechanism that allows foreign investors to acquire the trust rights to as much as 100 percent

[60] Staff interview with SECOFI official.

[61] May 1989 Regulations, art. 5.

[62] Industries subject to sectoral development programs include the electronics, automotive assembly, and pharmaceutical industries.

[63] May 1989 Regulations, art. 2.

of the shares of capital stock of companies in many of the classified activities.[84]

Foreign investors can now use a 20-year trust mechanism to acquire shares traditionally reserved to Mexicans in any of the classified industries that are subject to specific percentage limitations for foreign investment, and in the domestic air and maritime transportation and gas distribution industries.[85] For example, in the secondary petrochemicals industry, foreign investors can acquire shares through the temporary trust representing participation above the 40-percent limit on direct investment, up to 100 percent. A trust mechanism represents the only means by which foreign investors may participate in the domestic air and maritime transportation and gas distribution industries since they are classified as reserved to Mexicans. The trust may operate for a maximum of 20 years, at which time the shares must be sold to a Mexican investor.[86]

Although the trust mechanism does allow for foreign participation in industries that were previously closed, the trust is subject to approval by the CNIE. Under the May 1989 Regulations, the CNIE may only grant approval for trusts in companies that need capital for new export projects or to overcome an extreme financial imbalance resulting from large foreign-denominated liabilities incurred prior to the issuance of the regulations, or a drastic decline in sales.[87] In addition, the CNIE must be assured that domestic financing was unavailable, that Mexican investors have waived their right of first refusal with respect to the stock of the enterprise, and that the foreign investment will be in the form of cash or a capitalization of the company's liabilities.[88]

In addition to complying with the 20-year limit, each trust instrument must establish procedures for the appraisal and sale of the shares of the trust, contain provisions governing the transfer of ownership of the trust should it fail, and provide for the establishment of a technical committee and its authorization to order the sale of the shares at the end of the trust period. The technical committee must include at least one SECOFI official and representatives of the trust manager (usually a bank) and the foreign investor. Technical committees for trusts involving air and maritime transportation and gas distribution must have at least the same number of Mexicans as foreigners.

Neutral investment in Mexico's stock exchange.—The May 1989 Regulations also allow foreigners to use special trust funds to have access to Mexico's stock market.[89] SECOFI may authorize foreign investors to acquire ordinary certificates of participation that represent interests in trusts comprised of shares of the capital stock of companies listed in the Mexican stock exchange. The fund is comprised of series "N" or neutral shares of companies. The participation certificates represent only the economic rights over the stock; they may be acquired by foreign investors through the Mexican stock market or by foreign financial institutions. SECOFI may authorize that series "A" shares be acquired in trust, but only if the company carries out or plans new investments to expand its economic activities.[70]

Real estate investment in restricted zone.—The May 1989 Regulations also are more transparent and flexible with respect to trust funds that allow foreign control of real estate in otherwise restricted geographic areas. As provided under the LFI, foreign control of land in the Restricted Zone (areas along Mexico's borders and coasts), whether for industrial or tourist activities,[71] may be established through 30-year bank trusts with authorization by the Secretariat of Foreign Relations. Under the LFI, the granting of permits was considered on a case-by-case basis. The May 1989 Regulations stipulate that approval will definitely be granted if certain clearly defined criteria are met.[72]

In addition, the trusts for real estate investments in the Restricted Zone may now be renewed for additional periods of 30 years.[73] The renewal will automatically be granted if the beneficiaries remain the same, the new trust is to be executed on the same terms and conditions regarding the purpose of the trust and the use of the real property, and the request for a new trust is submitted at least 180 days preceding the termination of the prior trust. After permit applications for new or renewed trusts are filed, the Secretariat of Foreign Relations has 45 business days in which to reach a resolution. If no resolution is made in that time period, the request is deemed to be granted.

Furthermore, foreign investors, as well as Mexican companies with foreign shareholders,

[84] Under art. 5 of the LFI, the CNIE also retains the authority to allow direct foreign investment in certain classified activities at a higher percentage of the capital shares than the maximum set for the activity. Such authorization is possible if the activity is not classified as reserved for Mexicans or for the state, and if the Commission determines that the acquisition will have economically beneficial effects.

[85] May 1989 Regulations, arts. 23-26.

[86] Ibid., art. 26.

[87] Ibid., art. 23.

[88] Ibid., art. 24.

[89] May 1989 Regulations, arts. 13-15.

[70] Series "A" shares are also known as Mexican shares because they could only be subscribed by Mexican investors.

[71] Tourist activities include residential parks. See May 1989 Regulations, arts. 18 and 19 for definitions.

[72] Ibid., art. 17.

[73] Ibid., art. 20.

may now be authorized to acquire beneficial rights in a Mexican trust holding shares in companies that own real property in the Restricted Zone, providing that applicable guidelines are met and that new and productive investments will be made in industrial or tourism-related activities.

Expansion of existing foreign investments.—The expansion of existing foreign investments through new projects, activities, or product lines and the relocation of such enterprises no longer requires specific authorization under any of the following conditions: (1) if the existing investment involves an in-bond (maquiladora) facility or other export-oriented operation; (2) if the expansion is the result of a merger; (3) if the owners agree to an additional investment equal to ten percent of the net value of the company's fixed assets; and (4) if the project is in compliance with the six criteria required for automatic approval of foreign investment in unclassified activities.[74]

Investment by international development financial companies.—The May 1989 Regulations incorporated provisions, previously established through general resolutions, that allow foreign investment by international development financial companies to be considered neutral capital. In addition, the number of years before which shares corresponding to the investment have to be sold to Mexican investors was extended from 10 years to 20 years.

Investment in maquiladoras and industrial or commercial exporting companies.—According to the May 1989 Regulations, authorization is not required for non-Mexican investors' new investment in or acquisition of participation in existing companies which carry on in-bond activities (maquiladoras) or other industrial or commercial activities for export purposes, including firms operating under the Temporary Import Programs to Produce Articles for Export (PITEX) and foreign trading companies.

In 1984, maquiladoras were granted an exception allowing 100-percent foreign-ownership without prior approval under General Resolution No. 2. However, firms operating under the PITEX program had not previously been granted this blanket exception, although 100-percent foreign-ownership was possible. The new regulations also allow 100-percent foreign investment in foreign trading companies; a 1986 decree had previously prohibited majority foreign participation.[75]

Petrochemical Reclassification

On August 14, 1989, SEMIP announced another major reduction of the number of petrochemical products reserved exclusively for production by Pemex and by majority Mexican companies.[76] Based on a strict interpretation of the definition of a basic petrochemical, 15 petrochemicals were reclassified as secondary reducing the list of basic petrochemicals from 34 to 19, although the addition of a new product brought the total number of basic petrochemicals to 20.[77] The reduced list of basic petrochemicals includes major olefins (ethylene, propylene and butadiene) and major aromatics (benzene, toluene and xylenes). Vinyl chloride, styrene, and ethyl benzene were among those petrochemicals reclassified as secondary. Foreign investors may for the first time participate in production of the products reclassified as secondary, up to 40 percent directly and up to 100 percent through the temporary trust mechanism.

Around 748 secondary petrochemicals were also reclassified as tertiary opening their production to unrestricted foreign participation and eliminating the requirement for a production permit.[78] The resulting group of tertiary petrochemicals includes such products as automotive antifreeze, nylon and polyester. The reclassification of secondary petrochemicals reduced that category to 66 clearly defined products (see Appendix E for a complete list of basic and secondary petrochemicals). Prior to the reclassification, no definitive list of secondary petrochemicals existed, adding to an already uncertain investment environment. The deregulating resolution also included a provision stating that new applications for permits to produce secondary petrochemicals will be considered approved if the Petrochemical Commission has not acted within 45 business days of receiving the application.

Banking Regulations

On December 27, 1989, the Government of Mexico published new regulations that opened state banks to foreign participation.[79] Foreign investors are now able to obtain up to 34-percent ownership through new nonvoting "C" shares or *certificados de aportacion patromonial* (CAPs). The government will retain 66-percent voting control through "A" shares, while private Mexican investors can continue to own up to 34-percent through "B" shares.[80] Under the

[74] Ibid., arts. 27-29.
[75] Staff interview with SECOFI official.

[76] Resolution Reclassifying Specified Petrochemical Products as Either Basic or Secondary, *Diario Oficial*, Aug. 15, 1989.
[77] U.S. Embassy, Mexico City. Tert amyl methyl ether, an octane enhancer for gasoline, had not been categorized previously.
[78] Spanish language document supplied by the Deregulation Unit, SECOFI.
[79] See Decree by which Several Provisions of the Regulatory Law of Banking and Credit Public Service are Amended, Enlarged and Revoked, published in the *Diario Oficial* on Dec. 27, 1989.
[80] Limited private Mexican participation in banking was first allowed in 1987.

revised banking regulations, the maximum capital in the forms of CAPs allowed to any individual is being raised from 1 to 5 percent.

Insurance Regulations

The limitation on foreign investment in the Mexican insurance industry was recently relaxed under the Decree for the Reform, Addition, and Elimination of Various Dispositions of the General Law for Insurance Institutions, published on January 3, 1990. The new insurance decree lifts the prohibition on new foreign investment in the insurance industry and raises the maximum allowable level of foreign participation from 15 percent to 49 percent.

Implications of Liberalization for U.S. Industry

Since 1984, Mexico has significantly liberalized its rules governing foreign investment. The May 1989 Regulations offer the most dramatic evidence of Mexico's opening to foreign investment. The provisions allowing 100-percent foreign-ownership in unclassified activities affects 547, or 73 percent, of the 754 economic activities that comprise the Mexican economy.[81] Included in these activities are certain industries such as glass, cement, iron, steel, and cellulose for which administrative restrictions had previously restricted majority foreign participation.[82] Of the remaining 207 classified activities, 40 more are open to 100-percent foreign investment with prior approval by CNIE. Moreover, majority foreign participation in many of the classified categories is possible through the temporary 20-year trust mechanism.

In 1989, foreign investors initiated 2,231 projects in Mexico, of which only 213 required prior approval by the CNIE.[83] All of these applications were approved, except five that were pending as of the time of writing. Reportedly, most of the projects requiring CNIE approval exceeded the $100 million limit on projects entitled to automatic approval. Although only 9.5 percent of the projects required CNIE approval, they accounted for 48 percent of the foreign investment projects by value.[84] The remaining 2,018 projects needed only to be registered with the RNIE.

While the new regulations affect a wide range of industries, the implications in several fields are especially noteworthy. For example, prior to the May 1989 Regulations, foreign participation in telecommunications services was prohibited.[85] Telecommunications services is now considered a classified activity in which up to 49 percent of equity may be held by foreign investors. Although SECOFI has yet to define the group of services to comprise the telecommunications services category, it does include certain value-added services and cellular phone service.[86] Previously only wholly Mexican-owned companies could provide these services.

In November 1989, the Secretariat of Communications and Transportation (SCT) released a bid request for cellular phone service concessions for eight regional areas in Mexico. Many U.S. companies teamed up with Mexican private service providers to prepare bids.[87] Reportedly, foreign investors have already acquired a number of Mexican companies that are providing cellular telephone service. In addition, according to the May 1989 Regulations, investments in the production of telecommunications equipment may be wholly foreign-owned. Over the next 5 years, Mexico is planning an expansion and modernization of the national telecommunications network valued at between $9 billion and $14 billion.[88] The Mexican market for telecommunications equipment in 1989 has been estimated at $409 million and is expected to grow at an average annual rate of 6 percent through 1991.

Opportunities for U.S. investment also exist in Mexico's petrochemicals industry. In 1988, the petrochemical industry accounted for 2.5 percent of Mexico's gross domestic product. The reclassification of petrochemicals in August 1989 opened up a large portion of the petrochemicals industry to unrestricted foreign investment as hundreds of products were reclassified from the secondary category to the tertiary category, including specialty and fine chemicals. Prior to the August deregulation, over 280 individual companies were regulated as secondary petrochemical manufacturers. Only 60 individual companies were still subject to regulation following the reclassification.[89]

New foreign investment opportunities also exist in the production of the newly reclassified secondary petrochemicals. The private sector may be particularly interested in the production of acetonitrile, isoproponal, low density polyethylene, and vinyl chloride.[90] Further, foreign

[81] SECOFI. The 754 economic activities are detailed in the Mexican Catalog of Economic and Productive Activities.
[82] Administrative restrictions that previously had prohibited majority foreign-ownership were abrogated with enactment of the May 1989 Regulations. *Climate Report 1989*, p. 9.
[83] Staff telephone converstaion with SECOFI official.
[84] Ibid.

[85] Staff interview, SECOFI.
[86] Value-added telecommunications services include such services as videotex, data transmission, and electronic mail.
[87] U.S. Department of Commerce.
[88] *Ibid.*
[89] Leopoldo Rodriguez, "Majority Investment in Classified Activities: A Surviving "Gray Area" in Mexican Regulation? The Redefinition of Industrial Categories such as Secondary Petrochemicals."
[90] U.S. Embassy, Mexico City.

investment above the direct participation limit of 40 percent in secondary petrochemical production is now possible through the temporary trust mechanism.

The petrochemical reclassifications have already resulted in an increase in investment in the sector. On October 30, 1989, the Mexican Petroleum Commission approved four private investment projects in secondary petrochemicals valued at $520 million and involving at least one foreign investor.[91] In 1988, The Petrochemical Commission approved almost 50 permits representing a total investment of $250 million.[92]

Foreign investors in the petrochemical industry, however, are still faced with some difficulties. The foreign investment restrictions that remain in the basic and secondary categories hinder vertical integration of the industry, one of the most efficient methods of operation.[93] In a vertically integrated operation, a single plant would probably produce products in at least two of the three petrochemical categories. Since wholly foreign-owned plants may not produce basic and secondary petrochemicals, flexibility in operating the plant is reduced. Furthermore, private petrochemical producers will still be dependent on Pemex for most feedstock supplies.

Analysts have estimated that $4.7 billion in investment in petrochemical projects is required during President Salinas' sexenio for Mexico to avoid importing petrochemicals worth about $9.1 billion.[94] About half of the investments are needed in basic petrochemicals production.[95] To enable it to modernize its existing plants and add capacity during the current period of fiscal austerity, Pemex is contemplating coinvestments with the private sector, including foreign investors. Two approaches being considered by Pemex are (1) to allow private financing of basic petrochemical projects with the investor to be repaid through income generated by the project; and (2) to allow private investors to own the petrochemical plant while Pemex maintains control of the operations.

Mexico considers tourism one of its highest priority sectors because it creates jobs, brings in considerable foreign exchange, and generates significant investments. In 1988, the Mexican tourist industry generated $2.7 billion in annual income, and it is expected to grow by 40 percent over the next 3 years.[96] U.S. investors have expressed strong interest in increasing their participation in this industry.[97] Tourist investments in Mexico are now more attractive for two reasons: (1) foreign equity participation is now allowed up to 100 percent in hotels and restaurants, and (2) foreign investors can now secure control of land along Mexico's borders and coasts for indefinite life through renewals of the 30-year trust.

At present, only three U.S. companies have minority interests in Mexican insurance companies. However, increased foreign participation in Mexico's insurance industry is now possible since the ban on new foreign investment was lifted (although it is limited to a 49 percent share) as a result of the January 1990 industry decree. In 1988, insurance offerings in Mexico were comprised of automobile insurance (23.9 percent), group insurance (22.3 percent), fire (18.3 percent), other (12.9 percent), freight (11.6 percent), damages (6.6 percent), and accidents and sickness (4.4 percent).[98] The premium volume for the industry exceeds $1 billion annually.[99]

Although the December 1989 banking regulation opened the sector to nonvoting foreign participation, direct foreign participation is still prohibited. It is not anticipated that banking will be open to direct foreign participation in the near future. A 75-percent majority vote in Mexico's legislature is required to amend the Constitution, a prospect that the Salinas Administration considers unlikely.

Through sector specific decrees, Mexico has lifted limits on foreign investment in many areas of the economy. Furthermore, the May 1989 Regulations for foreign investment have established a more predictable and transparent framework for foreign investment by providing precise criteria and guidelines and a wholesale deregulation of the bulk of activities that comprise the Mexican economy. These policy changes have been implemented, however, through administrative measures rather than the legislative process. Some investors note that the 1973 foreign investment law remains the legal framework for foreign investment and are concerned that administrative policies may be easily changed in the future.

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[91] Spanish language document supplied by the Deregulation Unit, SECOFI.
[92] U.S. Embassy, Mexico City, A-006, Mar. 28, 1989, p. 3.
[93] Vertical integration in the petrochemical industry in general involves a company already engaged in the manufacture of primary petrochemicals, intermediate petrochemicals, or petrochemical products, becoming a manufacturer of one or more classes of products. For further discussion see *Study of the Petrochemical Industries in the Countries of the Northern Portion of the Western Hemisphere*, USITC Publication 1123, January 1981, p. 22.
[94] U.S. Embassy, Mexico City, A-14, July 24, 1989, p. 9.
[95] Some estimates place about 70 percent of Pemex's primary petrochemical plant as outdated. Ibid.

[96] U.S. Department of Commerce, *Business America*, Dec. 4, 1989, pp. 9 and 16.
[97] U.S. Embassy, Mexico City, *Economic Trends Report*, November 1989, p. 40.
[98] Lindajoy Fenley, "Insurance Reforms: Road to Recovery," *Business Mexico*, June 1989, p. 24.
[99] USTR, *1989 National Trade Estimate Report on Foreign Trade Barriers*, p. 133.

According to SECOFI officials, the Mexican Administration chose what it deemed to be the most prudent path for attaining its goals in the near term, namely increased foreign investment in Mexico. Given the current Mexican political climate, the Salinas Administration did not believe that it was legislatively possible to modify the 1973 LFI; to have tried might have resulted in an extensive delay in relaxing and implementing new foreign investment rules.

Maquiladora Industry

The maquiladora,[100] or in-bond, industry was established in 1965 as part of Mexico's Border Industrialization Program (BIP) and was legalized by a specific decree in 1971.[101] The program was initially designed to attract foreign manufacturing facilities to a 20-kilometer strip along the U.S.-Mexican border, and later throughout the interior of Mexico. It was developed to offer alternative employment opportunities to Mexican individuals who could no longer perform seasonal farm work legally in the United States after the termination of the U.S. Bracero Program.[102]

Maquila or maquiladora generally refers to an offshore assembly operation that is involved in export-manufacturing processing or secondary assemblage. Enterprises operating as maquiladoras are exempted from paying duties when temporarily importing machinery, equipment and raw materials to be used in their assembly process. The amount of the corresponding import duty and any fine or penalty that could result should the imported goods not be exported within the authorized time period are guaranteed through the posting of a financial bond, hence the term "in-bond" industry.

The maquilas do not receive direct financial assistance from the Mexican Government. However, in addition to the exemption from import duties, foreign investors in maquilas enjoy a number of benefits including low labor costs and proximity to the U.S. market. Most maquiladoras are U.S. subsidiaries that are able to avoid the higher transportation, managerial, and inventory costs for similar operations in Asia. For products destined for the U.S. market, additional benefits are provided under HTS items 9802.00.60 and 9802.00.80 (formerly TSUS items 806.30 and 807.00), whereby no duty is applied to the value of U.S.-made components, and under the U.S. Generalized System of Preferences, which grants duty-free treatment to certain imports from developing countries.

Over the last 25 years, the maquiladora industry has grown to become a major sector of Mexico's economy. Although the maquiladora program fell short of its objective to alleviate the unemployment of the former Bracero workers,[103] it has helped Mexico develop an industrial base along its northern border and provided much-needed foreign exchange to improve its balance of payments. Today the maquiladora industry is second only to petroleum as Mexico's largest earner of foreign exchange.

In recognition of the important role that the maquiladora industry can play in technology transfer and foreign currency earnings, Mexico has over time relaxed the rules and regulations governing the industry. Liberalization has continued under the Salinas administration as well as an increased emphasis on integrating the maquiladora industry into the Mexican economy. The new Maquiladora Decree promulgated in December 1989 revised and liberalized all previous regulations covering the industry.

Maquiladora Industry Overview

Twelve maquiladoras were established in 1965, the first year of the programs operation. After little expansion in the late 1960s, the industry began to grow slowly in the 1970s as the peso was devalued. By 1980, 620 maquila plants employing 119,546 workers had been established.[104] During the 1980s, Mexico became an increasingly attractive location for labor-intensive assembly because its labor rate in dollar terms declined, while labor rates in most developing countries were increasing.[105] The decline in Mexico's dollar wage rate was the result of a series of peso devaluations that began in 1976.[106] As a result, the maquiladora industry grew rapidly in the 1980s. As of August 1989, 1,699 maquila plants employing 443,682 workers were operating in Mexico.[107]

[100] The term maquiladora comes from a Spanish word *maquila*, which was the amount of corn that farmers used to pay a miller for his services. See John E. Tarbox, "An Investor's Introduction to Mexico's Maquiladora Program," *Texas International Law Journal*, Winter 1987, vol. 22, No. 1, p. 109.

[101] Elsie Echeverri-Carroll, *Maquilas, Economic Impacts and Foreign Investment Opportunities; Japanese Maquilas—A Special Case*, Research Monograph 1988-1, Bureau of Business Research, Graduate School of Business, University of Texas-Austin, 1988, p. 4.

[102] The Bracero, or Mexican Labor Program, allowed migrant Mexican workers to enter the United States on a temporary (seasonal) basis from 1942 through 1964. See *The Use and Economic Impact of TSUS Items 806.30 and 807.00*, USITC Publication 2053, January 1988, p. 8-1.

[103] The Bracero workforce was predominantly male while the maquiladora workforce is predominantly female (SECOFI estimated as 62 percent as of August 1989). The high proportion of female maquiladora employees has sometimes been attributed to the purported dexterity that they display in assembly type operations. Reportedly, the number of male employees as a share of maquiladora employment is rising.

[104] Echeverri-Carroll, p. 4.

[105] Ibid., p. 4. For example, the average Mexican wage rate in U.S. dollars declined from $2.96 per hour in 1980 to $1.37 per hour in 1987. As of 1986, Mexico's wage rate was below that of Brazil, Taiwan, Hong Kong and Singapore. See USITC, *The Use and Economic Impact of TSUS Items 806.30 and 807.00*, USITC Publication 2053, January 1988, p. 8-10.

[106] Ibid.

[107] SECOFI, Office of Regional Development and Maquiladora Industry.

Typically, the Mexican maquiladora provided the labor-intensive assembly of components fabricated in the United States. In 1965 and 1966, the vast majority of maquiladoras were textile firms that were located in Mexico principally to take advantage of Mexico's low labor rates.[108] The other early maquiladora operations were virtually all light industry, producing simple subassemblies that required very little manufacturing skill. Although statistics are not available, a more recent tendency seems to be toward higher capital intensity in the production processes and automation.[109]

As of August 1989, maquiladora plants were concentrated in the manufacture of electric and electronic goods (27.8 percent of total), textiles and apparel (15.0 percent), furniture (13.4 percent), and transportation equipment (8.4 percent).[110] The maquilas producing electric and electronics products account for an even larger share of employment. However, the relative share of this sector has declined from 56.5 percent of total maquiladora employment in 1982 to 38.6 percent in August of 1989. Employment in the transportation equipment industry has accounted for an increasing share over the same period, from 10.6 percent to 20.3 percent. As of August 1989, maquiladoras manufacturing textiles and apparel, and furniture accounted for 9.4 percent and 4.8 percent of total maquila employment, respectively.[111]

Growth in the Mexican value-added of the maquiladora industry has also been substantial. In U.S. dollars, the Mexican value-added of the maquiladora industry has increased from $772 million in 1980 to $2.3 billion in 1988.[112] Foreign exchange earnings for the industry in 1989 are estimated to total $2.9 billion.[113]

The dynamic growth of the maquiladora industry in the 1980s has also been reflected in U.S. imports from Mexico under HTS items 9802.00.60 and 9802.00.80. Between 1979 and 1989, the customs value of these imports increased at a compound annual rate of 17.6 percent.[114] In 1989, imports from Mexico under HTS items 9802.00.60 and 9802.00.80 totaled $12.5 billion, up from $10.8 billion in 1988 and $2.1 billion in 1979.[115] In 1988, these imports were concentrated in motor vehicles (16.3 percent on a customs value basis); electrical conductors (9.9 percent), television receivers (7.2 percent); motor vehicle parts (5.8 percent); articles for making and breaking electrical circuits (5.6 percent), combustion engines (5.4 percent) and textile and apparel (5.3 percent).[116]

Since the inception of the maquiladora industry, it has been dominated by U.S.-owned firms. The dominance of U.S. operations is largely due to the location of the original maquiladora zone along the U.S.-Mexican border and to provisions of HTS items 9802.00.60 and 9802.00.80. Mexican firms have also participated in the industry in significant numbers. However, the Mexican-owned firms tend to be relatively small and concentrated in the apparel and furniture sectors.[117] Although a few European firms have engaged in maquiladora activity, most European maquiladoras have either been operated through U.S. subsidiaries or were acquired when a European company purchased a U.S. company with a maquiladora operation.[118]

Recently, however, the question of "third country" (i.e., not U.S.- or Mexican-owned) maquiladoras has taken on greater significance as Japanese interest in maquiladoras has become a topic of debate. The laws and rules that regulate the maquiladora industry are not country-of-origin specific and are applied equally to investors of all nationalities. Interest in the maquiladora industry by third country investors is in part spurred by the benefits of low Mexican labor rates and proximity to the U.S. market.

Of foreign maquiladoras, the level of Japanese involvement is second only to the U.S. presence, but it is still relatively small. Out of the total of 1,699 maquilas operating in Mexico in

[108] USITC, *The Use and Economic Impact of TSUS Items 806.30 and 807.00*, p. 8-4.
[109] Echeverri-Carroll, p. 4.
[110] SECOFI, Office of Regional Development and Maquiladora Industry.
[111] Ibid.
[112] American Chamber of Commerce of Mexico. Although Mexican value-added accounts for around 24 percent of the total value of maquiladora production, local content comprises only about 1.7 percent on average for the industry. Martin, Drought & Torres, Inc., *Maquilmex Briefs*, Vol. II, No. 1, March 1990, p. 3.
[113] SECOFI official.

[114] U.S. trade statistics can not be used to directly measure exports from the maquiladoras. However, trade statistics for HTS items 9802.00.60 and 9802.00.80 are often used as a proxy, since it is believed that a large portion of maquiladora exports enter the United States under these provisions.
[115] USITC, *Imports Under Items 806.30 and 807.00 of the Tariff Schedules of the United States, 1979-1982*, USITC Publication 1467, January 1984; and USITC, *Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Subheadings 9802.00.60 and 9802.00.80, 1985-1988*, USITC Publication 2243, December 1989. The 1989 trade figures are preliminary.
[116] *Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Subheadings 9802.00.60 and 9802.00.80, 1985-1988*, USITC Publication 2243, December 1989, Table B-22.
[117] U.S. Embassy, Mexico City, *The Maquiladora Industry, 1987 Data and Developments to Mid-1988*, p. 9.
[118] Ibid. As of mid-1989, European participation in the maquiladora industry totaled about 8 plants (SECOFI).

mid-1989, 58 were Japanese.[119] This represents a little over 3 percent of the total. The Japanese maquilas are concentrated in electric and electronic products and transportation equipment industries. Many of these operations are ventures of U.S. subsidiaries of Japanese parent companies and are therefore legally U.S.-owned.[120] Thirty of the firms are located in northern Baja California-Tijuana, Mexicali, and Ensenada.

Legal Aspects of the Maquiladora Industry

The maquiladora program is administered by SECOFI. All investors wishing to establish maquiladoras must submit applications to SECOFI outlining the nature of the operation, location, expected employment, and other pertinent details. Upon acceptance of the proposed maquiladora "program," SECOFI issues a license entitling the enterprise to operate as a maquiladora. Imported capital equipment such as tools, equipment, instruments for the production process, and laboratory equipment may remain in the country for as long as the maquila is authorized to operate. Imported raw materials and components to be incorporated into the finished product may remain in the country for a maximum of 1 year—6 months initially with a 6-month extension.

There are three types of maquilas: captured, sheltered, and subcontracting.[121] Captured maquilas are majority foreign-owned. Sheltered maquilas are wholly Mexican-owned, but are managed by a single foreign corporation. Subcontracting maquilas are also wholly Mexican owned, but may or may not be foreign managed, and may have contracts for production with more than one foreign firm.

Maquiladoras can be established in all industries except those that are reserved for the state. Although there are few restrictions on what can be produced, maquilas involved in textile and apparel operations must obtain approval from the CNIE before taking certain actions with respect to the transfer or purchase of shares in the entity, the opening of new establishments, or the manufacturing of new lines of production, since most products are subject to quotas.[122]

Initially, all maquila operations were restricted to a 20-kilometer strip along the U.S.-Mexican border. In 1972, however, the Mexican Government approved the establishment of maquilas in the interior of the country, except for major industrial centers such as Mexico City and Monterrey. Maquilas wishing to operate outside the border zone were issued permits to do so. However, today about 80 percent of the maquiladoras are still located in the border area.[123]

In contrast to the Mexican Government's strict interpretation of the 1973 LFI regarding foreign investment in other economic activities, 100-percent foreign-ownership of maquilas has been allowed since the program's inception. Although under the 1973 LFI foreign investors would generally not be allowed to hold more than a 49 percent share of a business enterprise, the CNIE routinely issued exceptions for maquiladoras. In practice, virtually all applications for foreign ownership of maquiladoras were granted.

In 1984, the CNIE issued General Resolution No. 2, which expressly authorized foreign investments of up to 100 percent in the capital stock of maquilas, except for those with textile and apparel operations.[124] Under General Resolution No. 2, prior approval by CNIE was not required for new investments in maquilas with foreign capital; the transfer of stock, fixed assets, or partner interests among foreigners; or the acquisition of stock or partner interests owned by Mexican investors if prior to the purchase, foreign investment represented a minimum of 75 percent of the capital stock. Although CNIE review and approval was no longer required for most foreign investments in maquilas, notification of CNIE was still mandatory. Also, an application detailing the proposed maquila "program" must still be submitted to SECOFI in order to obtain a maquiladora license.

Although maquila facilities may be wholly foreign-owned, the Mexican Constitution forbids foreign nationals to own land within 100 kilometers of the borders and within 50 kilometers of the coast. As described previously, however, foreign maquiladora operators within the Restricted Zone may secure the rights to the

[119] This figure includes all maquiladoras with Japanese participation whether it be minority, majority or wholly-owned. SECOFI, Office of Regional Development and Maquiladora Industry.

[120] U.S. Embassy, Mexico City, *The Maquiladora Industry, 1987 Data and Developments to Mid-1988*, p. 9.

[121] USITC, *Imports Under Items 806.30 and 807.00 of the Tariff Schedules of the United States*, pp. 21-22.

[122] By some estimates, the maquiladora industry has accounted for as much as 90 percent of Mexican apparel exports to the United States. Prior to the bilateral textile agreement signed in February 1988, maquiladora exports were counted against Mexico's textile export quotas to the United States, even though they were made of U.S. manufactured and cut material. The 1988 agreement established a Special Regime which places a number of categories under quotas which distinguish between Mexican products assembled from foreign (non-U.S.) fabric and Mexican products assembled from U.S. formed and cut fabrics. U.S. Embassy, Mexico City, *The Maquiladora Industry 1987 Data and Developments to Mid-1988*, p. 14.

[123] SECOFI, Office of Regional Development and Maquiladora Industry.

[124] Although foreign-ownership of textile and apparel maquiladoras was allowed, the Mexican Government required CNIE approval of these investments since these goods were subject to export quotas.

land through a trust with a Mexican bank serving as the trustee. Alternatively, maquiladoras may lease the land for their operations, or may lease the entire plant on 10-year renewable terms.

Initially, to obtain the duty-free privileges of the program, the entire output of the maquila had to be exported. This limitation was relaxed under the August 15, 1983 Decree for the Development and Operation of the In-bond Export Industry (1983 Maquiladora Decree), which allowed maquilas to sell up to 20 percent of their production in the Mexican market under certain conditions.[125] Approval for domestic sales was dependant on the maquila complying with a pre-established positive foreign currency budget, as well as technology transfer and domestic content requirements.[126] In addition, a permit for domestic sales would not be issued by SECOFI if "domestic output was sufficient to cover demand" or when a program existed to "foster the internal production of articles that are identical or similar to those produced by the in-bond operation." If Mexican production was insufficient, the proposed sale had to be considered essential to meet local demand. In addition, authority for local sales was reviewed annually and could be withdrawn at any time.[127] As a result of the burdensome preconditions imposed for approval, few maquiladoras received authorization for domestic sales. As of April 1988, only 15 maquilas were authorized for sales in the Mexican market.[128]

Recent Liberalization Measures

Administrative procedures.—In 1986, SECOFI enacted administrative changes to reduce the amount of paperwork associated with operating a maquiladora as well as the time required for its processing. As part of this effort, SECOFI allowed its regional offices to provisionally grant approval for maquiladora operating permits and temporary importation programs. Previously, all approvals emanated from SECOFI headquarters. Decisions on maquiladora sales to the domestic market, sales to other maquiladoras, and subcontracting of maquiladora services, however, still had to be made by senior SECOFI officials in Mexico City.[129]

General Resolution to Streamline and Update the General Resolutions Issued by the National Foreign Investment Commission.—On February 3, 1988, the CNIE issued a single general resolution, replacing its 15 previously existing resolutions, for the purpose of streamlining and updating foreign investment procedures. In addition to incorporating the exception for 100-percent foreign investment in maquiladoras granted under former General Resolution No. 2, the 1988 General Resolution expanded the list of activities permitted by foreign investors without prior approval of the CNIE to include (1) the acquisition or lease of Mexican-owned maquiladoras; and (2) the entry into new fields of economic activity, provided the output is sold abroad or to other maquiladoras. Previously, CNIE approval was required for the 100-percent acquisition of an established Mexican maquiladora by a foreign investor, unless it was already 75-percent foreign-owned. In addition, the general exception for 100-percent foreign-ownership granted to maquiladoras was extended to those producing textiles and apparel products.[130]

May 1989 Foreign Investment Regulations.— When the May 1989 Regulations governing foreign investment became effective, the foreign-ownership exception for maquilas that had been granted via general resolutions was given a more permanent standing. Article 6 of the May 1989 Regulations explicitly states that no prior authorization of foreign participation in maquiladora enterprises is required. This includes foreign acquisition of established maquiladoras.

December 1989 Maquiladora Decree.—On December 21, 1989, the Secretary of SECOFI presented the Salinas administration's maquila decree, which he said was designed to promote the continued rapid growth of the maquila industry. The new Decree for the Development and Operation of the Maquiladora Industry for Exportation (1989 Maquiladora Decree) became law on December 23, the day after it was published in the *Diario Oficial*. It replaced the 1983 Maquiladora Decree published by the de la Madrid administration. The Mexican Government has characterized the changes presented in the new decree as a major deregulation and simplification that will benefit mostly foreign-owned maquila operators as well as Mexican workers and consumers.[131]

Significant administrative changes were incorporated in the new decree to encourage establishment of new maquiladoras and expansion of existing operations. The 1989 Maquiladora Decree simplifies maquila paperwork and streamlines the administrative process by creating a "single window" at SECOFI.[132] One office within SECOFI is now empowered to authorize new investments based on just one application from the maquila investor. The "single window" is designed to handle all administrative details, including program

[125] See the Decree for the Development and Operation of the In-bond Export Industry, published in the *Diario Oficial* on Aug. 15, 1983, art. 12.
[126] 1983 Maquiladora Decree, art. 13.
[127] Ibid. art. 12.
[128] Echeverri-Carroll, p. 45.
[129] Ibid.

[130] 1988 General Resolution, sect. V.
[131] SECOFI official.
[132] 1989 Maquiladora Decree, art. 3, sect. VII.

approvals, and registration with the National Maquila Industry Registry, CNIE, the Secretariat of Foreign Relations, the Federal Taxpayers Registry, the National Fund for Workers' Housing Institute, and the Mexican Social Security Institute. Industry sources have indicated that under the prior regulatory framework, such paperwork required negotiations with 9 different government agencies. To further streamline administrative procedures, local SECOFI offices are now authorized to process all maquila paperwork; the maquila operator may now work solely with the local office, alleviating the need to travel to Mexico City.[133]

Provisions of the 1989 Maquiladora Decree have also created a more predictable environment for long-term investments by changing the time period for which maquila licenses are granted. Maquila licenses are now to be granted for an indefinite, open-ended period.[134] Previously, maquila licenses were valid for only 2 years at which time they were reviewed for renewal, suspension, or termination. Although most maquila licenses were routinely renewed, granting an indefinite life to the license creates a more certain environment for the maquiladora investor. In another change, the list of imports that a maquila may import duty-free was relaxed to allow for the automatic replacement of machinery and equipment, and to include telecommunications and computer equipment.[135] Trucks for trailers and containers were also added to the list of duty-free imports and may remain in the country for 3 months.[136]

One of the most significant operational changes embodied in the 1989 Maquiladora Decree relates to the issue of maquiladoras selling products in Mexico. According to the new decree, a maquila may now sell locally an amount equal to 50 percent of its total export sales during the preceding 12 months.[137] Local sales must be in addition to the maquiladora's pre-established level of exports. Therefore, to sell on the domestic market, a maquiladora must increase its production. Under the new regulation, the maximum level that a maquila may sell domestically is effectively one-third of its current production, compared with the 20-percent limit previously employed.[138]

Perhaps more importantly, approval for selling on the domestic market is no longer contingent on a number of restrictive preconditions.[139] Rather, approval will be based solely on the maquila's ability to maintain an overall positive foreign currency account. To attain a positive foreign currency account, the value of imports used in the production of goods sold on the domestic market must be more than offset by the maquila's expenditures of foreign currency in Mexico for operating expenses, purchase of supplies, wages, etc.[140]

A key objective noted in the 1989 Maquiladora Decree is that the maquila industry become more integrated into the national economy. The decree encourages the increased use of local content by offering tax breaks in connection with the domestic maquila sales, instead of by applying restrictive across-the-board local content requirements. The new decree establishes two options under which the maquila may pay duties on imported components incorporated into the products sold on the domestic market.[141] The maquila may either pay duties on the foreign content of the products sold in the national market according to the tariff rates applicable to the final good, or, it may opt to pay duties applicable to the individual imported components (usually lower than those of the final product). The latter option requires that the maquila meet the following minimum domestic content requirements (on a cost-of-parts basis): 2 percent for the first year; 3 percent for the second year; and 4 percent for each year thereafter.[142] Previously, duties were assessed only on a finished product basis.

The decree also attempts to improve government coordination of the program by revitalizing inter-agency coordination. An interdepartmental maquila commission established in the 1983 Maquila Decree was replaced by a new Work Group for the Maquiladora Export Industry with representatives from a wider scope of government agencies. The new Work Group has representatives from 14 government ministries and agencies, compared with 6 in the former interdepartmental commission. Staff work will be carried out by a Technical Secretariat headed by a SECOFI representative. The Work Group is charged with formulating policies to assure administrative simplicity and proposing and coordinating projects to improve infrastructure and furnish urban services needed by the maquila industry. A Consultative Committee established in the 1983 Maquiladora Decree that includes private sector representatives will be continued and expanded.

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[133] Staff interview with SECOFI official.
[134] 1989 Maquiladora Decree, art. 7.
[135] Ibid., art. 10, sect. II.
[136] Ibid., art. 10, sect. IV.
[137] Ibid., art. 20.
[138] For example, if export sales totaled $100 in year one, the maximum amount that a maquila could sell in the domestic market the following year would be $50. Domestic sales in year two would represent one-third of the total current production valued at $150.
[139] 1989 Maquiladora Decree, art. 20.

[140] This is not the same concept as a foreign trade balance since maquila exports are considered transfers, not sales transactions and are not counted in Mexico's trade statistics.
[141] 1989 Maquiladora Decree, art. 22.
[142] Local content in the maquiladora industry averages around 1.7 percent.

Implications of Liberalization for U.S. Industry

The liberalization measures presented in Mexico's May 1989 Regulations on foreign investment and 1989 Maquiladora Decree do not represent a complete deregulation of the maquiladora industry. However, the changes do represent a significant attempt to create an investment and operating environment that is more predictable and less restrictive. The single window for registration within SECOFI will provide maquila operators with a more streamlined administrative process, and the indefinite life of the maquila license will provide a more certain environment for long-term investment.

With regard to domestic sales by maquiladoras, the 1989 Maquiladora Decree represents a partial deregulation; the cap on domestic sales by maquiladoras was not totally eliminated. However, the increased sales limit does present new opportunities for maquila sales. More importantly, the criteria that will now be used by SECOFI in granting approval to sell on the domestic market is considerably less restrictive than the previous set of conditions. The reliance on a maquila's foreign currency account is more transparent and allows greater decision-making freedom for maquila management. This may enable a larger number of maquilas to take advantage of the domestic sales option.

Since this is a recent change in regulation, the full effect of the 1989 Maquiladora Decree can not be evaluated at this time. However, Mexico seems to have opted for a regulatory approach that moves away from a reliance on strict domestic content requirements and protection of national manufacturers. By emphasizing positive foreign currency accounts over protection policies, the Government of Mexico has given greater decision-making freedom to affected business enterprises, setting the stage for continued growth in the maquiladora industry.

Chapter 6
Current Mexican Intellectual Property Protection

Introduction

Mexican law and enforcement of intellectual property protection in the patent, trademark, copyright and trade secret areas has improved over the past several years according to Mexican and U.S. Government, business and legal representatives.[1] Amendments in 1987 to the 1976 Law of Inventions and Trademarks (LIT)[2] resulted in longer patent terms, additional patent and trademark protection for new products, processes and marks, and limited protection of trade secrets. However, the implementation of many of these increased protections was delayed until 1997. The 1987 Amendments also resulted in additional criminal penalties and procedural protection for infringed parties. The amendments established a limited concept of trade secret protection by making disclosure of trade secrets under certain circumstances a crime.

U.S. and Mexican and industry sources indicate that in the past 2 years, the Mexican Patent and Trademark office (MPTO), the Mexican Copyright Office and the Federal Police and Prosecutors office have increased certain enforcement of Mexican patent, trademark, and copyright laws. These efforts have been assisted by the 1987 Amendments and implementing regulations issued by SECOFI in 1988 which increased enforcement capabilities, including the ability to seize and stop certain pirate activities in a relatively short time.

One former USTR negotiator involved in bilateral negotiations with Mexico during the 1980s agreed with the recent assertion of Mexican officials that:

Mexico has in fact moved further and more quickly in improving intellectual property protection than have many other developing countries and even some developed countries.[3]

Despite these improvements, U.S. and Mexican intellectual property experts indicate that the Mexican intellectual property system has not provided sufficient protection to intellectual property rights of Mexicans and foreigners. In a study conducted by the Commission in 1987-88 of foreign intellectual property protection, survey respondents consistently ranked Mexico among the worst countries in the world.[4] For example, the Commission reported that Mexico ranked first for patent protection inadequacies, first for trademark problems, second for trade secret problems, and fifth for proprietary technical data problems. Mexico's enforcement of intellectual property rights was similarly ranked low by survey respondents.

As a result of these and similar findings and the lack of progress in bilateral negotiations between the U.S. and Mexican governments, the United States withdrew GSP treatment affecting $220 million of Mexican chemical products in July, 1987.[5] In addition, on May, 25, 1989, Mexico was placed on a "priority watch" list in connection with the USTR's implimentation of Section 182 of the Omnibus Trade and Competitiveness Act of 1988. USTR Carla Hills explained that Mexico was on the list "because of its lack of adequate patent protection and in the hope of promoting bilateral negotiations to cover intellectual property rights."[6]

On January 24, 1990, the Mexican Government announced its intention to introduce legislative changes in the intellectual property law beginning with the April 1990 legislative session. These changes would include (1) increasing the patent term to 20 years—that used by a number of developed countries, (2) offering product patent protection for products and processes not previously subject to patent protection, (3) significantly restricting compulsory licenses for patented products, (4) strengthening its trade secrets law, (5) increasing the term of trademark registrations and permitting reasonable variations in the manner and form in which a trademark is used, with no automatic lapsing, and (6) modernizing the infrastructure of MPTO to provide prompt service and increased enforcement of intellectual property rights.[7]

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[1] Much of the information provided in this chapter was derived from Mexico's legal statutes pertaining to intellectual property rights protection. In addition, USITC attorneys traveled to Mexico City during February 11-17, 1990 to conduct a number of personal interviews with representatives of the Mexican government, legal, and business communities to obtain insight on the implementation of Mexico's laws. Personal and telephone interviews with U.S. attorneys familiar with Mexico's system were also conducted.

[2] The 1976 law signed by President Luis Echeverria has been viewed as a law which actually reduced the level of intellectual property protection. Timothy B. Bennett, "Intellectual property protection as an issue in U.S.-Mexican trade relations", *Comercio Internacional Banamex*, September 1989, p. 65. The objective of President Echeverria in enacting the law was to "create a legal framework to stimulate creativity and to prevent multinational companies that generally possess the majority of patents from dominating the domestic market. Multinational companies, however, argued that the 1976 law failed to curtail "creativity" that has infringed on their intellectual property rights. Mike Zellner, "Intellectual property: trespassers may be prosecuted", *Business Mexico*, September 1987, p. 38.

[3] Bennett, p. 67.

[4] USITC, *Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade*, Publication No. 2065, February 1988, pp. 3-1 to 3-13.

[5] Zellner, p. 42.

[6] Office of the U.S. Trade Representative, Press Release, Jan. 24, 1990, p. 1.

[7] Arts. 137-143 of the National Program of Industrial Modernization and Foreign Trade 1990-1994 (National Program), Published in the *Diario Oficial* on Jan. 24, 1990.

On January 24, 1990, Mexico was removed from the "Priority Watch List." U.S. Trade Representative Hills stated that the reason behind the decision was because "[t]he Mexican Government has demonstrated its firm belief in the need to protect intellectual property rights."[8] Ambassador Hills further noted that "I believe the [Mexican Government's promise to introduce legislation] demonstrates a genuine will to achieve adequate protection of intellectual property. . ."[9]

The likelihood of success for the proposed new legislation is enhanced by the "growing perception" among the Mexican business community that "strong patents, trademarks, copyrights, trade secrets and other intellectual property protections are needed in Mexico in order to protect its own industry from counterfeiters, infringement of inventions and artistic creations as more imports are introduced."[10] In late 1988, the Mexican Business Counsel on International Affairs (CEMAI) proposed to the Mexican Government substantial changes in the LIT.[11] These changes include the immediate grant of product patents; broad-scope trade secret protection that could enable recourse against use by third parties of illicitly obtained trade secrets; and respect for trademarks of foreign origin and the movement toward more effective enforcement of all intellectual property rights available in Mexico.[12]

Patent Protection in Mexico

Patent law protection in Mexico is governed by the 1976 LIT statute. This statute was amended in certain respects by the Law Amending and Supplementing the [LIT] (the Amendments), which took effect on January 17, 1987. In addition, regulations implementing the 1987 Amendments were published in August 1988.

Summary of Mexican Patent Law

A major difference between current Mexican patent law and U.S. patent law is the lack of patent protection in Mexico for a variety of products and processes. For example, the 1987 Amendments provided that the following products and processes will not have patent protection until 1997:

1. Biotechnological processes to obtain the following products: pharmaceutical and chemical products, medicines in general, beverages and food for animal consumption, fertilizers, pesticides, herbicides, fungicides or biological- activity products;
2. Genetic processes to obtain vegetable and animal species or varieties thereof;
3. Chemical products;
4. Chemical and pharmaceutical products, medicines in general, beverages and food for animal consumption, fertilizers, pesticides, herbicides, fungicides and biological-activity products.

The LIT also differs from U.S. law in that plant species, animal species, their varieties and the biological processes to obtain them, existing alloys, foods and beverages for human consumption are unpatentable.[13]

Mexican patent law provides for a patent term of 14 years from the date of patent grant. U.S. law provides for a term of 17 years from the date of grant. Mexican law also imposes working requirements on issued patents; exploitation must begin within 3 years of issuance[14] in industrial quantities of adequate quality and price[15], and importation of a patented product is not considered exploitation.[16] If the patents are not worked or exploited, they lapse automatically.[17] There are no comparable working requirements in U.S. patent law.

Another major difference in Mexican patent law is the existence of compulsory licenses. Under the LIT a compulsory license from the patent holder to a third party may be issued by MPTO in four circumstances: (1) where a patent holder has not satisfied the working requirements, (2) exploitation of the patent has been suspended for 6 months, (3) exploitation of the patent does not satisfy the national market, and (4) the patent is not being used in the export market and someone has expressed an interest in using the patent for exports.[18] There are no compulsory licensing provisions in U.S. patent law.

Patents are obtained in Mexico by filing an application with MPTO.[19] Once the application is

[8] USTR, Press release, Jan. 24, 1990, p. 2.
[9] Ibid.
[10] Prepared testimony of Hope Camp, Jr., before the U.S. International Trade Commission, Public hearing, Dec. 5, 1990, p. 4.
[11] Interviews with Mexican business representative and Mexican attorney.
[12] Ibid. Discussions with Mexican business representatives and lawyers indicate that the sectors of the Mexican business community that most strongly opposed the intellectual property liberalization in the 1987 Amendments-the chemical and the Mexican based pharmaceutical industries-have less objection to the introduction of comprehensive legislation granting additional intellectual property protection in 1990. Interviews with Mexican business representatives and attorneys.

[13] While the U.S. Patent and Trademark Office has granted patents for certain animal biological processes, this is a highly contested area of U.S. patent law.
[14] Art. 41, LIT.
[15] Art. 43, LIT.
[16] Ibid.
[17] Ibid.
[18] Art. 50, LIT; MPTO will decide if a compulsory license is to be granted after hearing the parties. Mexican Government officials could not recall any such hearing or the granting of any compulsory license. Interview with Mexican Government official.
[19] For an extensive discussion of the formal requirements for a patent application, see Jaime Delgado, "Highlights of New Regulations for Patent and Trademark Law", *World Intellectual Property Report*, vol. 3, November 1989, pp. 58-59.

complete, MPTO must determine if the invention is capable of industrial application.[20] The patent applicant must request novelty examination no later than 15 months following the date of filing.[21] MPTO may accept novelty examinations made by any examining foreign patent and trademark office of any member nation of the Convention on Patent Cooperation or by the European Patent Office.[22] If the novelty examination shows that the invention is not new, the applicant will be so notified.[23] The applicant must respond within two months or the application will be deemed abandoned.[24]

Recent Developments

The 1987 Amendments changed the LIT in several significant respects:

1. Patentability for pharmaceuticals, chemicals and alloys was restored beginning in 1997.
2. The patent term was extended to 14 years from the date of grant of the patent as opposed to 10 years under the original 1976 law.
3. Patent exploitation must now begin within 3 years instead of the 1976 law 1 year requirement before a patent is considered lapsed, conforming Mexican law to the Paris Convention.[25]
4. MPTO may now waive the required novelty examination procedure, if the applicant provides MPTO with the results of the novelty examination conducted by foreign patent offices as defined by the Convention on Patent Cooperation or the European Patent Office.[26]

On January 24, 1990, the Mexican Government announced its intention to introduce legislation to further strengthen the LIT patent protection:

> The term of patents will be increased to 20 years as of filing date, according to the worldwide trends in this regard, to provide equitable incentives to local industry to invest in technological research and development. In addition, the grant of patents in technological-industrial fields in which protection for inventions is not yet afforded will be permitted, such as new chemicals and pharmaceuticals, biotechnological products not yet used in Mexico and recently patented in other countries will be protected, to encourage the patentee or the licensee to carry out their immediate manufacture and trade.[27]

MPTO officials have indicated that this legislation is being drafted and will likely be presented to the Mexican Congress in late 1990.[28]

U.S. and Mexican industry representatives have long sought this increased patent protection.[29] In addition, strengthened patent protection under Mexican law has long been the subject of considerable bilateral governmental negotiations between the two countries.[30] If enacted, this legislation could eliminate certain outstanding patent problems identified by U.S. and Mexican legal and business representatives. These problems are outlined in greater detail below.

Perceived Changes Needed in Mexican Patent Laws

Patent protection for inventions in all areas of technology.—Mexican and U.S. industry and U.S. Government representatives have attempted for years to convince the Mexican Government to amend the 1976 LIT that precludes patent protection in a number of areas of technology, including chemical and pharmaceutical products, and biotechnological processes to obtain them, food and beverage products and processes, plant varieties and alloys.[31] A typical complaint is made by the U.S. Pharmaceutical Manufacturers Association:

> The U.S. research based pharmaceutical companies we represent are forced to compete against national companies which do not honor internationally respected intellectual property rights and are not burdened by years of costly research and development.[32]

MPTO officials indicate they are drafting legislation to provide product patent protection for the areas of technology listed above.[33] However, discussions with Mexican industry representatives indicate that there is uncertainty concerning whether this protection will be immediate for all of the currently non-patentable areas. For example, some doubts were expressed

[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Alan L. Hyde, "Transferring technology: Pittfalls and prospects," prepared for the American Bar Association Current Legal Apsects in U.S.-Mexico Trade and Investment Seminar, October 1987, p. A-18.
[26] Carlos R. Valencia Barrera, "Prospects and Pitfalls of Technology Licensing in Mexico: The Regulation of Patents and Trademarks under the 1987 Amendments to the Inventions and Trademarks Act", prepared for the American Bar Association Current Legal Aspects in U.S.-Mexico Trade and Investment Seminar, October 1987, p. A-36.
[27] Art. 139, National Program.
[28] Speech by Dr. Jaime Serra Puche, "Mexico's Economic Program", given on January 24, 1990 in New York during seminar "Mexico: The New Opening" sponsored by *Business Week*.
[29] Interviews with Mexican business representatives and Mexican attorneys. Hope H. Camp, *Ten Year Review of the Ad Hoc Group on Mexican Intellectual Property Matters*, p. 2.
[30] Bennett, pp. 65-67.
[31] Interviews with U.S. and Mexican legal and business representatives.
[32] Pharmaceutical Manufacturers Association submission to the USITC, Jan. 4, 1990.
[33] Interview with Mexican Government official.

whether pharmaceuticals would receive immediate patent protection, as opposed to a two or three year phase-in.[34] Opposition exists in Mexico for immediate patent protection from those Mexican-based pharmaceutical companies which are not affiliated with foreign companies, are lacking in extensive research facilities, and whose existence is based on the use of foreign patents to sell pirated pharmaceuticals within Mexico.[35] However, Mexican industry and governmental sources are optimistic about the proposed legislation and indicate that opposition is considerably less than in 1987 when the 10-year waiting period was enacted.[36]

Compulsory Licenses—Mexican law provides MPTO with discretion to issue compulsory licenses where patents have not been worked within 3 years and in other circumstances. U.S. industry representatives complain that the right of third parties to obtain such licenses gives excessive discretion to MPTO officials and limits the possibility for investment in Mexico.[37] In addition, these representatives assert that patent holders cannot escape the issuance of a compulsory license under the LIT if they justify their inaction based on legitimate reasons.[38] U.S. industry representatives have recommended for several years that the Mexican law should be amended to limit the use of compulsory licensing (1) to non-exclusive licenses granted to address declared national emergencies during the existence of such emergencies, (2) to remedy adjudicated violations of competition laws, or (3) to the government for governmental purposes.

Mexican Government officials state that Mexico currently does not issue compulsory licenses.[39] They indicate that certain branches of the Mexican Government believe that compulsory licensing is an important safeguard against abuses by foreign patent holders.[40] Nevertheless, on January 24, 1990, the Mexican Government announced it intended to seek restrictions on compulsory licenses:

> The figure of the non-exclusive, compulsory license will be revised. Its application will be limited to those cases of critical lack of a patented product or notorious abuse in its manufacture or trade, by patentee. Arbitrary resolutions will be avoided through the remedy of judicial revision.[41]

Mexican MPTO officials indicate that proposed legislation concerning compulsory licenses will be introduced in the latter half of 1990.[42]

MPTO resources—U.S. and Mexican industry, government, and legal representatives all agree that MPTO has insufficient human and technological resources to process and examine patent and trademark applications.[43] For example, approximately 30 patent and trademark examiners perform all application examinations and assist in enforcement efforts.[44] The examination of the average patent application takes 6 to 8 years.[45] The current patent art library (sources of prior patent art from which to examine patents) comprises only 250,000 documents.[46] MPTO does not have access to the patent art of U.S., Japanese, German, or other major industrialized countries patent offices.[47] There are only limited numbers of computers and data bases from which to conduct examinations.[48]

Because of the lack of resources, MPTO does not conduct a novelty examination, even though Mexican law requires such an examination.[49] Instead, MPTO relies on the assertions of the applicant that there is no prior art.[50] The patent application process is in reality an examination that the formalities of patent procedural regulations have been fulfilled.[51] Mexican patent attorneys state that this lack of novelty examination provides opportunities for fraud and double patenting.[52] The 1987 Amendments provide for waiver of the novelty examination if the applicant presents the results of the novelty examination conducted by the European Patent Office or other patent offices as defined by the Convention on Patent Cooperation. Use of the foreign patent results can greatly speed up the application process.[53]

Discussions are taking place between MPTO officials and the U.S. Government concerning U.S. assistance to improve Mexican enforcement capabilities.[54] Mexican Government officials have acknowledged additional financial resources

[34] Interviews with Mexican business representatives.
[35] Ibid.; Prepared testimony of Hope Camp submitted to the USITC, Dec. 5, 1989, p. 4.
[36] Interviews with Mexican government, legal, and business representatives.
[37] Zellner, p. 42. The 1988 USITC Survey noted numerous complaints by U.S. companies of the compulsory licensing provisions of Mexican law.
[38] Art. 41 *et seq.* LIT; The 1987 Amendments included the only provision in the LIT suspending legitimate patent work for "suspension due to cyclical or seasonal production." Art. 52, §II.
[39] Interview with Mexican Government official.
[40] Ibid.
[41] Art. 141, National Program.

[42] Interview with Mexican Government official.
[43] Interviews with Mexican Government, legal, and business representatives.
[44] Interview with Mexican Government official. By comparison, in the United States, there are approximately 1,500 examiners.
[45] Interview with Mexican Government official.
[46] Ibid.
[47] Interview with Mexican attorney.
[48] Ibid.
[49] Interviews with Mexican attorneys. In most countries, a novelty examination involves the search by the patent examiner of prior art (journals, patents, treatises, trade journals, etc.,) to ascertain whether or not the proposed invention was "anticipated" by the prior art or was rendered "obvious" to one of ordinary skill in the art. If the examiner finds either obviousness or anticipation, the application is rejected and the applicant usually is afforded an opportunity to rebut.
[50] Interview with Mexican attorney.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Interview with Mexican Government official.

are needed in order to hire additional personnel and equip them with modern search equipment and data bases necessary to examine and enforce complex pharmaceutical, chemical or other high technology subject matters.[55] These officials also indicated a strong interest in obtaining assistance from the United States regarding training of patent and trademark investigators, information on how the United States pursues counterfeit goods, and access to modern computer data base patent and trademark abstracts.[56]

Trademark Protection in Mexico

The basis for current Mexican trademark law is the 1976 LIT statute. The trademark provisions of this statute, like the patent provisions, was amended in certain respects in 1987. In addition, regulations relating to the 1987 Amendments were promulgated in August 1988.

Summary of Mexican Trademark Law

The LIT expressly recognizes both product marks and service marks,[57] the right to the exclusive use of which can be obtained only through their registration with MPTO.[58] A registered trademark is not effective against a third party who has in good faith used the same or a confusingly similar mark in connection with the same or similar products or services for at least 1 year prior to the date of registration.[59] The prior user may, within 1 year following publication of the existing registration, initiate proceedings to nullify the registration and obtain his own registration of the mark.[60] International priority may be claimed within 6 months following application for registration in one or more foreign countries.[61]

The LIT provides that a trademark registration is effective for 5 years and may be renewed indefinitely for successive 5-year periods.[62] A trademark that has not been renewed or that has been cancelled voluntarily or for non-use, may be re-registered only by the prior registrant during the first year following its lapse; thereafter, any person may apply for registration. Renewal by the prior registrant during the 1-year grace period is not automatic, however, as it is subject to a new novelty examination.[63] In order to avoid automatic cancellation of the trademark, the owner must prove its use within 3 years following registration.[64]

Recent developments.—The 1987 Amendments resulted in certain changes to the Mexican trademark law:

1. **Protection of well-known marks:**
   An explicit ban was created on the use of marks or signs that are identical or similar to a mark registered or recognized by SECOFI as well-known in Mexico. This should put an end to the production of goods with intentionally confusing labelling, such as the "Pior" label instead of "Dior".[65]
2. **Procedure for Objections:**
   Trademark examinations now allow objections to registrations at any time before approval.[66]
3. **Elimination of "Linking":**
   The 1987 Amendments eliminated the most controversial provision of the LIT by eliminating the "linking" requirement. Under the LIT, every trademark of foreign origin, or owned by a foreign person, intended to cover goods produced or manufactured in Mexico, had to be used in conjunction with—or "linked" with a trademark originally registered in Mexico. The Amendments make this linking optional.[67]

U.S. industry representatives report that there have been additional changes in Mexican trademark practice that appear to have improved the ability of U.S. businesses to obtain adequate and effective trademark protection in Mexico.[68] For example, Mexico recently adopted the International Classification System.[69] In addition, increased enforcement prompted by the 1987 amendments and implementing regulations issued in 1988 have "made adequate trademark protection more feasible."[70]

However, both U.S. and Mexican trademark experts identified certain aspects of Mexican law which offer less protection for trademarks than U.S. law. Witnesses testifying and submitting material before the Commission as well as Mexican experts identified the following areas of the Mexican trademark law which they assert could be liberalized: (1) lack of provision for justifiable non-use, (2) compulsory licensing, (3) lack of protection for different uses of a registered mark, and (4) lack of an effective procedure to oppose registration.

[55] Ibid.
[56] Ibid.
[57] Art. 87, LIT.
[58] Art. 88, LIT.
[59] Art. 93, LIT.
[60] Ibid.
[61] Art. 113, LIT. However, the international priority is only valid as to the products or services that were subject to the foreign appolication and in cases where the foreign country or countries likewise provide international priority. If the registration is effected on the basis of international priority, it relates back to the date of the first foreign registration. Ibid.
[62] Art. 112, LIT. U.S. law provides that the initial term of trademark registration is 10 years as is the period for renewal of trademark registrations.
[63] Art. 99, LIT.
[64] Art. 117, LIT.
[65] Zeller, p. 39.
[66] Ibid., p. 42.
[67] Barrera, p. A-37.
[68] Submission of the United States Trademark Association to the USITC, Jan. 5, 1990, p. 1.
[69] Ibid., p. 2.
[70] Bennett, p. 38.

On January 24, 1990, the Government of Mexico announced that legislation to enact the following changes in the trademark law would be introduced before the Mexican Congress:

> The term of trademark registrations will be increased, and reasonable variations in the manner or form in which a trademark is used will be accepted, with no automatic lapsing.[71]

Set forth below are trademark law areas identified by U.S. and Mexican business and legal representatives where Mexico could make additional improvements.

Perceived Changes Needed in Mexican Trademark Laws

Compulsory licenses.—The Mexican Government has discretionary power to grant compulsory licenses to third parties to use registered trademarks and set corresponding royalty fees.[72] No such comparable licensing power exists in U.S. trademark law. Mexican officials of MPTO indicate that the provision has [22never been used.[73] Nevertheless, U.S. trademark industry representatives assert that the power to grant such mandatory licenses is unreasonable:

> [compulsory licensing] gives the government the right to approve pirating of their trademarks. Faced with this situation many manufacturers have elected not to locate in Mexico both because they risk receiving unreasonably low royalties for use of their trademark, and because they might be forced into association with a low quality producer who could tarnish the prestige of their trademarks.[74]

On January 24, 1990, the Mexican Government stated that it intended to introduce legislation which apparently will end the possibility of the use of a compulsory license with trademarks. The proposed legislation would limit compulsory licenses to patents, not trademarks, and then only under very limited circumstances.[75]

Exact use as registered.—Under Article 115 of the LIT, a trademark must be used exactly as it is registered. Use in a different form can give rise to extinguishment of the registration, upon a ruling by MPTO to that effect.[76] U.S. and Mexican counsel indicate that this statutory provision is in conflict with Article 5 c(2) of the Paris Convention. The article provides that use of a trademark in a form differing from the registered trademark (which does not alter the distinctive character of the trademark) does not invalidate the registration nor diminish protection of the trademark.[77]

However, 1988 regulations appear to limit the severity of the "exact use" requirement by providing that proof of use of the same mark for a single class of products is sufficient to prove use in all other classes, provided a renewal application is filed on each class designating the class of goods for which there is actual, effective use.[78] In addition, the Mexican Government's January 24, 1990 announcement of legislative changes included the proposal to permit acceptance of registrations for "reasonable variations in the manner or form in which a trademark is used..."[79]

Lapse of trademark where no proof of use.—Although use is not a prerequisite to trademark registration in Mexico, proof of use is a requirement for maintaining a registration after it is approved.[80] Under Article 117 of the LIT, the registrant is required to submit proof of use of the mark within three years after registration or the registration will be extinguished.[81] Mexican law does not provide any exceptions to the use requirement, for example, in cases of force majeure or when non-use can be justified.[82] U.S. and Mexican legal experts have suggested that the lack of a use exception under Mexican law is in conflict with Article 5 (1) of the Paris Convention. Article 5 (1) provides that where use of a mark is compulsory, a registration may be canceled only after a reasonable time, and then only if the registrant does not justify its non-use.[83]

The Mexican Government has pledged to introduce legislation in 1990 which would not result in the *automatic* extinction of the mark if the trademark is not used within a specific period of time.[84]

Opposition to registration procedure.—U.S. industry representatives complain that the Mexican trademark law does not provide an

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[71] Art. 138 of National Program.
[72] Art. 132, as amended in 1987. Barrera, p. A-36.
[73] Interview with Mexican Government official.
[74] Zellner, p. 42.
[75] Art. 141, National Program, Jan. 24, 1990.
[76] Interview with Mexican attorney.
[77] Ibid., and Trademark submission, p. 1.

[78] Delgado, p. 59. To the extent that the 1988 regulations are in conflict with the LIT, the regulations could be challenged by an appeal of the administrative ruling in an Amparo suit. In an Amparo appeal, the party seeking to invalidate the regulations could argue that the regulations exceed their statutory basis. The LIT Regulations are inferior to statues in the legal hierarchy of Mexico because "a regulation cannot create an intellectual property right that is forbidden by statute or eliminate or modify one that is created by statute." Prepared Testimony of Hope Camp, Jr., pp. 9-10; Telephone interview with Mexican attorney.
[79] Art. 138, National Program, Jan. 24, 1990.
[80] Trademark submission, p. 1.
[81] Ibid., p. 2.
[82] Ibid., p. 1.
[83] Interview with Mexican attorney. Trademark submission, p. 1. U.S. industry representatives assert that the Mexican law on use is further complicated in that Art. 117 of the LIT requires the registrant to prove (1) "effective use" of a mark within three years after registration *and* (2) "continuous use" (i.e. use during each and every year) at the time it applies for renewal of its registration. The U.S. Trademark Association claims that "the existence of the two ambiguous standards of use makes compliance confusing and difficult. Trademark submission, p. 2.
[84] Art. 138, National Program, Jan. 24, 1990; Interview with Mexican Government official.

effective opposition procedure. Registrants for trademarks may only oppose applications by invitation of MPTO which, according to one U.S. company, "rarely occurs."[85] In actuality, registrants and prior users of trademarks must bring cancellation actions.[86] This procedure is described as more burdensome and damaging to the legitimate trademark owner, since it occurs "after the fact."[87] At present, no proposed legislation appears to provide for such opposition procedures.

Resources to examine trademarks.—MPTO currently employs 10 trademark examiners.[88] MPTO officials acknowledged that they need to hire additional examiners but presently cannot because of insufficient resources.[89] Because of the lack of examiners and the resources to create an extensive filing system, trademark examinations tend to be based less on the basis of substance than on whether all formalities have been met.[90] Mexican counsel indicate that there is a strong possibility that a new registration can infringe an existing valid trademark.[91] Accordingly, U.S. and Mexican trademark interests indicate that the lawful trademark holder must continuously be alert to the registration of infringing marks.[92]

Enforcement of Patent and Trademark Rights

Mexico has made progress in the enforcement of patent and trademark property rights of Mexican and foreign interests.[93] Less than 3 years ago, Mexico was identified in a survey of leading U.S. companies as a principal offender in failing to enforce a variety of intellectual property rights.[94] Recent enforcement by Mexican officials from MPTO, the Copyright office and the Federal Police and Prosecutors Office has begun to make significant inroads in some forms of piracy in Mexico. Of assistance in this piracy battle have been (1) new regulations promulgated in August 1988 providing MPTO with the ability to seize, fine, and close businesses engaging in piracy, (2) increased manpower provided by the Mexican Federal Police to combat piracy, and (3) the willingness of MPTO and Copyright officials to respond quickly to requests for assistance by intellectual property rights holders.

[85] Submission by Whirlpool Corp. to the USITC, Jan. 5, 1990, p. 10.
[86] Telephone interview with Mexican attorney.
[87] Whirpool Corporation reported to the Commission that "[t]o comply with current practice in the developed countries, Mexico would have to amend its current law to allow interested third parties to file oppositions against advertised trademark applications within a certain term." Submission by Whirpool Corporation, p. 10.
[88] Interview with Mexican Government official. By comparison, there are approximately 200 trademark examiners in the U.S. Patent and Trademark office.
[89] Ibid.
[90] Ibid.; Trademark submission, p. 3.
[91] Interview with Mexican attorney.
[92] Ibid.
[93] Ibid.
[94] 1988 USITC Study.

Experts from both sides of the border agree that the Mexican Government's will as well as the resources dedicated to patent and trademark enforcement have increased over the past several years.[95]

However, Mexican and U.S. legal and business representatives continue to criticize both the level of enforcement efforts and the ability to enforce patent and trademarks under the current law.[96] Among the problem areas identified by Mexican and U.S. sources are the lack of resources to address piracy and infringement problems, the length, cost and uncertainty of proceedings to enforce intellectual property rights and the lack of certain preliminary relief to stop infringing activity prior to completion of administrative and judicial determinations. A U.S. industry representative's comments are illustrative:

> [T]he process of enforcing one's rights against infringement continues to be extremely cumbersome, slow and difficult. Systemic problems (e.g., a requirement that a decision must be obtained from the Trademark Office before a civil or criminal action can be started to the Courts) are exacerbated by an overall shortage of Trademark Office personnel and the lack of written guidelines explaining how one should proceed in coordinating Customs and Trademark Office activities when faced with the importation of counterfeit merchandise.[97]

The Executive Branch of the Mexican Government announced on January 22, 1990, that the following steps would be taken to enhance the protection and enforcement of intellectual property rights in Mexico:

> The infrastructure of the Patent and Trademark Registry will be modernized and measures for simplified administration will be introduced to expedite services to individuals. Industrial property infractions or crimes, in commerce or production, commonly referred to as piracy, will be energetically combatted. By these means, the due protection of industrial property rights will be afforded.[98]

Legislation implementing this pronouncement is presently being prepared by MPTO for submission in the latter half of 1990 to the Mexican Congress.[99] Discussed below are the

[95] Interviews with Mexican government, business, and legal representatives, Testimony of Hope Camp and Eric Smith before the USITC, Dec. 5, 1989.
[96] See 1988 USITC Study; Interviews with Mexican attorneys. See also testimony of Hope Camp and Erik Smith before the USITC, Dec. 5, 1989, tr., pages 13-14, 39. Mr. Camp also noted that while there has been aggressive enforcement in certain cases, the "system" itself is "defective" because of the lack of certainty and predictability in the enforcement of rights. Camp Prepared Testimony before the USITC, Dec. 5, 1989, p. 9.
[97] Trademark submission, p. 3.
[98] Art. 142, National Program.
[99] Interview with Mexican Government official.

enforcement problems identified by both Mexican and U.S. business interests and their legal representatives as significant.

Resources in the Mexican Patent and Trademark Office

Under current Mexican law, the first step in the enforcement of a patent or trademark is the filing of a complaint with the infringement investigation branch of MPTO. When an MPTO attorney assigned to the case determines that a patent or trademark is valid and infringed, an aggrieved party may then initiate a criminal or civil action to seek to recover damages and/or obtain injunctive relief. If the party seeking to protect its patent and trademark does not prevail before MPTO, it must then seek to overturn the decision in an appeal process.[100]

MPTO does not have the financial resources to expedite its procedures. MPTO officials, as well as Mexican attorneys practicing before MPTO, agree that the office does not have enough resources to perform a wide variety of complex tasks.[101] At present, eight lawyers are employed in MPTO to perform the analysis and determination of the patent and trademark cases filed for adjudication.[102] These lawyers are paid approximately one fourth to one fifth as much as junior attorneys in Mexico City patent and trademark law firms.[103]

A case filed by a party seeking to protect its patent or trademark against an infringer takes at least one year for the assigned attorney in the office to decide.[104] The resolution of complex cases can take much longer.[105] A substantial number of the cases decided by MPTO are reversed in Amparo suits before the District and Appellate courts.[106]

[100] The foregoing summary of the process of patent and trademark enforcement was provided in interviews with Mexican attorneys.

[101] Interviews with Mexican government and legal representatives. In addition, U.S. industry representatives identify the lack of resources in MPTO as a serious problem. The 1988 USITC Survey describes as inadequate the training and resources for enforcement of patents and trademarks in Mexico. Hope Camp testified that Mexico does not have the money to hire all the people and to hire the quality people that are necessary to carry out effective enforcement against the scale of piracy that does exist there. Testimony of Hope Camp before the USITC, Dec. 5, 1989, tr., p. 39.

[102] Interview with Mexican Government official.

[103] Interview with Mexican attorney.

[104] Interviews with Mexican Government official and attorneys. Following the one or more years it takes to receive an MPTO administrative ruling, a long series of Amparo appeals before the District Court and the Collegiate Court (an appellate court) can take several years. An "Amparo" appeal is defined at note 377 *supra*. Only after the resolution of the Amparo suits can a criminal or civil action be commenced. Removal of the jurisdiction from MPTO would greatly shorten the process and present the possibility for relief, such as a permanent injunctive order or damages, to individuals or companies whose patent and trademark rights have been infringed. Ibid.

[105] Interview with Mexican attorney.

[106] Interviews with Mexican attorneys.

Mexican patent and trademark attorneys state that legislation should be introduced to remove MPTO from the process of adjudicating patent and trademark infringement cases.[107] This change would allow MPTO to concentrate on the task of prosecuting the filing of patents and trademarks, or providing expert advice where needed in patent and trademark cases filed with the civil and criminal courts.[108] Finally, it would greatly shorten and reduce the expense of the enforcement process.

Preliminary relief.—An important issue addressed by U.S. and Mexican companies whose patents, trademarks, copyrights and trade secrets are in use in Mexico is how quickly relief can be attained in the event of a violation of their intellectual property rights. Prior to 1987, there was little opportunity for rights holders to obtain any preliminary relief to stop piracy in Mexico.[109]

The 1987 amendments to the LIT provided MPTO and the Federal Prosecutor's office with authority to stop the infringement of patents and trademarks.[110] Specifically, the Federal Prosecutor was given the right to take action to stop violations of the patent and trademark laws "as soon as he has knowledge of the facts."[111] The Amendment also permits the Federal Prosecutor to take preventative measures as provided in the Federal Code of Criminal Procedure, including seizure and securing "those things that are the product or object of the [felony]."[112]

Recent 1988 regulations to the LIT provide MPTO with injunctive relief in those cases where an infringing product can be physically seized.[113] These regulations give MPTO authority, prior to the resolution of the administrative complaint before MPTO, to prohibit the sale of infringing products until the Attorney General or appropriate judge orders the release of the products.[114] In addition, infringing products can be seized and the place of business closed either temporarily or permanently if the infringing products comprise more than 30 percent of the merchandise in a given store.[115] Closure of stores or places of business can be carried out to prevent the continuation of an infringement.[116] In case of

[107] A U.S. intellectual property lawyer suggested that enforcement would be improved if Mexico could "develop some statutory provision that will enable individuals to have accessed recourse directly to the courts without having to go through several layers of bureaucrats before they can ever get their alleged infringement into the courts." Testimony of Hope Camp, tr., p. 41.

[108] Interview with Mexican attorney.

[109] Interviews with Mexican attorneys and Government officials.

[110] Barrera, pp. A-39-40.

[111] Ibid., p. 40.

[112] Art. 213 of the LIT as amended in 1987; Art. 181 of the Mexican Federal Code of Criminal Procedure.

[113] Delgado, p. 60.

[114] Ibid.

[115] Ibid.

[116] Ibid.

deliberate continued infringement, a permanent closure may be ordered by MPTO.[117] Reports from U.S. and Mexican Government, business and legal sources indicate that Mexican authorities have used these new regulations aggressively to combat piracy relating primarily to trademarks.[118]

Mexican patent and trademark attorneys indicate that this form of seizure relief is not completely adequate to protect their clients' intellectual property rights. The effectiveness of these remedies can be dependent on the resources and will of MPTO and the Federal Police to initiate an investigation and carry it out.[119] As noted above, there is a lack of resources available in MPTO to combat piracy. Moreover, the focus of the 1988 regulations on "seizure" provide little opportunity for injunctive relief for intellectual property such as a trade secret or a process patent.[120] Finally, once MPTO completes an administrative determination, it has no power to enjoin any activity of an infringer.[121]

Mexican legal and business representatives as well as U.S. industry representatives have recommended to MPTO officials that some form of additional preliminary injunctive relief be made part of the LIT or the Federal Code of Civil Procedure to close the perceived gaps in the current system.[122]

Criminal enforcement.—Patent and trademark infringement is a crime under the LIT. Prosecutions are almost always initiated upon a complaint filed by the party claiming infringement.[123] While it is possible to file a criminal complaint at the same time as an action before MPTO, the Federal Prosecutor will take little action to prepare the case until MPTO has issued a determination finding that the trademark is valid and infringed.[124] Even though the prosecutor theoretically can take some preliminary action to stop infringement before the decision to prosecute a case, this almost never occurs.[125]

Very few criminal patent and trademark cases are brought in Mexico.[126] The reason given by Mexican patent and trademark attorneys is that the lengthy proceedings before MPTO along with Amparo appeals forces a settlement of most cases.[127] Accordingly, arrests, fines and imprisonment pursuant to the penal provisions of the LIT are rare.4 Ibid.[128]

Discovery.—Many intellectual property disputes involve complex factual issues whose resolution results from discovery of documents and information from the alleged infringer or the alleged holder of the intellectual property right. Discovery in Mexican intellectual property disputes before MPTO can be limited and is not directly controlled by the real parties to the dispute. In patent and trademark administrative proceedings before MPTO, MPTO can order visits to inspect the premises of interested parties to examine documents and evidence of infringement.[129] Such visits are almost always carried out at the express request of interested parties and compliance with the order to inspect is required.[130] There is no provision in MPTO proceedings for the taking of testimony either at a hearing or in pre-hearing discovery.

It is theoretically possible for the Federal Prosecutor to request information from the interested parties where MPTO proceedings and a criminal charge have been filed simultaneously. Even though the Federal Prosecutor cannot charge an alleged infringer until MPTO has made an affirmative finding of validity and infringement, the prosecutor can collect evidence in making the determination of whether to charge which could be used in MPTO proceeding. Federal Prosecutors are most reluctant to conduct such discovery.[131]

Assuming a holder of an infringed intellectual property right survives MPTO proceedings and the Amparo appeals, it then has the right to initiate a civil suit for damages pursuant to Article 214 of the LIT. In civil actions, the court can order "the inspection of certain things, documents, books or papers . . ."[132] This right of discovery only assists a litigant in the assessment of damages, because the issues of patent validity and infringement would have already been decided by MPTO. Thus, this right of discovery has no usefulness in determining the validity and infringement issues at the most important stage of the proceedings—before MPTO.[133]

Delay in enforcement.—All of the Mexican attorneys interviewed expressed considerable concern at the length of time expended by the current process of MPTO proceeding, Amparo

[117] Ibid.
[118] Interviews with Mexican government, business, and legal representatives.
[119] Ibid.
[120] Telephone interview with Mexican attorney. Mexican attorneys described conversations with dissatisfied clients who were upset at the fact that there was no possibility to obtain injunctive relief to stop the infringement or use of trade secrets during MPTO proceedings or even during civil proceedings. Interviews with Mexican attorneys. See also testimony of Hope Camp, tr., p. 35, who stated that "[t]here is no comprehensive scheme under which one whose trade secret had been appropriated by a third party can get immediate relief in the form of an injunction...."
[121] Telephone interview with Mexican attorney.
[122] Interviews with Mexican legal and business representatives.
[123] Interview with Mexican attorney.
[124] Ibid.
[125] Ibid.

[126] Ibid.
[127] Ibid.
[128] Ibid.
[129] LIT art. 220. Delgado, p. 60.
[130] Ibid.; LIT art. 219. Telephone interview with Mexican attorney.
[131] Interviews with Mexican attorneys.
[132] Federal Code of Civil Procedure, art. 379.
[133] Interview with Mexican attorney.

appeals, possible remand to MPTO, criminal actions and appeals and civil actions and appeals.[134] The following chronology of a hypothetical enforcement action illustrates the delay:

1. An action before MPTO takes at least 1 year and in complex cases up to 2 or even 3 years.[135]
2. An Amparo suit, or appeal of an MPTO decision to the Federal District Court can take 3 to 4 months.[136]
3. Following the Amparo district court appeal, an appeal before the Collegiate Circuit Court can consume another three to four months.[137]
4. Because a substantial number of the MPTO administrative decisions are reversed on appeal, many such cases are remanded to MPTO for additional proceedings and findings, which take additional time and can result in additional rounds of similar appeals.[138]
5. Simultaneously with the filing of the infringement action before MPTO, the petitioner can also file a criminal action with the Federal Prosecutor. This criminal action will only proceed when the Amparo appeals are completed. The criminal case and subsequent appeals can take up to several years.[139]
6. After the completion of the Amparo appeals, a civil action for damages and injunctive relief can be filed. This case and subsequent appeals could take several years to complete.[140]

In view of this lengthy and expensive process, most intellectual property disputes involving patents and trademarks are settled.[141] Mexican attorneys describe settlement as necessary because the party whose trademark or patent was being infringed did not want to continue to pay the significant legal costs, particularly without the possibility of injunctive relief pending the resolution of the dispute.[142]

Copyright Protection in Mexico

Mexico's copyright law has been described as relatively more comprehensive and easily enforced than Mexican patent, trademark, and trade secret laws.[143] Mexico's participation in international copyright treaties has been described by U.S. industry sources as "quite good."[144] Mexico is a signatory to the Universal Copyright Convention, the Bern Convention, the Brussels Satellite Convention, the Geneva Phonograms Convention, and the Rome Convention.[145]

Because Mexico's present copyright act has not been significantly amended since 1956, modern concepts such as computer software are not explicitly protected. Moreover, the statutory monetary penalties for piracy and for copyright infringement under the act, due to devaluation and inflation, now amount to a maximum of $4.00. U.S. industry representatives claim there are a number of other problems with the Copyright Act and its enforcement. For example, the International Intellectual Property Alliance[146] estimates overall copyright related piracy losses during 1989 from "inadequate law and inadequate enforcement" at $167 million.[147] According to the Alliance, Mexico is slow in resolving certain problems, as detailed below:

> Actually, there hasn't been much progress in the copyright area over the last few years, and we are looking toward that happening. The record industry has been raising their issues for some time, and there has been really nothing forthcoming at all by the Mexican Government on those issues.[148]

Mexican legal, governmental, and business sources indicate that legislative changes to correct some of the perceived statutory problems will be introduced to the Mexican Congress as early as April 1990, and that effective anti-piracy efforts have substantially reduced copyright piracy activities. Set forth below is a discussion of the current copyright issues raised by U.S. and Mexican copyright-based industry including (1) changes needed in Mexican copyright law, and (2) enforcement of existing law.

Perceived Changes Needed in Mexican Copyright Laws

Increased criminal penalties.—Mexican and U.S. representatives believe that the greatest

[134] Ibid.
[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] Ibid.
[141] Ibid.
[142] Ibid. In the 1988 USITC study, Mexico was among a number of countries identified by some U.S. business firms as having enforcement problems aggravated by corrupt activities. While some agree that these activities still occur, indications are that the Salinas administration is working to eradicate the problem. Telephone interview with U.S. attorney.

[143] U.S. Department of State, *Country Reports on Economic Policy and Trade Practices*, 1989 pp. 766-68. The term "Mexican copyright law" used herein refers to *Legislation Sobre Derechos De Autor* (9th Ed. 1989).
[144] Testimony of Erik Smith before the USITC, Dec. 5, 1989, tr., p. 12.
[145] Ibid.
[146] The International Intellectual Property Alliance is an organization formed in 1984 which represents many U.S. copyright-based industries. Alliance members include (1) The Association of American Publishers, (2) The American Film Marketing Association, (3) ADAPSO, the Computer Software and Services Industry Association, (4) The Business Software Association, (5) the Computer & Business Equipment Manufacturers Association, (6) The Motion Picture Association of America, (7) the National Music Publishers' Association, and (8) the Recording Industry Association of America.
[147] Telephone Interview with U.S. attorney.
[148] Testimony of Erik Smith, tr., pp. 23-24.

existing problem in copyright enforcement is the present low $4.00 maximum fine levied for violations of the copyright laws.[149] This low penalty is criticized as providing little economic disincentive for Mexican pirates of copyrighted material to cease and desist.[150] While the Mexican Copyright law provides for prison terms, many of these are of short term.[151] Pirates in Mexico normally are able to escape serving any time in prison by commuting prison terms for less than 6 months by the payment of a small fine.[152]

Mexican Copyright officials believe that increased criminal penalties would greatly aid in the fight against piracy.[152] Accordingly, legislation has been drafted to increase the criminal penalties for violation of the Copyright laws to 10,000 times the minimum daily wage of Mexico City.[154] It also provides for prison terms of between 6 to 12 years in jail for copyright infringement, with no sentence commutable to a fine.[155]

Protection for sound recordings.—Present Mexican copyright law does not protect sound recordings. Only the underlying musical composition is protected, not the actual recorded sounds.[156] Thus, if U.S. record companies who produced, packaged and paid for artists to perform recorded music wish to file suit for infringement, they must do so on behalf of the authors of the underlying music.[157] Furthermore, because many recording artists record the music of other authors who are not the performers, it is difficult for these artists to recover royalties.[158] The Recording Industry Association of America, Inc. estimates that annual U.S. recording industry losses in Mexico from piracy and lack of statutory protection is approximately $75 million.[159]

Mexico is a signatory to international treaties that govern sound recordings; the Geneva Phonograms Convention and the Rome Convention. However, U.S. recording industry representatives complain that although these treaties are supposed to be self-executing in Mexico (the treaty provisions apply directly as local law), Mexican courts have not applied these treaties and enforcement is difficult.[160] It is also the opinion of officials within the World Intellectual Property Organization (WIPO) that the current Mexican law does not comply with the requirements of the Rome, Phonograms, or Bern Conventions.[161] Unsuccessful legislative attempts were made to provide specific sound recording statutory protection in the Mexican copyright law in 1974, 1983, and 1988.[162]

The major Mexican recording industry association and the two major unions, the Musicians's Union (CTEM) and the Performer's Union, support the creation of express statutory rights in a sound recording, amendment of the copyright and/or penal laws to provide for greater penalties, and the provision of greater enforcement resources for combatting music piracy.[163]

Mexican copyright officials acknowledge that producers of sound recordings are not explicitly protected by Mexican copyright law.[164] However, they contend that U.S. and Mexican record producers could successfully protect their rights in a civil action by arguing that such protection exists by implication under four different articles of the copyright law, citing a recent successful suit by Mexican record producers against record pirates.[165] However, U.S. legal experts are uncomfortable with this interpretation of the law, and note the absence of any reported judicial decisions affirming the right of producers to sue for civil damages or to institute a criminal action against pirates.[166]

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[149] Art. 135-43 Mexican copyright law. Interview with Mexican Government Official. The low fine problem is exacerbated by the fact that fines for violation of copyright laws are computed on the basis of a per "work" not per copy of the work. Thus, the fact that a pirate may have copied and sold, for example, 200,000 copies of a record will not result in a fine over $4. Under the U.S. criminal code, Title 18 2319, the number of copies pirated are considered in determining the severity of criminal penalties and in determining "willful" criminal behavior.

[150] Testimony of Erik Smith, tr., p. 26.

[151] Prison terms range from 1 month to 6 years under art. 135-142 of the Copyright law.

[152] Interviews with Mexican business representative, and telephone interviews with U.S. attorneys.

[153] Interview with Mexican Government official.

[154] Interviews with Mexican government and legal representatives; telephone interview with U.S. attorney. Thus, the maximum criminal fine that can be levied under the proposed legislation would be approximately $30,000.

[155] The Recording Industry Association of America asserts that pirates sentenced under the present Copyright criminal provisions are able to commute their sentences and "buy their freedom (and cheaply too)." Letter of Jason S. Berman to Carla Hills, dated Mar. 2, 1990, p. 2.

[156] Memorandum of Eric Schwartz, Policy Planning Advisor to the Register, Copyright Office, Jan. 19, 1990, p. 3 (Schwartz memorandum).

[157] Ibid.

[158] Testimony of Erik Smith, tr., p. 13. The reason sound recording protection is important to U.S. interests is piracy. It is nearly impossible for the authors of underlying works to prevent piracy because musical composers do not have the resources that U.S. record companies ("producers") have. In addition, each work

[158]—*Continued*
may contain the compositions of several "authors" which makes copyright infringement actions very difficult without the coordinated efforts of all the composers-represented by the producers. Schwartz memorandum, p. 6.

[159] Telephone interview with U.S. attorney.

[160] Ibid., p. 13.

[161] Schwartz memorandum, p. 6.

[162] Ibid., p. 5. However, even the most recent attempt (1988) would have provided for the rights only to apply to "authors or performers," not record producers.

[163] Letter from Jason S. Berman, President of the Recording Industry Association of America, Inc. to Ambassador Carla Hills, Jan. 26, 1990, p. 2.

[164] Interview with Mexican government and business representatives.

[165] Ibid, and Copyright Law, arts. 6, 38, 59, and 79.

[166] Telephone interview with U.S. attorney.

U.S. and Mexican record producers assert that the only effective way to initiate serious anti-piracy actions is through a petition for criminal action against pirates.[167] U.S. and Mexican recording industry producers urge the creation of criminal penalties for pirates who copy and distribute recordings without consent of the producer.[168] Mexican Copyright Office officials indicate that legislation is under consideration to amend the penal code in order to permit producers to initiate criminal actions for piracy.[169] No legislation is being considered to give producers an explicit right to bring civil actions to recover damages and obtain preliminary relief.[170] U.S. and Mexican recording industry producers indicate that no serious political opposition exists to the proposed penal code legislation.[171]

Software protection.—Under present Mexican law, no explicit protection exists for computer software.[172] The Mexican Copyright office does allow interim registration of computer programs.[173] Administrative regulations since 1984 treat software as protected.[174] U.S. software interests know of no reported judicial decision holding software copyrights under these regulations valid.[175]

U.S. and Mexican computer manufacturers complain that inadequate penalties exist for infringement and that an absence of a clear prohibition on "private" copying promotes infringement by organizations such as corporations.[176] One U.S. software company estimates that U.S. industry lost $80 million due to software piracy in Mexico during 1989.[177] The U.S. Business Software Alliance estimates that "in Mexico only one legitimate copy of software is acquired for every seven illegal copies in use."[178]

Mexican private computer software interests and the officials of the Mexican Copyright Office have drafted proposed legislation they assert will provide explicit copyright protection for software.[179] This draft legislation is presently under review by the Legal Counsel of the Department of Education. This bill would amend the copyright law in three ways (1) adding computer programs to article 7 as a protected work of authorship; (2) tightening up the private use exception to ensure that internal corporate copying would not be permitted; and (3) increase monetary penalties and provide jail terms up to eight years.[180] Copyright office officials indicate that there is a very good chance the draft bill will be considered by the Mexican Congress as early as April 1990.[181] U.S. and Mexican copyright experts are optimistic that the legislation would be enacted sometime in 1990.[182]

Protection from cable television retransmissions.—The U.S. Motion Picture Export Association of America (MPEAA) contends that piracy of their copyrighted works, broadcast through international satellites to their receiving sites in Mexico, are intercepted and retransmitted without compensation (pirated) by certain Mexican cable television systems.[183] MPEAA states that an ambiguity in the Mexican copyright law allows pirates to assert that the definition of "public performance" includes the retransmission of intercepted U.S. terrestrial-broadcast and satellite signals without payment to U.S. copyright owners.[184] To cure this perceived ambiguity, MPEAA suggests that the Mexican copyright law be amended to prohibit retransmission of protected works to the public outside of a normal circle of family and its social acquaintances.[185]

Mexican legal representatives acknowledge that the Mexican definition of "public performance" is imprecise,[186] but state that it is possible to sue successfully under current Mexican law for copyright infringement of cable broadcasts.[187] For example, Televisa, the largest

[167] Ibid.
[168] Ibid.
[169] Interview with Mexican Government official.
[170] Telephone interview with U.S. attorney.
[171] Ibid. It appears that despite the fact that there is no opposition to the introduction of the bill in the Mexican Congress, it will not be submitted until the fall of 1990. The Recording Industry of America contends that the delay in submitting the bill to the Mexican Congress between April and November 1990 is "inexcusable" and will cost the U.S. recording industry between $35–40 million. Letter from Jason S. Berman to Carla Hills, Mar. 2, 1990, p. 2.
[172] Letter from David Curtis, Senior Corporate Attorney for Microsoft Corp. to Emery Simon, Feb. 9, 1990.
[173] Testimony of Erik Smith, tr., p. 15.
[174] Regulation No. 114, issued by Secretary of Public Education on Sept. 28, 1984, provides for registration of computer programs. "Initial Submission of Business Software Association" before the U.S. Trade Representative, p. 16 n. 12.
[175] Ibid.
[176] Interview with Mexican attorney. The Mexican copyright law requires "reproduction for profit" or "reproduction for commercial purposes." Mexican copyright attorneys were not confident that this law protects against end user copying, for example, such as a bank copying one software program to be used in 500 personal computers of its employees.
[177] Supplemental Submission to the USITC of Erik Smith, International Intellectual Property Alliance, Dec. 22, 1989.
[178] Initial Submission of Business Software Alliance before the USTR on Denial of Intellectual Property Protection and Market Access for U.S. Software Products, Feb. 22, 1990.
[179] Interviews with Mexican government and legal representative.
[180] Testimony of Erik Smith, tr., p. 15.
[181] Interview with Mexican Government official.
[182] Interview with Mexican attorney. Letter of David Curtis, Senior Corporate Attorney for Microsoft Corp. to Emery Simon, Feb. 9, 1990.
[183] Schwartz memorandum, pp. 3–4. MPEAA asserts that U.S. broadcast signals (transceived by U.S. and INTELSAT satellites) near the U.S.-Mexican border are intercepted routinely by hotels, resorts, and similar establishments for distribution to paying guest without authorization or compensation to copyright owners. Ibid.
[184] Schwartz memorandum, p. 3.
[185] Ibid., p. 4.
[186] Interview with Mexican business representative.
[187] Ibid. U.S. copyright owners argue that the Mexican copyright law does provide protection pursuant to art. 7(i)(providing for protection of works for

private television and cable company in Mexico, recently sued a regional Mexican cable operator under Mexican copyright laws for retransmission of its copyrighted broadcasts.[188] Private Mexican attorneys indicate that U.S. companies could enforce their interests in Mexico courts by initiating civil or criminal suits for violation of copyrights, trademarks, the failure to place a Mexican Government seal on pirated products, and through tax evasion suits.[189] It was suggested that U.S. companies could strengthen their position in Mexican courts by assigning their rights to a Mexican Company—such as Televisa—prior to bringing suit.[190] The Mexican Copyright Office has no plans to institute changes in the law that clarifies the definition of "public performance."[191]

Within the past year, a settlement of a dispute took place between Televisa and U.S. television interests that permits Televisa to retransmit U.S. television and cable broadcasts in Mexico City. There are reports of additional agreements between U.S. television interests and a few other cable transmitters.[192] These joint industry efforts have been successful in alleviating the problem, but one industry representative states that millions of dollars are lost annually to U.S. broadcasting interests.[193] Mexican officials acknowledge that many cable operators outside Mexico City are still pirating U.S. programs.[194]

Distribution of theatrical royalties.—The reciprocal distribution of theatrical and cinematic royalties between Mexico and the United States is one of the oldest unresolved copyright disputes between the two countries.[195] The dispute arises from a direct conflict in "who" is to receive royalty payments.

Mexican law provides royalty payments to "authors, composers, directors and performers," not legal entities such as film studios or producers.[196] These royalties are distributed to foreign authors and performers on the basis of reciprocity.[197] Under U.S. law, the "work madefor hire" concept permits royalty payments to the producer or film studio who hired the actors, directors, composers and performers in a film or theatrical production.[198] U.S. copyright law does not provide royalties to performers (actors/actresses in films, or singers on sound recordings) for the distribution of the films or records.[199] Rather, the royalty payments are made to the copyright owner of a film (usually the production company) or sound recording (the producer).[200]

The Mexican Government withholds royalties claimed by U.S. film producers because (1) they are not within the class of persons intended to receive royalty payments under Mexican law and (2) U.S. law does not provide reciprocity for Mexican performers.[201] Mexican officials point out that Mexican performers are not receiving royalties for Mexican films and sound recordings distributed and performed in the U.S.[202] Mexican officials state that before they will consider changing Mexican law to compensate U.S. "producers," the U.S. will have to change its laws to compensate "performers."[203] In the meantime, Mexico does not pay royalties to U.S. companies with claims on theatrical royalties, even if these companies are "authors."[204]

At present, no agreement has been reached in bilateral negotiations between the United States and Mexico regarding this issue. No legislation is presently anticipated to be introduced in either Mexico or the United States addressing this problem.

Copyright enforcement.—There has been an increase over the past several years in the enforcement of certain copyrights in Mexico.[205] Numerous Mexican and United States business and legal representatives confirm that the Mexican Federal Police, Prosecutors Office and the Copyright Office have taken considerable new efforts attacking piracy.

Despite these improvements, U.S. and Mexican lawyers and business representatives identify a number of continuing problems with copyright enforcement including the inadequacy of criminal penalties, limited civil remedies, widespread piracy of videotapes, pirated sound recordings of Mexican musical artists sold in Mexico and the United States, and the unauthorized and uncompensated retransmissions

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[187]—*Continued*
broadcasting by television), art. 4 (right of performance and "public use"), and art. 73 ("authorization to diffuse a protected work by means of television, broadcasting or any other similar means"). Nor is there any specific exemption under the law for the private use of these works in, for example, hotels. Schwartz memorandum, p. 4.

[188] Ibid.

[189] Ibid. One U.S. recording industry attorney reported that he is skeptical of the rights of producers such as Televisa and record producers to sue successfully using the theories proffered by Televisa in that suit. He notes that the Televisa case was settled and there are no reported decisions which support Televisa's theory of producer infringement suits. Telephone interview with U.S. attorney.

[190] Ibid.

[191] Interview with Mexican Government official.

[192] Schwartz memorandum, p. 4.

[193] Testimony of Erik Smith, tr., p. 16; Schwartz memorandum, p. 4.

[194] Ibid.

[195] Ibid.

[196] Ibid.

[197] Mexican Tariff Law on Cinematographic Films, art. 2, enacted Oct. 26, 1956.

[198] Ibid.

[199] 17 U.S.C. §101.

[200] Ibid.

[201] Schwartz memorandum, p. 6.

[202] Ibid., p. 7.

[203] Ibid.

[204] Ibid.

[205] For example, in 1989 there were 287 cases settled by arbitration and 46 judicial review cases filed regarding copyright infringement. In the first 2 months of 1990, 55 cases were settled in proceedings before the Copyright Office and 4 were initiated in the courts. Figures provided by Direccion General Del Derecho De Author, Feb. 16, 1990.

in Mexico of U.S. television signals.[206] Erik Smith of the International Intellectual Property Alliance estimates that in 1989, Alliance members lost $167 million due to copyright piracy.[207]

Criminal enforcement of copyright laws.—Violations of the Mexican copyright statute are crimes. As discussed earlier, the monetary penalties provided are very low ($4.00). Moreover, certain Mexican and U.S. copyright protected industries assert that the incarceration penalties in the statute—between 1 month and 6 years for different violations[208]—are too minimal to provide an effective deterrent to piracy.[209] Mexican attorneys and government officials indicate that in the past several years only a few pirates were imprisoned pursuant to this statute.[210] Mexican and U.S. copyright based industries charge that most pirates do not go to prison, but pay bonds or small fines that commute the prison terms.[211] No statistics are available enumerating how many persons were imprisoned and for how long pursuant to this statute.[212]

Recent action by private industry groups, including the simultaneous filing of charges through the Mexican Copyright Office and the Federal Police has resulted in seizures and confiscations of a wide range of pirated material.[213] Also, criminal piracy enforcement actions have recently been combined with tax evasion prosecutions for which pirates have been imprisoned.[214]

However, representatives from the International Intellectual Property Alliance point to their substantial piracy based losses—estimated at $167 million during 1989—as proof of their claim that enforcement is inadequate.[215] The Recording Industry Association of America, Inc. describes enforcement as "non-existent" in the area of records and cassette tapes.[216] It concludes that the lack of adequate enforcement is based in part on the lack of adequate penal sanctions:

> The combination of the lack of an express statutory right and the absence of an adequate enforcement regime (based in part on the lack of adequate penal sanctions) has created great obstacles to the legitimate trade in sound recordings. Pirates can operate at great profit, and without fear of any negative consequences. . . .[217]

Recording industry representatives claim that until "producers" are given explicit copyright protection, there is "nothing to enforce" and thus no actions for enforcement can begin.[218]

Civil Enforcement of Copyright Laws

For those persons or entities specifically covered by the Mexican copyright law, Articles 145-56 provide for the initiation of a civil action to recover damages and injunctive relief against piracy. Article 156 also provides for the recovery of civil penalties of no less than 40 percent of the value of each copy of pirated material sold.

Groups such as the U.S. and Mexican recording industry state that the copyright law does not protect "producers" of records, tapes and movies.[219] At present, the right of such producers to pursue civil actions against pirates is in doubt and no legislation is planned that would give these groups the explicit right to sue.[220] However, Televisa indicates that it initiated a number of civil actions against pirates over the past several years using the Copyright statute. Televisa brought these suits ostensibly as a Mexican producer of television programming.[221] Televisa has settled certain of these cases by obtaining private agreements from the pirates to stop the activity, pay damages and, even in some cases become the licensee of the copyrighted material or product.[222] To date, the Mexican Copyright office reports that no U.S. company has initiated a civil suit under these provisions to collect damages for piracy.[223]

Resolution of instituted cases has been relatively rapid. Pursuant to the Mexican copyright statute, a mandatory settlement conference is held by the Copyright office prior to the filing of a civil case. These conferences have been successful in resolving approximately 90 percent of the copyright infringement cases.[224]

Piracy of records and tapes.—U.S. industry representatives assert that piracy of records and audio cassettes has for many years represented a major problem in Mexico. The latest piracy statistics available from the Mexican association of phonogram producers, show that the rate for both LPs and for cassettes is over 50 percent[225]

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[206] Bennett, p. 67.
[207] Supplemental Submission of Erik Smith to the U.S. International Trade Commission, Dec. 22, 1989.
[208] Art. 135-143 of the Copyright Act.
[209] Interviews with U.S. attorney and Mexicn business representative.
[210] Interviews with Mexican government and legal representatives. Telephone interview with Mexican attorney.
[211] Interview with Mexican business representative. Telephone interview with U.S. attorney.
[212] Interviews with Mexican business and legal representative.
[213] Interviews with Mexican attorneys.
[214] Ibid.
[215] Supplemental Submission of Erik Smith before the USITC, Dec. 22, 1989, p. 2.
[216] Letter of Neil Turkewitz to Walter Bastian, Nov. 2, 1989.

[217] Letter from Jason S. Berman, President of Recording Industry Association of America, Inc., to Ambassador Carla Hills, Jan. 26, 1990, p. 2.
[218] Telephone interview with U.S. attorney. See the discussion of sound recordings and the statutory changes to criminal penalties set forth above.
[219] Ibid.
[220] Ibid. Interview with Mexican Government official.
[221] Interview with Mexican business representative.
[222] Ibid.
[223] Interview with Mexican government official.
[224] Ibid. Interview with Mexican attorney.
[225] Telephone interview with U.S. attorney.

The Recording Industry Association of America estimates that the members of its organization lost approximately $75 million in sales to pirates in 1989.[226]

According to U.S. industry sources, pirated product is sold openly both in record shops and by itinerant sellers on the street.[227] U.S. and Mexican recording industry sources state that little anti-piracy action can be taken before legislation is passed making it a crime to pirate records and tapes without the producer's consent.[228] Substantial funds are allocated by Mexican and U.S. recording industry to undertake an aggressive anti-piracy campaign as soon as this legislation is passed.[229]

Video tape piracy.—Mexican private industry, Copyright officials, and the Federal Prosecutors Office have made headway in attacking piracy of video tapes during the past several years.[230] In 1986, it was estimated that the percentage of pirated videotapes being sold in Mexico was almost 100 percent of the market.[231] After 3 years of an aggressive anti-piracy campaign initiated by Mexican groups including Televisa, the major private television company and other groups effected by piracy, this piracy rate has fallen to an estimated 40 percent.[232] U.S. industry sources acknowledge that the piracy rate has dropped to approximately 50 percent, which they state is still much too high.[233]

Mexican copyright officials indicate that they intend to continue aggressive enforcement of video tape piracy.[234] Private industry representatives indicate they will continue to press for additional enforcement and are confident that the piracy rate could be further reduced by the enactment of significant criminal penalties.[235]

[226] Ibid.
[227] Ibid.
[228] Ibid.
[229] Ibid.
[230] A major amount of the piracy centered around the proliferation of "video clubs," in which consumers organize to purchase and distribute among themselves allegedly lawful copies of video product. Mexican industry representatives confirmed that the video clubs are involved in piracy, as purchasers of illegal materials and as copiers. Interview with Mexican industry representative.
[231] Interview with Mexican business representative.
[232] Ibid. According to the Mexican business representative, Televisa, along with the Mexican Motion Picture Association and the All Authors society in Mexico, have pooled their resources and hired three full time investigators who travel throughout Mexico in search of pirates. Upon location of the pirate activities, these investigators contact a local lawyer who builds a case against the pirates. The Copyright officials and local Federal Police are contacted and raids are conducted on the suspected premises. After such seizure, the Televisa group has been successful at settling cases with the pirates.
[233] Testimony of Erik Smith, tr., p. 13.
[234] Interview with Mexican Government official.
[235] Interviews with Mexican business representative and U.S. attorney.

Parallel imports.—A major problem identified by the U.S. recording industry is the problem of parallel importation. According to these industry sources, large numbers of lawfully produced copies of recordings licensed for Mexican distribution are being imported illegally into the United States, diminishing the value of distribution rights for the U.S. market.[236] In addition, it is alleged by U.S. industry sources that much of the pirate product manufactured in Mexico without a license finds its way into the U.S. and is sold at very low prices to the detriment of legitimate U.S. record distributors.[237]

U.S. industry representatives state that Mexican customs officials are not stopping the flow of these recordings, which they state are probably in violation of Mexican law by misrepresenting the contents of the shipment at the border.[238] One alternative, according to practitioners, would be for U.S. copyright owners to register all of their works at the U.S. border at $190 per copyright.[239] This recordation would alert the U.S. Customs Service that the illegal or even legal Mexican licensed recordings are not licensed for sale in the United States.[240]

Trade Secrets

A "trade secret" has been defined as "proprietary technical information used in industry or commerce."[241] Trade secret protection can encompass a broad scope of manufacturing processes, testing, materials and other know-how making up the most valuable resources a company has to license.[242] Mexican and U.S. industry sources indicate that trade secret protection is vital to the protection of new technology.[243] In many situations it is essential for protection during the time (often months)

[236] Schwartz memorandum, p. 3.
[237] Ibid. The Recording Industry Association of America, Inc. also made available to USITC staff a number of letters from record distributors in Texas, California, New York and Florida complaining about sales and imports of pirated Latin music manufactured in Mexico and sold in the United States.
[238] Schwartz memorandum, p. 3.
[239] Ibid.
[240] Ibid.
[241] Robert Sherwood, "Mexico's Intellectual Property System: Desirable Improvements," Mar. 23, 1989, p. 3.
[242] Telephone interview with U.S. attorney and business representative.
[243] Interview with Mexican business representative. Testimony of Hope Camp, tr., pp. 30-31. A Senior Counsel and a major U.S. Corporation representative stated that trade secret protection was crucial in determining in what foreign markets the company makes investments. Telephone interview with U.S. attorney and business representative. A recent informal survey indicated that between 60 percent and 80 percent or more of all technology transferred from one person to another within a business relies on the trade secret. Sherwood, p. 5.

between the moment an invention is made and the moment a patent application is filed.[244]

Prior to the 1987 Amendments to the LIT, Mexican law provided no trade secret protection. The 1987 Amendments made appropriation of trade secrets a crime, providing:

> The use, for one's own purpose and with the intent to obtain a monetary gain, or the disclosure of, an industrial secret or invention which licensing is being processed and that is known or has come to be known as a consequence of one's employment or position, or through any other illicit means.[245]

Mexican and U.S. legal experts assert that the problem with this statute is that it establishes a very difficult burden of proof to attack third party use of trade secrets.[246] These experts claim that it is difficult to prove that a third party purchaser of a trade secret obtained it through "illicit means" or had knowledge that the secret was stolen.[247]

Enforcement of trade secret rights under Article 210 of the LIT is described as cumbersome by Mexican and U.S. lawyers.[248] Like patent and trademark crimes, an aggrieved party can seek enforcement of trade secret rights only by first filing a claim with MPTO for a determination of whether the trade secret has been violated.[249] Only after MPTO makes an affirmative determination of trade secret violation can the Federal Prosecutor initiate criminal action against the employee who stole the trade secret.[250] In addition, the 1987 amendments permit the filing of a civil cause of action for violation of trade secrets.[251] However, legal experts assert that there is no effective right to stop the use of the trade secret by third parties or even the former employee prior to the completion of a civil trial.[252]

The Mexican government moved to provide additional trade secret protection in January 1990 with the promulgation of regulations liberalizing the registration of license agreements between foreign companies and Mexican subsidiaries. Under the old law, a license agreement would not be approved by SECOFI if the foreign company required the maintenance of trade secrets by the employees of the Mexican licensee for more than ten years.[253] The new regulations provide that the confidentiality term of an employment contract may be extended liberally for additional ten year terms under a number of circumstances.[254]

U.S. and Mexican business and legal experts stress the importance of these new regulations because many Mexican licensee companies of U.S. technology protect trade secrets by entering into restrictive employment contracts.[255] Mexican legal experts indicate that these employment contracts by former employees using trade secrets may be enforced by Mexican courts.[256] No reported court decisions exist on this issue and strong labor laws preventing restrictions on the right to work may make certain contracts unenforceable.[257]

Mexican businessmen and lawyers identify a major problem to be the inability to obtain preliminary relief under Mexican law to stop trade secret violations prior to the completion of a legal action.[258] Even where a civil suit is brought on a breach of employment contract to protect trade secrets, there is little ability to obtain a preliminary injunction, according to those interviewed.[259] Mexican industry has recommended to MPTO that legislation be

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244 Ibid. The interconnectedness of trade secrecy and patent protection was highlighted by Hope Camp in his prepared testimony before the USITC, p. 6.

> [I]f the patented invention is a cornerstone of a new product such as a new metal alloy, it may not be safe to develop that new invention commercially where there is a lack of trade secret protection which exposes to piracy the proprietary manufacturing processes necessary for commercial development.

245 Art. 210, §II of the LIT, as amended 1987.

246 Interview with Mexican attorney. Telephone interview with U.S. attorney.

247 Ibid.

248 Ibid.

249 Telephone interview with Mexican attorney.

250 Ibid. Testimony of Hope Camp, tr., p. 34.

251 Ibid. As with patents and trademarks, however, this civil lawsuit can only be initiated after MPTO has made an affirmative finding of violation of trade secrets and Amparo appeals are concluded.

252 Ibid. Telephone interview with U.S. attorney.

253 Art. 15 § XI, and 16 § III of the Law on Control and Registration of the Transfer of Technology and the Use and Working of Patents and Trademarks. See also Comments by Whirlpool Corporation, submitted to the USITC, Jan. 5, 1990, p. 8.

254 Thus, the regulations at article 46(III) provide for the extension of the confidentiality term for up to an additional 10 years every time that the technology provider (U.S. company) supplies the local Mexican company with improvements to the licensed technology. The regulations also provide other means to protect trade secrets: (1) a license can be registered even if the foreign concern requires that any innovations made by a local Mexican company, which are based on the original trade secret technology, will remain confidential as defined by the parties to the agreement [art. 37 § III]; and (2) foreign companies may require the local Mexican companies to purchase supplies from particular sources where the foreign company demonstrates that there is a risk of disclosing the trade secret in an indirect manner to a third party [art.38 § IV].

255 Interviews with Mexican business and legal representatives. Telephone interview with U.S. attorney.

256 Interviews with Mexican business and legal representatives.

257 Interview with Mexican business and representative; Sherwood, p. 4.

258 Interviews with Mexican business and legal representatives; Testimony of Hope Camp, tr., p. 35.

259 Art. 384 of The Federal Code Of Civil Procedure provides for the maintenance of the status quo: "[b]efore the trial, or during its prosecution, all necessary measures to maintain things as they are can be ordered." Mexican attorneys indicated that this provision would not be effective when used by the infringed party to obtain an order enjoining the use of a trade secret. Indeed, by the time the breach of contract or infringement civil case is filed, the way "things as they are" is such that the trade secret is being used to the detriment of the original employer. This trade secret appropriation is certainly not what the party initiating the suit wants to maintain.

introduced which would provide for immediate relief in the form of an injunction.[260]

On January 22, 1990, the Government of Mexico announced its intention to introduce legislation to provided strengthened protection of trade secrets:

> Trade secret protection will be strengthened, with adequate definitions of industrial and commercial secrets and foreseeing means for their defense against unfair competition.[261]

[260] Interview with Mexican business representative. This representative indicated that part of the proposals for trade secret reform which his company submitted to MPTO includes the right to obtain preliminary injunctive relief to protect companies from the use of trade secrets pending the resolution of litigation; a process which can take a number of years. Art. 223 of the LIT could be amended to provide that courts may order any party not to use or disclose secret information which it has no right to obtain or disclose. Interview with Mexican attorney.

Legislation to be introduced will probably define trade secrets as they are currently defined under U.S. state law.[262] U.S. and Mexican legal and business representatives have expressed the hope that this legislation will include provisions (1) broadly defining trade secrets, (2) providing for trade secret protection against third-party use without consent of the owner of the trade secret, and (3) a mechanism to provide rapid preliminary relief to stop the use of the trade secret pending resolution of legal action.[263] The trade secret legislation is expected to be presented to the Mexican Congress in the latter half of 1990.[264]

[261] Art. 140, National Program.
[262] Interview with Mexican government official.
[263] Interviews with Mexican business and legal representatives. Telephone interview with U.S. attorney.
[264] Ibid.

APPENDIX A
LETTER OF REQUEST FROM HOUSE COMMITTEE ON WAYS AND MEANS

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COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

1532

October 12, 1989

The Honorable Anne E. Brunsdale
Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Madam Chairman:

In recent years, the Government of Mexico has undertaken a number of bold steps which have moved Mexico in the direction of greater liberalization of its international trade and investment regime. Mexico has joined the General Agreement on Tariffs and Trade (GATT), entered into a trade and investment framework agreement with the United States, cut tariffs, and proposed other measures designed to open the Mexican market further to foreign exporters and investors.

The steps being taken by the Mexican Government under the leadership of President Carlos Salinas de Gortari are most welcome and have important implications, not just for Mexico but for the United States as well. Given the already strong trade and investment ties between the United States and Mexico, the United States has a great interest in seeing the economic reforms in that country succeed. It would certainly be our hope that these reforms will help bring about a healthier, more competitive economy in Mexico.

It is important that U.S. business leaders and policymakers have a better understanding of the scope of the changes being undertaken by the Mexican leadership and their implications for future U.S.-Mexican economic relations. Accordingly, on behalf of the Committee on Ways and Means, I am writing to request that you conduct a fact-finding study, under section 332(g) of the Tariff Act of 1930, of Mexico's recent trade and investment reforms; and that you also explore experts' views on prospects for future U.S.-Mexican trade relations.

We would like the study to provide a comprehensive review of Mexico's recent trade and investment liberalization measures (including GATT membership) and describe, to the extent possible, their implications for U.S. exporters and investors. Some discussion of Mexico's role in and positions taken in the Uruguay Round of multilateral trade negotiations now underway also would be useful. We would appreciate receiving this phase of the study within six months of receipt of this letter.

A second phase of the study should examine experts' views on prospects for future U.S.-Mexican trade relations. This survey should explore such proposals as a free trade area; an enhanced dispute settlement mechanism; possible sectorial approaches; the recently established Framework of Understanding; and other options for enhanced bilateral trade relations. The Committee hopes to receive this phase of the study within twelve months of receipt of this letter.

Thank you for your cooperation. Please let me know if you have any questions about the proposed study.

Sincerely yours,

Dan Rostenkowski
Chairman

cc: The Honorable Bill Archer

APPENDIX B
FEDERAL REGISTER NOTICES

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures and Prospects for Future U.S.-Mexican Trade Relations

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of hearing, and request for comments.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202-252-1263), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332-282 following receipt of a letter on October 18, 1989 from the House Committee on Ways and Means requesting the Commission to conduct a two-phase investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) of Mexico's recent trade and investment reforms. As requested by the Committee, phase I of the investigation will provide a comprehensive review of recent trade and investment liberalization measures undertaken by Mexico and, to the extent possible, a description of the implications for U.S. exporters and investors. Some discussion of Mexico's role in and positions taken in the Uruguay Round of multilateral trade negotiations will also be provided.

Phase II will provide a summary of the views of recognized authorities on prospects for future U.S.-Mexican trade relations. As requested by the Committee, this survey will explore such proposals as a free trade area, an enhanced dispute settlement mechanism, possible sectorial approaches, the recently established Framework of Understanding, and other options for enhanced bilateral trade relations.

Phase I of the investigation will be submitted to the Committee no later than six months after receipt of the letter; phase II will be submitted to the Committee no later than 6 months after completion of phase I.

Public Hearing

A public hearing in connection with phase I of this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on December 4, 1989. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Commission, 500 E Street, SW, Washington, DC 20436, no later than noon, November 27, 1989. The deadline for filing prehearing briefs (original and 14 copies) is November 27, 1989. Post hearing briefs are due on December 18, 1989. Notice of a separate public hearing for phase II of this investigation will be announced in the **Federal Register** at a later date.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the phase I report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than January 8, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

By Order of the Commission.

Issued: November 9, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-26980 Filed 11-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures and Prospects for Future U.S.-Mexican Trade Relations, Phase I, Commission Determination To Change Date Of Hearing

AGENCY: United States International Trade Commission.

ACTION: Change in hearing date.

SUMMARY: The Commission has determined to change the date of its hearing in connection with the above-captioned investigation to 9:30 a.m., December 5, 1989. The hearing will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, November 27, 1989. The deadline for filing prehearing briefs (original and 14 copies) is November 27, 1989. Post hearing briefs are due on December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202)-252-1263, Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: November 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-27542 Filed 11-22-89; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX C
HEARING PARTICIPANTS

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	REVIEW OF MEXICO'S RECENT TRADE AND INVESTMENT LIBERALIZATION MEASURES AND PROSPECTS FOR FUTURE U.S.-MEXICAN TRADE RELATIONS
Inv. No.:	332-282
Date and Time:	December 5, 1989 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W., in Washington, D.C.

WITNESS AND ORGANIZATION:

International Intellectual Property Alliance
Washington, D.C.
(Representing eight trade organizations for copyright protection)

Eric H. Smith, General Counsel

Camp & Einstein, P.C.
San Antonio, Texas
On behalf of

Ad Hoc Group on Mexican Intellectual Property Matters
(Representing 17 Fortune 500 companies)

Hope H. Camp, Jr.)--OF COUNSEL

United States-Mexico Chamber of Commerce
Washington, D.C.

Gerard J. Van Heuven, Executive Vice President

WITNESS AND ORGANIZATION:

Katten Muchin & Zavis
Chicago, Illinois
On behalf of

Baxter Healthcare Corporation, Convertors Operations Division

W. E. Riddle, Vice President Manufacturing, Operating Room Division

Mark Zolno)--OF COUNSEL

American Trucking Associations (ATA)
Alexandria, Virginia

Lana Batts, Senior Vice President

Kenneth Siegel, Counsel

Embassy of Mexico (Trade Office)
Washington, D.C.

Miguel A. Leaman, Minister for Trade Affairs

Manuel Suarez-mier, Minister for Economics

American Chamber of Commerce of Mexico, A.C.
Cuauhtemoc, Mexico

Stephen Lande, Advisor, Manchester Trade

APPENDIX D
CLASSIFIED ACTIVITIES (I.E., RESTRICTED ACTIVITIES) FOR THE PURPOSE OF IMPLEMENTING MAY 1989 FOREIGN INVESTMENT REGULATIONS

Classified activities for the purpose of implementing Mexico's May 1989 foreign investment regulations[1]

Field	*Class*	*Investment Regime*[2]
1111	AGRICULTURE	6
1112	LIVESTOCK AND GAME	6
1200	FORESTRY AND LUMBER ACTIVITIES	
	120011 ... Forestry	2
	120012 ... Exploitation of Forest Nuseries	2
	120030 ... Collection of Forest Products	6
	120040 ... Felling Trees	6
1300	FISHING A/	
	130011 ... Fishing on the High Seas	5
	130012 ... Coastal Fishing	5
	130013 ... Fresh Water Fishing	5
	130020 ... Growth of Species	5
2100	CARBON EXPLOITATION	
	210000 ... Exploitation and/or Profitable Use of the Mineral Carbon	3
2200	EXTRACTION OF PETROLEUM AND NATURAL GAS	1
2310	EXTRACTION AND/OR PROFITABLE USE OF MINERALS CONTAINING IRON	3
2320	EXTRACTION AND/OR PROFITABLE USE OF MINERALS NOT CONTAINING IRON	
	232001 ... Extraction and/or Profitable Use of Minerals Containing Gold, Silver and other Precious Minerals and Metals	5
	232002 ... Extraction and/or Profitable Use of Mercury and Antimony	5
	232003 ... Extraction and/or Profitable Use of Industrial Minerals Containing Lead and Zinc	5
	232004 ... Extraction and/or Profitable Use of Minerals Containing Copper	5
	232005 ... Extraction and/or Profitable Use of Uranium and Radioactive Minerals	1
	232006 ... Extraction and/or Profitable Use of Other Metallic Minerals Not Containing Iron	5
2910	EXTRACTION AND/OR PROFITABLE USE OF ROCKS, CLAYS AND SAND	
	291003 ... Exploitation and/or Profitable Use of Feldspar	5
	291006 ... Exploitation of Gypsum	5
2920	EXTRACTION AND/OR PROFITABLE USE OF OTHER NON-METALLIC MINERALS	
	292001 ... Extraction and/or Profitable Use of Barium Oxide	5
	292002 ... Extraction and/or Profitable Use of Phosphoric rock	3
	292003 ... Extraction and/or Profitable Use of Fluorite	5
	292004 ... Extraction of Sulfur	3
	292005 ... Extraction of Other Minerals in Order To Obtain Chemicals	5
	292006 ... Extraction and/or Profitable Use of Salt	5
	292007 ... Extraction and/or Profitable Use of Graphite	5
	292008 ... Extraction and/or Profitable Use of other Non-Metallic Minerals	5
3420	PRINTING, EDITING AND ASSOCIATED INDUSTRIES B/	
	342001 ... Editing Newspapers and Magazines	6
3511	BASIC PETROCHEMICALS	
	351100 ... Manufacturing Basic Petrochemical Products	1
3522	MANUFACTURE OF OTHER CHEMICAL SUBSTANCES AND PRODUCTS	
	352236 ... Manufacture of Artificial Explosives and Fireworks	5
	352241 ... Manufacture of Secondary Petrochemical Products	4
3530	PETROLEUM REFINING	1
3540	COKE INDUSTRY, INCLUDING OTHER DERIVATIVES OF CARBON AND PETROLEUM C/	
	354001 ... Manufacture of Coke and Other Carbon Derivatives	6
3720	BASIC NON-IRON METAL INDUSTRIES INCLUDING THE TREATMENT OF NUCLEAR FUELS	
	372006 ... Treatment of Uranium and Nuclear Fuels	1
3822	MANUFACTURE, REPAIR AND/OR ASSEMBLY OF MACHINERY AND EQUIPMENT FOR GENERAL USES WITH OR WITHOUT AN INTEGRAL ELECTRIC MOTOR, INCLUDING WEAPONS	
	382208 ... Manufacture of Firearms and Cartridges	5

[1] Extract from the Mexican Catalog of Economic Activities and Products (MCAP).
[2] A legend explaining the investment regimes follows this table.

Classified activities for the purpose of implementing Mexico's May 1989 foreign investment regulations[1]—*Continued*

Field	*Class*	*Investment Regime*[2]
3831	MANUFACTURE AND/OR ASSEMBLY OF MACHINERY, EQUIPMENT AND ELECTRICAL ACCESSORIES INCLUDING THOSE FOR THE GENERATION OF ELECTRICAL ENERGY	
	383103 ... Manufacture of Parts and Accessories for Electrical Automotive Systems	4
3841	AUTOMOTIVE INDUSTRY	
	384121 ... Manufacture and assembly of Car and Truck Bodies and Trailers	4
	384122 ... Manufacture of Car and Truck Motors and their Parts	4
	384123 ... Manufacture of Car and Truck Transmission System Parts	4
	384124 ... Manufacture of Car and Truck Suspension System Parts	4
	384125 ... Manufacture of Car and Truck Brake System Parts and Accessories	4
	384126 ... Manufacture of Other Car and Truck Parts and Accessories	4
3900	OTHER MANUFACTURING INDUSTRIES	
	390002 ... Minting Coins	1
4100	ELECTRICITY	
	410001 ... Generation and Transmission of Electrical Energy	1
	410002 ... Supply of Electrical Energy	1
5011	CONSTRUCTION	
	501101 ... Residential or Housing Construction	6
	501102 ... Non-residential Construction	6
5012	CONSTRUCTION OF URBANIZATION PROJECTS	6
5013	INDUSTRIAL CONSTRUCTION AND INSTALLATION	
	501311 ... Construction of Industrial Plants	6
	501312 ... Construction of Electricity Generation Plants	6
	501321 ... Construction of the Maintenance of Electricity Conduction Lines and Networks	6
	501322 ... Construction of the Means to Conduct Petroleum and Its Derivatives	6
5014	OTHER CONSTRUCTION	
	501411 ... Mounting or Installing Concrete Structure	6
	501412 ... Mounting or Installing Metallic Structure	6
	501421 ... Marine and River Works	6
	501422 ... Construction of Routes For Land Transportation	6
	501423 ... Road Construction	6
5020	INSTALLATIONS	
	502001 ... Hydraulic and Sanitation Installations in Building	6
	502002 ... Electrical Installations in Buildings	6
	502003 ... Telecommunications Installations	6
	502004 ... Other Special Installations	6
5030	SPECIAL WORKS	
	503001 ... Earth Movement	6
	503002 ... Cement Works	6
	503003 ... Underground Excavations	6
	503004 ... Underwater Works	6
	503005 ... Installation of Signs and Warnings	6
	503006 ... Demolition	6
	503007 ... Construction of Water Purification or Treatment Plants	6
	503008 ... Drilling Petroleum and Gas Wells	6
	503009 ... Drilling Water Wells	6
	503010 ... Construction Works Not Mentioned Above	6
6230	SALES OF NON-FOOD PRODUCTS TO INDIVIDUALS IN SPECIALIZED ESTABLISHMENTS	
	623050 ... Specialized Sales of Liquid Gas Fuel	2
	623087 ... Specialized Sales of Firearms, Cartridges and Ammunition	5
7111	RAILWAY TRANSPORTATION	
	711101 ... Railway Transportation Service	1
7112	AUTO-FREIGHT TRANSPORTATION	
	711201 ... Transportation Services For Construction Materials	2
	711202 ... Moving Services	2
	711203 ... Other Specialized Auto-freight Services	2
	711204 ... Auto-freight Services in General	2

[1] Extract from the Mexican Catalog of Economic Activities and Products (MCAP).
[2] A legend explaining the investment regimes follows this table.

Classified activities for the purpose of implementing Mexico's May 1989 foreign investment regulations[1]—Continued

Field	*Class*	*Investment Regime*[2]
7113	OTHER LAND PASSENGER TRANSPORTATION INCLUDING AUTOMOBILE RENTAL	
	711311 ... Foreign Passenger Transportation Service by Bus	2
	711312 ... Urban and Suburban Passenger Transportation Service By Bus	2
	711315 ... Collective Automobile Transportation Service	2
	711316 ... Established Route Automobile Transportation Service	2
	711317 ... Automobile Transportation Service From a Specific Station	2
	711318 ... School and Tourist Transportation Service	2
7120	WATER TRANSPORTATION	
	712011 ... Maritime Transportation Service on the High Seas	6
	712012 ... Coastal Maritime Transportation Service	2
	712013 ... High Seas and Coastal Towing Service	2
	712021 ... River and Lake Transportation Service	5
	712022 ... Internal Port Transportation Service	5
	712023 ... Tourist Boat Rental Service	6
7130	AIR TRANSPORTATION	
	713001 ... Transportation Service on Mexican Registry Airplanes	2
	713002 ... Airtaxi Transportation Service	2
7200	COMMUNICATIONS (EXCLUDING SERVICES RENDERED BY THE STATE)	
	720003 ... Telephone Service	5
	720005 ... Telegraph Service	1
	720006 ... Other Telecommunications Service	5
8110	CREDIT INSTITUTION, BANKING AND AUXILIARY CREDIT SERVICES	
	811010 ... Central Banking	1
	811021 ... Development Banking	1
	811030 ... Multiple Banking (Commercial)	1
	811022 ... Funds and Financial Trusts	1
	811041 ... Credit Unions	2
	811042 ... General Deposit Warehouses	2
	811043 ... Financial Rentals	5
	811044 ... Money Exchanges	2
	811045 ... Financial Consulting, Development and Commissions	2
	811046 ... Non-banking Services Institutions that grant loans	2
	811047 ... Other credit institutions	2
8120	INSTITUTIONAL FINANCIAL SERVICES FOR THE STOCK MARKET	
	812001 ... Stock brokerage services	2
	812002 ... Investment Company Services D/	6
	812003 ... Services of Companies Operating Investment Companies D/	6
	812004 ... Stock Market Services	2
8130	INSURANCE AND BOND SERVICE INSTITUTIONS	
	813001 ... Bond Service Institutions	2
	813002 ... Insurance Service Institutions	2[3]
	813003 ... Independent Pension Fund Service	2
9211	EDUCATIONAL SERVICES FOR THE PRIVATE SECTOR	
	921101 ... Preschool Private Educational Service	6
	921102 ... Primary School Private Educational Services	6
	921103 ... Secondary School Private Educational Services	6
	921104 ... Middle School Private Educational Services	6
	921105 ... High School Private Educational Services	6
	921106 Private Education Services that Combine Preschool, Primary, Secondary, Middle and High School Instruction	6
	921107 ... Sales and Language Courses Services	6
	921108 ... Technical Occupational and Artesanal Training Services	6
	921109 ... Music, Dance and Other Special Private Instruction Services	6
	921111 ... Private Special Education Services	6
9411	ENTERTAINMENT SERVICES RELATED WITH CINEMATOGRAPHY, THEATER, RADIO AND TELEVISION PERFORMED BY THE PRIVATE SECTOR	
	941104 ... Private Transmission of Radio Programs	2
	941105 ... Transmission and Repetition of Television Programs	2
9510	PERFORMING PROFESSIONAL, TECHNICAL AND SPECIALIZED SERVICES OTHER THAN AGRICULTURE E/	
	951001 ... Notary Public Services	2
	951002 ... Legal services	6
	951003 ... Accounting and Auditing Services	6
	951012 ... Customs Agency and Representation Services	2

[1] Extract from the Mexican Catalog of Economic Activities and Products (MCAP).
[2] A legend explaining the investment regimes follows this table.
[3] On January 3, 1990, insurance service institutions were reclassified as category 5 activities, allowing foreign investment up to 49 percent.

Classified activities for the purpose of implementing Mexico's May 1989 foreign investment regulations[1]—*COntinued*

Field	*Class*	*Investment Regime[2]*
9720	CONSTRUCTION RELATED SERVICES	6
9731	LAND TRANSPORTATION RELATED SERVICES	
	973101 ... Administration Services for Passenger Bus Stations and Auxiliary Services	6
	973102 ... Administration Services for Buses, Bridges and Auxiliary Services	6
	973105 ... Vehicle Towing Services	6
	973106 ... Other Services Related With Land Transportation Not Mentioned Above	6
9731	WATER TRANSPORTATION RELATED SERVICES	
	973203 ... Administration of Maritime, Lake and River Ports	2
9733	AIR TRANSPORTATION RELATED SERVICES	
	973301 ... Air Navigation Services	6
	973302 ... Airport and Heliport Administration Services	6
9740	SERVICES RELATED WITH FINANCIAL, INSURANCE AND BOND INSTITUTIONS	
	974011 ... Investment and Value Appraisal Services	6
	974012 ... Insurance and Bond Negotiation and Agent Services	6
	974013 ... Pension Consultation Services	6
	974021 ... Services of Representative Offices of Foreign Financial Entities	6
	974022 ... Other Services Related With Insurance and Bond Financial Institutions Not Mentioned Above	6

[1] Extract from the Mexican Catalog of Economic Activities and Products (MCAP).
[2] A legend explaining the investment regimes is below.

Investment regimes for classified economic activities:

1: Activities exclusively reserved to the Mexican state.
2: Activities reserved to Mexicans or Mexican companies with an exclusion-of-foreigners clause.
3: Activities subject to specific regulation in which foreign investment is permitted in up to 34 percent of the capital stock of the companies.
4: Activities subject to specific regulation in which foreign investment is permitted in up to 40 percent of the capital stock of the companies.
5: Activities subject to specific regulation in which foreign investment is permitted in up to 49 percent of the capital stock of the companies.
6: Prior approval by the Mexican Foreign Investment Commission is required for foreign investment to hold a majority interest in these activities.
A: Excluded from this is the activities of exploitation of species reserved to fishing cooperatives. (As of December 1989, this no longer applied.)
B: Excluded from this area is the print on of money bills and stamp seals, which is expressly reserved to the Mexican Government.
C: The production of basic oil reserved to the state is excluded from this field.
D: The companies of fixed rent investing and their operation companies will remain excluded for the Mexican Government and official foreign offices, financial entities of abroad or groups of foreign persons, either persons or companies.
E: Companies may permit foreign investment to hold the interest approved by the Mexican Foreign Investment Commission. Those who render personal services governed by the Law Regulating Article 3 of the Constitution with respect to professions must be Mexicans.

APPENDIX E
BASIC AND SECONDARY PETROCHEMICAL CATEGORIES RESULTING FROM MEXICO'S AUGUST 1989 RECLASSIFICATION

Basic and Secondary Petrochemical Categories resulting from Mexico's August 1989 Reclassification

Basic

Ammonia
Benzene
Butadiene
Carbon black
Dodecylbenzene
Ethane
Ethylene
Heptane
Hexane
Methanol
Methyl tertiary butyl ether
n-Paraffins
ortho-Xylene
para-Xylene
Pentane
Propylene
Propylene tetramer
Tert amyl methyl ether
Toluene
Xylenes

Secondary

2-ethyl hexanol
* Acetaldehyde
Acetic acid
Acetic anhydride
Acetylene
Acetone
Acetone cyanohydrin
* Acetonitrile
Acrolein
* Acrylonitrile
Acrylonitrile styrene
Acrylonitrile-butadiene-styrene
* alpha-Olefins
Ammonium nitrate
Ammonium phosphate
Ammonium sulfate
Aniline
Butyraldehyde
Caprolactam
Chlorobenzenes
Chloromethanes
Chloroprene
* Cumene
Cyanohydric acid
* Cyclohexane
Cyclohexanone
* Dichloroethane
Dimethyl Terephthalate
Ethanolamine
Ethyl chloride
Ethylamines
* Ethylbenzene
* Ethylene oxide
Ethylene-propylene copolymer
Ethylene-propylene elastomers
Formaldehyde
* High density polyethylene
* Internal olefins
Isobutanol
Isobutyraldehyde
Isoprene
* Isopropanol
* Low density polyethylene
Linear low density polyethylene
Maleic anhydride
Methyl methacrylate
Methylamines
N-Butanol
Nitrobenzene
Nitrotoluene
Oxo-alcohols
Paraformaldehyde
Pentaerythritol
Phenol
Phthalic anhydride
Polybutadiene
Polypropylene
Propylene oxide
* Styrene
Styrene-butadiene oil
Terephthalic acid
Urea
Vinyl acetate monomer
* Vinyl chloride

*Reclassified from basic to secondary.

Source: *Chemical Week*, Aug. 30, 1989, p. 25.

APPENDIX F
DEFINITION OF INTELLECTUAL PROPERTY TERMS

Definition of Intellectual Property Terms

The following definitions of intellectual property are provided for purposes of background information only. They are not intended to represent the ideal intellectual property system, but rather to provide a common baseline for comparison.

Definitions of Intellectual Property

The intellectual property of concern for the purposes of this investigation were copyrights, patents and trademarks, trade secrets, and to a lesser extent, semiconductor mask works and proprietary technical data. Although U.S. law was of primary concern in the primary comparison analysis, it is important to note that other intellectual property protection arenas comprise an important part of any comparison of Mexican intellectual property laws with those outside Mexico.[1]

Patent

A patent is a grant issued by a national government conferring the right to exclude others from making, using, or selling the invention within the national territory.[2] Also included are lesser forms of protection such as certificates of invention. Patents may be granted for new and useful products and processes for the manufacture of new or existing products, as well as for methods of use of new or existing products. Patent violations are referred to as patent infringement or piracy.

Copyright

A copyright is a form of protection provided by national governments to authors of original works of authorship including literary, dramatic, musical, artistic, and certain other intellectual works.[3] The owner of a copyright has the exclusive right to:

1. Reproduce the copyrighted work in copies or phonorecords.
2. Prepare derivative works based upon the copyrighted work.
3. Distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending.
4. Perform the copyrighted work publicly, in the case of literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including individual themes of a motion picture or other audiovisual work.[4]

Copyright protects an author's creative work regardless of the format in which it is cast. Copyright violations are referred to as infringement or piracy.

Trademark

A trademark is any word, name, symbol, or device, or any combination thereof, adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.[5] Violations of trademark law consists of counterfeiting and other forms of infringement. Counterfeiting is the unauthorized use of a representation or copy of a registered trademark or service mark.[6] Other forms of infringement include the offering for sale, distribution, or advertising of goods or services by a copy or colorable imitation of a trademark or service mark so similar to that of another that deception or confusion is likely to result.

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[1] In any comparison one should include patent practice before the European Patent Office (EPO) and patent practice under the Patent Cooperation Treaty (PCT).
[2] See, 17 U.S.C. §102
[3] See, 17 U.S.C. §102.
[4] See, 17 U.S.C. §106.
[5] See, 14 U.S.C. §1127.
[6] A service mark is a mark or device used to identify a service, such as transportation or insurance, offered to customers.

Trade Secret

A trade secret is information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known, and not being readily ascertained by proper means by other persons with the ability to obtain economic value from its disclosure or use. The trade secret must be the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[7] Violations of trade secrets, referred to as misappropriation, are defined as follows:

1. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

2. Disclosure or use of a trade secret of another without the expressed or implied consent by a person who used improper means to acquire the trade secret; or at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret derived from or through a person who had used improper means to acquire it; or the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or before a material change in his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[8]

Improper means includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through whatever means.[9] Trade secrets as intellectual property may well be more important than patents in certain quickly evolving high technology areas in which product development tends to rapidly outpace the often lengthy patent application process.

Proprietary Technical Data

Proprietary technical data comprises data stated to a government agency in connection with the regulatory review of a produce, such as new pharmaceuticals or chemicals.

Typically Affected Industry Sectors

Certain industries and products are well known targets of counterfeiting, pirates, and other infringers of intellectual property.[10] Although not limited to consumer goods, counterfeiting activity is most prevalent in industries producing goods wherein a significant amount of the retail price is supported by a well known trademark, such as fashion and sporting wearing apparel and footwear, cosmetics, watches, jewelry, sporting goods, aftermarket automobile parts, liquors, tobacco products, and blank audio/video tapes.

Copyrights are most important in industries such as printing and publishing, broadcasting, computer software, entertainment, including motion pictures, music, and all audio and video recordings, as well as character licensing for fashion and fad goods. Piracy, particularly of audio and video tapes and computer software is probably the most easily accomplished large scale violation worldwide.

Patents are probably most important in technologically innovative industries such as aerospace, pharmaceuticals, agricultural chemicals, electronics, telecommunications, motor vehicles, and scientific and medical equipment sectors. However, in the most rapidly advancing areas where product lifecycles are often short-lived, trade secrets are of increased importance. Trade secrets are also important in the chemical area, wherein patent protection can be unreliable.

The semiconductor mask work category defines the industry benefitting from its protection. The industries most concerned with the protection of proprietary technical information required by governmental regulatory agencies are the chemical and pharmaceutical industries.

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[7] See, Uniform Trade Secrets Act, §1(4).
[8] Ibid., §1(2).
[9] Ibid., §1(1).
[10] The following discussion related to affected industry sectors is meant to be generic, i.e., intellectual operty rights violations in its broadest sense, not necassarily those which may or may not be present in Mexico.