Regulatory Reform in Mexico

Enhancing Market Openness through Regulatory Reform

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Mexico. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Mexico* published in 1999. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Denis Audet, of the Trade Directorate in OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Mexico. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Does the national regulatory system allow foreign enterprises to take full advantage of competitive global markets? Reducing regulatory barriers to trade and investment enables countries in an expanding global economy to benefit more fully from comparative advantage and innovation. This means that more market openness increases the benefits that consumers can draw from regulatory reform. Maintaining an open world trading system requires regulatory styles and content that promote global competition and economic integration, avoid trade disputes and improve trust and mutual confidence across borders.

Regulatory reforms were instrumental in the significant transition that Mexico has undergone in the last decade and a half moving away from an inward-oriented economy based on import-substitution policies towards a market-based open economy integrated into the world economy. Mexico's accession to the GATT in 1986 and negotiation of NAFTA in the early 90s have had profound and lasting influence on Mexican policy and regulatory formulation processes. Mexico's multilateral and regional commitments have effectively worked as policy anchors during the financial crisis of early 1995. Far from backtracking, an extended deregulation programme was launched in the aftermath of the crisis to improve and quicken Mexico's regulatory reform programme.

Extensive and transparent public consultations in the revision of all existing Federal regulations and the preparation of new regulations are carried out under the extended deregulation programme. The Internet is used for disseminating the whole range of Federal formalities and regulations and for soliciting comments on proposed new regulations. Mexico is also using modern electronic transmission systems for Customs procedures and government procurement, thereby improving the transparency of these procedures and facilitating transactions for foreign participants. The enhanced transparency in the elaboration process of Federal regulations acts as an important check and balance feature in this regulatory formulation process.

Ministries and Regulatory Agencies are now required to prepare "regulatory impact assessments" (RIAs) for new regulations having potential impact on business activity. With respect to the elaboration of official technical standards, the combined features of the openness of consultation process, the publication of draft standards and the public availability of respective RIAs altogether act to minimise potential incidences of regulatory capture by domestic groups.

While Mexico has made significant investment in setting up a comprehensive framework for carrying out regulatory reforms at the Federal level, this study identifies a number of policy options for pursuing reform from the perspective of market openness:

- *Continue to foster good regulatory practices already instituted in areas such as transparency; and make public through the Internet the RIAs prepared for proposed regulations*.
- *Take measures to ensure uniformity in the preparation of RIAs and in the implementation of regulatory requirements by all Federal and Regulatory Agencies.*
- *Complement the current sets of guiding principles for the preparation of regulatory impact assessment with the additional principle of "avoidance of unnecessary trade restrictiveness*".
- *Heighten awareness of and encourage respect for the OECD efficient regulation principles in state and local regulatory activities affecting international trade and investment.*
- *Intensify efforts to use existing international standards and to participate more actively in the development of internationally-harmonised standards as the basis of domestic regulations*.
- *Seek to ensure that bilateral or regional approaches to regulatory co-operation are designed and implemented in ways which will encourage broader multilateral application.*

1. MARKET OPENNESS AND REGULATION: THE POLICY ENVIRONMENT IN MEXICO

Mexico has undergone a significant transition in the last decade and a half moving away from an inward-oriented economy based on import-substitution policies towards a market-based open economy integrated into the world economy. The accession of Mexico to the GATT in 1986 consolidated key commitments in terms of transparency, non-discrimination and trade liberalisation. Other market-based reforms were also adopted as necessary complementary policies. Barriers to foreign investment were lifted, except in a few sectors reserved to the State, and a comprehensive programme of privatisation was implemented covering banks, airlines, steel, telephone services and ports.

An initial regulatory reform programme was launched in 1989 and orchestrated by the Economic Deregulation Unit (EDU), based in the Ministry for Trade and Industry "*Secretaria de Comercio y Fomento Industrial"* (SECOFI). The programme consisted of rationalising certain economy-wide regulatory requirements, including technical standards and general administrative procedures, in targeting economic sectors in which the benefits of deregulation would be greatest including tourism, railways, air transport, ports, land transport, petrochemicals, electricity, telecommunications, satellites, customs administration, foreign exchange, water supply, financial institutions, mining and fishing.

Efforts were concentrated on removing rent-generating restrictions and on eliminating bureaucratic red tape at the Federal level. An antitrust law was prepared to set the stage for improved domestic competitive conditions and resulted in the creation of the Federal Competition Commission in 1993. All these policy and regulatory reforms were considered necessary to create new and equitable market opportunities in order to accelerate the modernisation of the Mexican production capacity and to stimulate the growth of its economy.

The negotiation of the North American Free Trade Agreement (NAFTA) has had a profound influence on the Mexican policy formulation given the scope and pace of the policy reform involved. Under NAFTA, almost all trade in goods, including agricultural products, and services is subject to complete liberalisation over fixed time periods. A comprehensive set of domestic policies having trade-related dimensions was subject to specific disciplines and exchanged on a reciprocity basis in such areas as the transparency of domestic regulations, technical standards and certification procedures, investment, government procurement, intellectual property rights, customs procedures and a binding dispute settlement procedure.

With the experience gained in NAFTA, Mexico negotiated several other free trade agreements with Central and South American countries and is actively participating in multi-country trade initiatives in the context of the Asia-Pacific Economic Co-operation (APEC) and the Free Trade Area of the Americas (FTAA). Mexico's simple average tariff remained stable at about 13% between 1993 and 1997 but the weighted average tariff fell from 7.8% to 2.7% during the same period when the calculation is done on the basis of applied tariff rates which incorporate the effects of regional and unilateral tariff reductions.[1] Mexico has also extended, on a non-discriminatory basis, to all WTO Members the benefits of its free trade agreements in such areas as investment, customs procedures and intellectual property. Mexico wishes to continue to negotiate WTO-compatible regional free trade agreements with its trading partners and is interested in pursuing trade liberalisation at the multilateral level through a new round of comprehensive negotiations within the WTO.

With the financial crisis of early 1995, Mexico was confronted with difficult policy decisions, in many respect its WTO and NAFTA commitments have effectively worked as policy anchors. Far from backtracking, an extended deregulation programme was launched in the aftermath of the crisis to improve and quicken Mexico's regulatory reform programme. The privatisation programme was accelerated and the Mexican investment regime was further liberalised, opening up to foreign ownership sectors previously reserved to the State, such as railways, satellite communications, natural gas storage and distribution. A reform of the pension system was launched based on individual capitalisation accounts managed by the private sector in order to stimulate domestic saving, thereby reducing external exposure.

Recent economic indicators for 1997 and early 1998 show that Mexico has staged an impressive recovery from its crisis with Gross Domestic Product (GDP) growing at a rate of 7% in 1997 and at above 5% during the first half of 1998. One indicator of the strength of the Mexican economy is revealed by the recorded inflows of foreign direct investment in fixed assets amounting to US$12.5 billion in 1997 (see Table 1).

Table 1. **Flows of foreign direct investment into Mexico (US billion)**

Year	1990	1991	1992	1993	1994	1995	1996	1997
Total FDI	6.0	17.5	22.4	33.3	19.2	-0.2	22.6	17.5
Direct FDI	2.6	4.8	4.4	4.4	11.0	9.5	9.2	12.5
Portfolio FDI	3.4	12.8	18.0	28.9	8.2	-9.7	13.4	5.0

Source: Banco de Mexico, Statistics on foreign direct investment include temporary imports of fixed assets by in-bond industries as of 1995.

Mexico's foreign trade sector played a key role in leading the recovery starting in 1995. Between 1994 and 1997, total exports in US dollars jumped by 95.5%. The trade balance moved from a deficit of $18.6 billion in 1994 to a surplus of $6.1 billion in 1996 (see Tables 2 and 3). In 1997, the trade balance was in a slight surplus position of $1.6 billion, as strong domestic demand increased total imports by 30.7%.

While NAFTA's imports and exports respectively accounted for 83.8% and 86.3% of total imports and exports in 1996, it is interesting to note that about two thirds of the incremental imports in 1997 originated from non-NAFTA regions. This suggests that the Mexican economy is not exclusively NAFTA-oriented and partly reflects multilateral trade opening measures.

Table 2. **Mexican imports by regions (US billion)**

Year	1990	1991	1992	1993	1994	1995	1996	1997
Total imports	31 058	38 124	61 923	65 271	79 335	72 453	89 466	116 932
NAFTA	21 458	26 804	46 532	46 876	56 433	55 347	74 958	84 151
EU 15	5 075	5 875	7 252	7 795	9 055	6 731	6 873	9 903
Other Americas	1 264	1 656	2 316	2 483	2 912	1 626	2 020	2 709
Rest of world	3,262	3 788	5 823	8 117	10 935	8 748	5 615	20 169
Total exports	26 854	26 655	45 945	51 698	60 644	79 278	95 657	118 609
NAFTA	18 981	19 194	38 111	48 022	52 753	67 271	82 527	96 690
EU 15	3 411	3 291	3 414	1 248	2 809	3 666	3 500	4 019
Other Americas	1 877	2 035	2 683	1 481	3 195	5 047	5 721	6 055
Rest of world	2 585	2 135	1 737	947	1 887	3 293	3 909	11 845

Source: OECD Annual Foreign Trade Statistics, Harmonised System Revision 1 (1998) for the 1990-1996 Data; and OECD Series A monthly data for 1997. Figures for 1990 and 1991 exclude in-bond trade.

Table 3. **Mexican composition of trade (US billion)**

Year	1990	1991	1992	1993	1994	1995	1996
Total imports	31 058	38 124	61 923	65 271	79 335	72 453	89 466
Manufactures	18 713	23 877	40 948	44 004	53 975	49 876	61 294
Semi-manufacturing	6 727	8 554	13 449	14 145	17 000	16 217	19 175
Agriculture	4 493	4 351	5 795	5 552	6 892	4 854	7 115
Oil products	1 126	1 342	1 731	1 570	1 468	1 506	1 882
Total Exports	26 854	26 655	45 945	51 698	60 644	79 278	95 657
Manufactures	8 923	10 290	28 029	33 489	41 329	53 241	65 886
Semi-manufacturing	4 829	4 905	6 465	7 035	7 691	11 589	12 111
Agriculture	3 145	3 486	3 332	3 894	4 408	6 245	6 262
Oil products	9 957	7 974	8 119	7 281	7 216	8 202	11 399

Source: OECD Annual Foreign Trade Statistics, Harmonised System Revision 1 (1998). Figures for 1990 and 1991 exclude in-bond trade.

Mexico is currently hard hit by the impact of the Asian crisis and the ripple effects spreading throughout the world. Despite substantial depreciation of the peso, Mexican products have lost competitiveness relative to the much more depreciated Asian currencies, with the textiles, clothing and electronic equipment sectors being particularly vulnerable. With slower world growth rate now expected for 1998 and 1999, Mexican growth rate will most likely slow down during the second half of 1998 thus putting additional pressure on the fragile fiscal balance. With oil-related income accounting for about 36% of the total governmental income in 1997, the steep drop in world crude oil prices is having a real dampening effect on the Mexican economy. Continuing deregulation efforts in the near future are thus likely to be made against a less favourable world environment than in 1996 and 1997.

With the Presidential election scheduled for the year 2000, a new National Development Plan will have to be proposed. This will provide the opportunity to reaffirm the importance of pursuing the deregulation programme at the Federal level and to ensure its application at the state and local levels. As improvement of the Mexican social network will certainly rank among the high priority items in the next Plan, the implementation of the six efficient regulation principles, discussed below, will be useful for underpinning a sound regulatory framework.

2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: THE SIX "EFFICIENT REGULATION" PRINCIPLES

An important step in ensuring that regulations do not unnecessarily reduce market openness is to build the "efficient regulation" principles into the domestic regulatory process for social and economic regulations, as well as for administrative practices. "Market openness" here refers to the ability of foreign suppliers to compete in a national market without encountering discriminatory, excessively burdensome or restrictive conditions. These principles, which have been described in the 1997 OECD *Report on Regulatory Reform* and developed further in the Trade Committee, are:

– Transparency and openness of decision making.

– Non-discrimination.

– Avoidance of unnecessary trade restrictiveness.

– Use of internationally harmonised measures.

– Recognition of equivalence of other countries' regulatory measures.

– Application of competition principles.

They have been identified by trade policy makers as key to market-oriented and trade and investment-friendly regulation. They reflect the basic principles underpinning the multilateral trading system, concerning which many countries have undertaken certain obligations in the WTO and other contexts. The intention in the OECD country reviews of regulatory reform is not to judge the extent to which any country may have undertaken and lived up to international commitments relating directly or indirectly to these principles, but rather to assess whether and how domestic instruments, procedures and practices give effect to the principles and successfully contribute to market openness. Similarly, the OECD country reviews are not concerned with an assessment of trade policies and practices in Member countries.

In sum, this chapter considers whether and how Mexican regulatory procedures and content affect the quality of market access and presence in Mexico. An important reverse scenario – whether and how inward trade and investment affect the fulfilment of legitimate policy objectives reflected in social regulation – is beyond the scope of the present discussion. This latter issue has been extensively debated within and beyond the OECD from a range of policy perspectives. To date, however, OECD deliberations have found no evidence to suggest that trade and investment *per se* impact negatively on the pursuit and attainment of domestic policy goals through regulation or other means.[2]

2.1. Transparency, openness of decision making and appeal procedures

To ensure international market openness, foreign firms and individuals seeking access to a market (or expanding activities in a given market) must have adequate information on new or revised regulations so that they can base their decisions on an accurate assessment of potential costs, risks, and market opportunities. Regulations need to be transparent to foreign traders and investors. Regulatory transparency at both domestic and international levels can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force, use of electronic means to share information (such as the Internet), well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation.[3]

Market participants wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. Mexico implemented a comprehensive deregulation programme in recent years which was reinforced in 1995. This sub-section discusses the above transparency and transparency-related considerations in Mexico and how they are met. Also covered in this sub-section are a brief synthesis of significant reforms applied in Mexican procurement and Customs procedures, as making procedures more transparent was one of the major objectives of these reforms.

2.1.1. Mexico's overall regulatory setting

This assessment needs to begin with a brief overview of the overall deregulation infrastructure that set up in order to better evaluate whether transparency and transparency-related considerations are taken into account. An extended deregulation programme to improve and accelerate Mexico's regulatory reform programme referred to as the *Acuerdo para la Desregulación de la Actividad Empresarial* (ADAE) was launched in 1995. Under the ADAE, the Economic Deregulation Council (the Council) was established and composed of high level business, labour, academic, agricultural and several Cabinet Ministers. The creation of this Council provided the already formed Economic Deregulation Unit (EDU), located within SECOFI, additional political leverage in promoting reform within the Federal public administration.

The task of the EDU is to promote and co-ordinate Mexico's regulatory reform programme in conjunction with the Council and with the Deputy-Ministers in charge of regulatory improvement in each Ministry. The strategy for reform is based on four pillars: the review and reform of all existing Federal business formalities (stock); the review and reform of all new administrative or legislative proposals (flow); the proposal of economy-wide legislative reforms to improve Mexico's regulatory framework; and providing support to regulatory reform programmes at the state and local levels.

Improved transparency was one of the most immediate results emerging from this programme as virtually all Federal business formalities were identified and published on the Council's Internet site (http://www.cde.gob.mx) by December of 1996. Since February 1998, a compendium of all current laws and other major legal regulatory is continually updated on the Council's Internet site. As a result, foreign participants have an open access to a comprehensive set of Mexican laws, regulations and business formalities at their computer tips through the Internet.

Another transparency-related feature of the Mexican regulatory regime is the preparation of the "National Development Plan". The Plan sets the economic, political and social objectives of the government actions and it is published at the beginning of each 6 year presidential term. From the Plan, a series of different programmes are developed for different sectoral policies, including regulatory activities. These programmes are drawn up in consultation with interested parties and set out the major activities that individual Ministers will undertake during their terms. A yearly progress report must be submitted by the President to Congress. The National Development Plan as well as all other sectoral programmes can be downloaded from the Internet or obtained from the corresponding Ministries. Upon prior registration, it is also possible to access the Internet version of the Mexican Official Diary (http://cde.gob.mx/prontuario/frpron1.htm).

2.1.2. Federal administrative procedure law

Transparency considerations are intimately related to the administrative procedures put into place for the elaboration and adoption of domestic regulations. It is therefore essential to review some of the key steps involved in order to assess the transparency-friendliness of these procedures.

Mexico's Federal Administrative Procedure Law (FAP Law) sets out the general guidelines for the government's interaction with the public in all administrative procedures. All regulations must be published in the Official Diary before they can be enforced and must comply with the criteria the Law sets relative to: the publication of rules; the validity of administrative actions; the responsibilities of regulatory authorities; the rights of the general public; the way documents and responses may be submitted; the maximum response times by authorities; and the manner in which inspections and verifications are carried out.

The FAP Law does not specifically set any public consultation procedures but recognises the need for them. It leaves the issue of public consultation to be decided in sector specific laws, while stating that if a specific law establishes that proposals must be published for public comment, the period of time allowed should be of at least 60 days, unless otherwise specified.

The Council and the EDU also play an important role in promoting public consultation and transparency by making public all proposed regulations they review. For every meeting of the Council's executive commission, the list of proposed regulations is made available in the Council's Internet site. Although the EDU's statutory powers allow it to review proposed regulations and to make public its opinion, it remains that it cannot oppose the implementation of poor regulations.

Box 1. **Regulatory Impact Assessment**

The FAP Law requires that all draft regulations with a potential impact on business activity be submitted to the EDU along with a regulatory impact assessment (RIA). In order to help regulatory Agencies prepare RIAs and to disseminate the regulatory criteria specified by the ADAE, the EDU prepared a RIA elaboration manual which specifies instructions for completing the six sections of a RIA:

- *Purpose of the regulation.* Agencies must list all behaviour to be regulated and the reasons for which government intervention is deemed necessary. Providing explanations and evidence of the existence of problems that the proposed regulation purports to solve is essential. Agencies must justify government intervention. There are no standardised criteria or threshold tests used to evaluate these justifications. This section of the RIA must also include an explanation of the legal basis for the regulation. A description of all related regulations, including any international obligations, as well as the reasons for which they have been unsatisfactory must be provided.
- *Alternatives considered and proposed solution.* Regulators are asked to think of all possible regulatory and non-regulatory options available to deal with the problems at hand, including the option of doing nothing. The alternatives must be described and the reasons for rejecting them clearly stated. International standards must always be taken into consideration and preferentially applied in order to promote harmonisation of technical regulations.
- *Implementation and enforcement.* Implementation and enforcement schemes must be described in detail (sanctions, verification mechanisms, etc.). It is particularly important for the regulatory agency to explain where it expects to obtain the resources needed to apply them effectively.
- *Public consultation.* Ministries are required to list all parties consulted, including names and telephone numbers, and their respective opinions.
- *Identification of business formalities.* All formalities created, modified or maintained by the proposed regulation must be listed and described.
- *Anticipated benefits and costs.* RIAs must include a structured description of the potential costs and benefits of the proposed regulation. The level of quantification and detail of the costs and benefits section is expected to be proportional to the importance of the project. Only regulations of major impact need to extensively quantify benefits and costs. Only incremental costs and benefits must be taken into account and all data sources must be duly noted. The different types of costs and benefits must be identified and discussed (effects on capital costs, operation costs, salary costs, consulting/legal costs, conformity assessment costs, health environment or other social costs, administrative costs, etc.), and their distributive implications made explicit.

The preparation of RIAs requires time and efforts by bureaucrats and the task could become over time repetitive or prepared in haste unless internal quality control measures are applied. Since RIAs are only performed since the end of 1997, the issues are rather about the quality of the assessment performed and its uniformity of application among Regulatory Agencies. Mexican authorities recognise that the quality of the data is generally poor in the costs and benefits section of RIAs. As a result, Regulatory Agencies are not asked to calculate net benefit for fear of creating additional incentives to distort data.

Concerning uniformity in the preparation of RIAs among Regulatory Agencies, the use of RIAs is still recent, thus time will tell whether some Agencies are well accomplishing the task or are *de facto* escaping or circumventing key areas of the required assessment. Evidence shows that Regulatory Agencies are generally complying with new requirements. Furthermore, a list of all regulatory proposals under review by the EDU and the Council is published and updated weekly on the Internet and RIAs for those projects are available to the public upon request. In coming months, proposed regulations and their respective RIAs will be directly available on the Internet. The ease of access availability would further assist the public, including foreign participants, in better understanding potential implications of proposed regulations.

Mexican authorities are also of the view that the review of new regulations allows the Council and the EDU to make sure that there is no backtracking on the advances that have been made in previous deregulatory processes. It allows for significant pre-emptive regulatory reform. It is much easier to change regulatory measures before they are actually implemented. It is easier for the EDU to promote greater co-operation and regulatory understanding with the use of regulatory impact statements.

From a transparency perspective for foreign participants, the comprehensiveness of the type and range of regulatory information made available through the Internet is notable and probably is among the most comprehensive within OECD countries. The regulatory framework provides for no distinction between nationals and non-nationals wishing to participate in public consultations. Mexican authorities have confirmed that non-nationals are effectively submitting comments on draft regulations and there comments are duly taken into consideration along with other comments.

In one way, the public availability of draft regulations issued at the Federal level and opinions expressed with the list of consulted parties acts as a check and balance feature which help to minimise instances of regulatory capture by specific groups with vested interests. So far, the foreign business community in Mexico has been supportive of the regulatory reform at the Federal level.

2.1.3. Federal Metrology and Standardisation Law

Another important regulatory area where the transparency of the overall procedures is essential for foreign participants relates to the formulation and adoption of standards and conformity assessment procedures. In the absence of full transparency or open consultation process, the risk exists that domestic groups might be able to capture the process of standards formulation and adversely impact on the competitiveness of imported products. The Mexican Federal Metrology and Standardisation Law (FMS Law) was revised in May 1997 with the view, *inter alia*, to provide for improved transparency-related provisions.

The responsibility for the development of technical regulations and their use rests in nine governmental ministries, including SECOFI through the National Standards Office "*La Dirección General de normas*" (DGN). Besides the national standardisation bodies, the DNG is the only government agency that is allowed to issue voluntary standards. The DGN is the recognised member body to the International Standardisation Organisation (ISO), the Commission for the CODEX Alimentarius, the International Electronic Commission (IEC) and the Pan American Standards Commission (COPANT). It serves as the Mexican enquiry point under the WTO TBT Agreement, NAFTA, the Group of Three (Mexico, Colombia and Venezuela) and the Free Trade Agreements with Costa Rica, Bolivia and Nicaragua. It also serves as the support secretariat for the National Standardisation Commission which is established to assist and co-ordinate standardisation-related activities that fall under the responsibility of the various Federal Regulatory Agencies and under the responsibility of the established of National Standardisation Bodies.

The FMS Law provides for specific administrative procedures for the drafting and publication of technical regulations and standards. It provides for a unified adoption process for technical regulations or *Normas Oficiales Mexicanas* (NOMs) and voluntary standards or *Normas Mexicanas* (NMXs). Technical regulations shall have the goal of establishing characteristics which products and processes must fulfil as they may pose a risk to the safety of persons or harm the health of human, animals, vegetables, the general environment and work environment or for the purpose of preservation of natural resources. NMXs are of voluntary application and cannot have lower specifications to those established in NOMs. In mid-1998, there were approximately 585 NOMs and 5,500 NMXs. A catalogue of all NOM and a list of NMX standards is available since early 1998 on SECOFI's Internet site (http//:www.secofi.gob.mx/dgn1.html).

The transparency of the formulation process of Mexican standards finds concrete forms through several means, including the preparation of a National Standardisation Programme, the consideration of draft standards by national consultative committees, the publication of draft proposals in the Official Dairy and opportunities provided to the public for comments. All these various components are discussed below.

Box 2. **National Standardisation Programme**

FMS Law adopted in July 1992 and revised in May 1997 requires the preparation of an annual publication containing the National Standardisation Programme (the Programme). It is published in the Official Diary and is publicly available through any of the consultative committees in charge of designing and approving technical standards and through SECOFI's Internet site. It contains a list of all technical regulations and standards and technical specifications (*normas de referencia*) to be considered during the coming year by each of the 22 national consultative committees (*comités consultivos nacionales de normalización*), the national technical committee (comités técnicos de normalización nacional), the reference committees (comités de normas de referencia) and the national standardisation bodies.

The Programme must be adopted by the National Standardisation Commission. Each committee must list the name, address and telephone number of its president, who is responsible for disseminating information and organising the activities of the committee. The national consultative committees must include a brief description of the objectives of the technical regulations proposed for their incorporation in the Programme. The time frame for the consideration of each regulatory topic must be indicated within the Programme in order to give all participants and the general public an idea of when the corresponding technical regulation or standard might be issued. Only technical regulations and standards listed in the Programme can be elaborated in that year.

In recent years, many complaints were expressed by trading partners about the lack of transparency of Mexican standards, the rigidity in the implementation of labelling and marking requirements and the lack of time for traders to keep up with modifications in standard-related requirements. Concerns were particularly expressed on labelling requirements for imported beers and the marking of origin for textiles articles.

As a result of these complaints, Mexican authorities have examined the relevant cases and used the so-called "fast track procedure" of the FMS Law (Article 51) to provide more flexibility for traders in meeting labelling requirements for beer imports and marking requirements for imported textiles articles. The fast track provision enables to bypass the normal public consultation process in order to rapidly modify standards that are causing unforeseen harmful consequences. To counterbalance the absence of open public consultation, the revised standards cannot impose new or stricter requirements. In the two above mentioned cases, the use of the fast track procedure resulted in more market openness.

Box 3. **National consultative committees**

All technical regulations, NOMs, are mandatory and must be drafted within one of the 22 national consultative committees, each of which represents a different sector of economic activity and NMXs must be drafted by one of the National Standardisation Bodies (NSBs) or SECOFI in those areas not covered by them through technical committees. There are currently six NSBs and 35 technical committees in Mexico.[4] The 22 consultative committees are presided over by a representative from the lead Regulatory Agency for the sector in question and are comprised of government and private sector representatives. The participation of private sector representatives in individual committees is open to all interested parties, nationals and non-nationals without distinction.

Once a committee has agreed on the characteristics of a new or revised standard, the lead Regulatory Agency publishes the draft proposal of the standard in the Official Diary for public comment. Proposed new or revised NMXs standards are prepared by NSBs or national consultative bodies and they must publish a summary of their draft proposals in the Official Diary.

Prior to the publication of the draft proposal for a technical regulation NOM, the lead Regulatory Agency must submit for discussion to the respective consultation committee a regulatory impact assessment. This statement must contain explanations about: the standards' objectives; the proposed measure; alternatives considered and the reasons for not proposing them; the advantages and disadvantages of the proposed standards; and the technical feasibility available for the verification and certification involved. For proposed standards that may have a broad impact on the economy, the statement must also include a financial assessment of the potential costs and benefits for the proposed standards and for the alternatives considered, as well as a comparison with international standards. All such information is available to the public at the DGN's information centre.

Sixty days later, the consultative committees or NSBs have 45 days to review and analyse comments received. After that period, responses to comments must be published no sooner than 15 days before the publication of NOMs in their final form.

The FMS Law also provides for the adoption of emergency mandatory standards to deal with exceptional and unforeseen circumstances which might result in irreversible situations (Article 48). Emergency standards can be in force for a maximum period of six months which can be extended for another period of six months. In the latter case, a RIA must be prepared and the process is considered by Mexican Authorities to be compatible with relevant provisions of the WTO TBT Agreement.

Overall, technical standards in Mexico reflect a mixture of government and private sponsored standards with the overwhelming majority of approved standards being in the category of voluntary standards sponsored by the private sector – the proportion of voluntary versus official standards is ten to one. This decentralised process of elaboration of standards however requires that they be based on a consensus of the interested sectors, after public consultations, and also based on international standards unless they are determined to be inefficient or inappropriate. The FMS Law provides for no distinction between nationals and non-nationals and foreign participants can participate in any of the 22 national consultative committees or in the work of NSBs. The combined features of the openness of the consultation process, the publication of draft standards and the public availability of RIAs altogether act to minimise potential incidences of regulatory capture by domestic groups.

2.1.4. Government procurement at the federal level

The Mexican legal framework on government procurement procedures is based on the principle of transparency. However, the cost of retrieving relevant information through traditional means could be substantial for national small and medium-sized enterprises and enterprises based in foreign countries. Similarly, due to the possibility of time lost in retrieving and in submitting bids, deadlines could be missed and bids disqualified. In this connection, foreign participants have legitimate expectations in terms of the degree of transparency that domestic government procurement procedures should abide with.

In March 1996, Mexico began an innovative process of government procurement through the Internet, known as COMPRANET, with, as the declared objective, improvement in the transparency of overall procedures. Through the use of the Internet, significant efficiency gains can be realised for both government purchasers and suppliers in terms of time and cost saved in retrieving and delivering electronically relevant technical tendering documentation, government laws and regulations. Small, medium-sized and foreign enterprises in remote locations can have the same access to procurement information as large domestic enterprises. Government agencies also gain by improving the competitive process as more bids can be submitted. Government procurement in Mexico is substantial amounting to US$ 22.4 billion in 1996.

Box 4. **COMPRANET: transparency in procurement**

In March 1996, the Ministry of Comptroller and Administrative Development (SECODAM) created an Internet site COMPRANET through which it is possible to consult a range of information about open tendering procedures of the Mexican government procurement system (http://www.compranet.gob.mx).

Each year the Ministry of Finance and Public Credit authorises the budget for the "Annual Acquisitions Programme of Goods and Services and Public Works" (PAASOP) for participating Ministries and Federal entities to establish their procurement requirements. SECODAM establishes the necessary standards based on the Law of Acquisitions and Public Works (APW) and oversees government procurement procedures. The annual acquisitions programme (PAASOP) is also available on COMPRANET.

The process of open tendering may be national or international. It is national when only Mexicans can participate and the goods to be procured must have at least 50% of local content. It is international when: it is mandatory under free trade agreements; for procurement financed by loans from international organisations; national offers cannot fulfil requirements; or in the case of price convenience.

Invitations to participate are advertised through a notice published in the Official Diary and in COMPRANET. The notice indicates various technical information, including whether the tendering is national or international and how to obtain tender documentation.[5]

Under NAFTA and other Free Trade Agreements with Bolivia, Costa Rica, Nicaragua, Colombia and Venezuela, goods, services and construction service markets in Mexico are gradually accessible in increased stages over a maximum period of 8 years. National treatment and non-discrimination are guaranteed for American, Canadian, Bolivian, Costa Rican, Nicaraguan, Colombian and Venezuelan suppliers. The coverage of the different agreements is basically the same.

In the future, Mexican authorities want to further develop COMPRANET to make it possible for participating agencies to carry out all necessary follow-up and control of the procurement process through electronic means. With the development of electronic signatures, cryptography and international standards in the electronic data transmission, possibilities will emerge for the submission of bids through COMPRANET.

Mexico has innovated in making Federal procurement procedures much more transparent than before through the use of the Internet. Foreign participants now enjoy more equitable treatment in terms of costs and time as: they can more rapidly identify that tendering opportunities exist in Mexico; they can electronically retrieve relevant technical tendering documentation, laws and regulations; and they are less subject to miss submission deadlines. As a general rule, the APW Law provides that 100% of the total value of acquisitions, leasing, services and public work obtained by entities should be done through public tendering. However, there are exceptions to the general rule which are specified in the APW Law.

2.1.5. Reforms in customs procedures

In any country, foreign participants can be frustrated by the lack of transparency or uneven applications of Customs regulations and procedures between various ports of entry. The corruption of Customs officials is encouraged when regulations provide them with wide discretionary powers. Similarly, importers can incur significant cost overruns when shipments are held in Customs warehouses as a result of inefficiencies in Customs procedures.

As a necessary complementary measure in the Mexican trade liberalisation orientation, several important changes were made in its Customs procedures and administration. Customs procedures are now based on the principles of: transparency and clear appeal provisions; self-determination and self-observance of legal obligations; integral automation of procedures and re-engineering through the use of new technologies; and maximum reduction of discretionary power by Customs officials.

Box 5. **Customs procedures in Mexico**

In Mexico, import transactions must be processed through certified Customs brokers and customs duties are payable in commercial banks to improve the duty collection system and to minimise incidences of frauds and corruption. Customs brokers are responsible, on behalf of their clients, for import declarations and duty assessment.

The principle of 100% physical inspection was dropped for a random system of inspection where about 10% of all shipments are subject to a physical inspection. A second level of inspection is carried out at random by private firms to detect potential malfeasance practices by Customs officials in collusion with brokers. At each stage, the maximum time granted to Customs officials for the inspection is limited to two hours. After this time limit, shipments must be released, unless exceptional circumstances. Post-audit verification of importers' files and transactions can be performed to detect false declarations and frauds.

Mexico has established an Integral Automated Customs System (SAAI) which allows for the electronic exchange of information between the General Customs Administration, Customs offices, Customs brokers, warehouses and authorised banking institutions to collect duties. Under SAAI, entry documents can be validated or refused prior to the actual clearance of goods, thereby providing for more transparency and predictability for traders.

Since May 1997, Mexico, the United States and Canada began experimenting an electronic-based commerce system called "the North American Trade Automation Prototype (NATAP)" for truck carriers. Six cross-border sites are covered for this programme of which four sites are on the Mexican-United States borders (El Paso/Juarez, Laredo/Nuevo Laredo, Otay Mesa/Tijuana, and Nogales/Nogales). The NATAP system is based on the Electronic Data Interchange (EDI) technologies using the EDIFACT standards. The required Trade Software Package (TSP) is freely available in three languages (English, Spanish and French).

In a nut shell, this Internet-based system links traders, Customs brokers, carriers and Customs offices. Encoded stickers attached on the truck's windshield are laser read as trucks approach border facilities and information is transmitted to the Customs official's computer. The information is immediately matched against pre-sent information for the shipment in question and Customs officials have instant access to the whole file. Officials then send a light signal to the drivers: a green light means go, and red means stop for inspection.

Preliminary indications suggest that NATAP has so far been little used. This may be partly due to the lead time required by all participants to get acquainted with the software and for training staff to properly operate the system.

The reform of Mexican Customs procedures represents a total revamp of administrative procedures and attitude. Mexico is now among the leading countries in the implementation of an integrated electronic-based system. These changes have resulted in several efficiency gains for all concerned parties in terms of: the improvement in the transparency of procedures; the maximum clearance time fell from anything up from 24 hours to a few minutes; the number of certified Customs brokers increased from approximately 380 in 1989, 800 in 1993[6] and 995 in 1997;[7] the number of Customs officials in entry ports fell by more than 20% between 1994 and 1997 while the number of import and export operations increased respectively by more than 25% and 62% during the same period; the more transparent system resulted in improved efficiency in duty collection; and the reduction of discretionary power by Customs officials and improved integrity practices.

The simplification and automation of Customs procedures and the investment in infrastructure have reduced significantly the possibilities of an uneven application of Customs procedures between ports of entry. Mexican authorities believe that the task of assuring even application of all Customs practices in their 47 ports of entry is a major challenge in itself due to: the large investment required to link electronically all ports; the diversified nature of operations carried out by Customs officials; and the complexity of co-ordinating training programmes with the frequency of modifications in regulations which Customs officials are called upon to administer.

2.1.6. Mexico's multilateral transparency commitments

SECOFI oversees the implementation of transparency provisions relating to Mexican obligations contained in the WTO and other trade agreements. This oversight concerns not only obligations regarding transparency but those concerning non-discrimination; national treatment; prohibition of unnecessary obstacles to trade; the use of international standards, recommendations and guidelines; and considerations of equivalency. SECOFI plays a co-ordinating role in encouraging government-wide awareness of and respect for international obligations relating to domestic regulatory matters, such as the WTO/GATT Article III (national treatment on internal taxation and regulation) and regulatory commitments arising from other WTO Agreements, such as the Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary Measures (SPS). The "Information Centre of the General Directorate of Standards" of SECOFI acts as the inquiry point to respond to requests for information only as foreseen in the TBT and SPS Agreements of the WTO.

Mexican regulation regarding the Foreign Trade Law also establishes a two-level *Comisión de Comercio Exterior* (COCEX) or Commission on Foreign Trade at the Deputy-Minister level and at Director-General level from various Ministries, including External Affairs (SRE); Finances (SHCP); Social Development (SEDESOL); SECOFI; Agriculture and Rural Development (SAGAR); Environment, Natural Resources and Fisheries (SEMARNAP); Health (SSA); the Central Bank; and the Federal Competition Commission. COCEX is headed by SECOFI and its main functions are to provide opinions on all issues concerning trade policy formulation. No changes in Mexican trade and trade-related laws and regulations can be adopted without the proposed regulations being reviewed by this Commission. With its direct involvement in COCEX, SECOFI is able to review draft regulations submitted by other participating Ministries and to verify their conformity with Mexico's international obligations and commitments.

2.1.7. Assessment

The Mexican Ministry for Trade and Industry, SECOFI, is overseeing a comprehensive deregulation programme which involves extensive and transparent public consultations in the revision of all existing regulations and the preparation of new regulations and legislation. The regulatory framework provides for no distinction between nationals and non-nationals who wish to participate in public consultations. Efforts are also made at the Federal level to support state and municipal levels to initiate regulatory reform programmes.

The extensive use of the Internet to disseminate the whole range of Federal formalities, regulations and laws places Mexico among the most advanced OECD countries for the use modern electronic information exchange. The Internet is not only used to disseminate formalities but more importantly it is used as a medium to solicit comments from all sources on proposed new regulations. In terms of opportunities for public consultation and comment, publication of draft regulatory measures and notification to international organisations, Mexico also ranks among the top OECD performers. The potential publication through the Internet of all RIAs would greatly assist the general public and in particular, foreign participants, to better understand some of the potential implications of proposed regulations prior to their adoption.

The absence of a specific deregulation infrastructure would in itself raises questions about the real impact of deregulation efforts. That is not the case in Mexico. The overall evidence is that Mexico has set up a comprehensive and transparent infrastructure to oversee deregulation efforts required by Federal Ministries and Agencies with specific responsibilities at senior levels for implementation and action. It remains that some of the key features of the deregulation programme are still very recent and there are signs that some Regulatory Agencies are escaping or circumventing some of the requirements (see section 3 telecommunications services). Time will tell whether the quality and uniformity in the implementation of regulatory impact assessments are performed as expected.

From the perspective of foreign participants, the degree and quality of the transparency of procedures regarding government procurement and Customs procedures are crucial for ensuring their ability to pursuit business opportunities in Mexico. In both fields, Mexico has made significant investment in putting into place electronic-based systems which are improving the transparency of procedures involved which in turn should result in transaction cost-savings for traders and added opportunities in submitting bids in due time for foreign participants. Recurrent complaints about the uneven application of Customs procedures in different ports of entry and difficulties encountered at the municipal levels with government procurement contracts are reminders that Mexican authorities should apply vigilance and that the improvement in the transparency of various regulatory procedures should be actively pursued at the state and municipal levels.

Mexico operates a decentralised process of elaboration of technical standards with the overwhelming proportion of standards being in the category of voluntary standards. Altogether it is found that the combined features of the openness of the consultation process, the publication of draft official standards and the public availability of their RIAs act to minimise potential incidences of regulatory captured by domestic groups.

2.2. Measures to ensure non-discrimination

Application of non-discrimination principles aims to provide effective equality of competitive opportunities between like products and services irrespective of country of origin. Thus, the extent to which respect for two core principles of the multilateral trading system – Most-Favoured-Nation (MFN) and National Treatment (NT) – is actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote trade and investment-friendly regulation.

International treaties subscribed by the President and ratified by the Senate are supreme law in Mexico. They do not require the adoption of domestic legislation for their internal application. However, several domestic laws have been modified to make them fully compatible with international commitments and to facilitate their application. Accordingly, despite the fact that there is no overarching requirements in Mexican law to incorporate MFN and NT principles into domestic regulations, all agencies are obliged to comply with the principles as contained in those international agreements. It falls upon SECOFI to act as an oversight agency to ensure that the implementation of non-discrimination provisions stemming from the WTO and other international trade and trade-related investment agreements are effectively implemented. Within the WTO dispute settlement process, there were no complaints from trading partners alleging infringement of Mexican MFN or NT obligations in the WTO.

Overtly discriminatory regulatory content is fairly exceptional when viewed from an economy-wide context and against the wide WTO and regional trade commitments entered into by Mexico. Existing measures which discriminate against foreign ownership tend to be fairly limited in scope and complete or partial deregulation across many sectors of the economy has already generated attendant pro-competitive effects for international market openness. Few areas however deserve some attention such as: preferential trade agreements; and trade in services. Each of these are reviewed below.

2.2.1. Preferential trade agreements

While preferential agreements give more favourable treatment to specified countries and are thus inherent departures from the MFN and NT principles, the extent of a country's participation in preferential agreements is not in itself indicative of a lack of commitment to the principle of non-discrimination. In assessing such commitments, it is relevant to consider the attitudes of participating countries towards non-members in respect of transparency and the potential for discriminatory effects. Third countries need access to information about the content and operation of preferential agreements in order to make informed assessment of any impact on their commercial interests. In addition, substantive approaches to regulatory issues such as standards and conformity assessment can introduce potential for discriminatory treatment of third countries if, for example, standards recognised by partners in a preferential agreement would be difficult to meet by third countries.

Preferential agreements to which Mexico is a party include six free trade agreements[8] and a network of bilateral investment agreements. Mexico is currently negotiating several free trade agreements with various countries including the European Union.[9] It also participates actively in large multi-country initiatives, such as the Asia-Pacific Economic Co-operation (APEC) and the Free Trade Area of the Americas (FTAA). As reflected in the number of free trade agreements signed and under negotiation, Mexico is keen to exchange on a reciprocal basis significant liberalisation commitments, that go beyond those applied in the WTO. Simultaneously, it supports current talks for the launching of a new round of multilateral trade negotiations.

More concretely, Mexico has extended on a non-discriminatory basis to all WTO Members the benefits of its free trade agreements in the areas such as investment, Customs procedures and intellectual property. The Foreign Investment Law was first amended in December 1993 to materialise its commitments under NAFTA and more generally to promote Mexico as a host country for foreign direct investment. Mexico's accession to the OECD in 1994 was instrumental in the extension of NAFTA's investment commitments to non-NAFTA countries. The Law was subsequently amended in 1996 to allow for additional liberalisation measures and to open up to foreign ownership some sectors previously reserved to the State, such as railways, satellite communications, natural gas storage and secondary petrochemical products.[10]

As a result of these investment liberalisation measures, out of 704 activities included in the Mexican Activities and Products Classification; 606 had been opened up to 100% FDI; 37 accepted up to 100% subject to favourable rulings by the National Foreign Investment Commission; 35 allow for minority interests; 16 are reserved to Mexicans; and ten are reserved to the States.[11]

Mexico's trade and investment agreements are managed in a highly transparent manner. Generally, information on actions to be taken by Mexico and requests for comments on proposed actions are published in the Official Diary. In addition, information on preferential agreements is made available by Mexican Ministries and agencies concerned through a variety of means, including press statements, and the Internet (http://www.secofi.gob.mx). Submission of information to relevant WTO bodies in accordance with WTO obligations establishes another avenue for information, and both of the FTAs to which Mexico is a party encourage and require transparency through public notice. Overall there are few complaints formulated by trading partners concerning Mexico's participation in free trade agreements.[12]

Overall, available evidence points to well-orchestrated and good faith efforts in Mexico to share information about its trade and investment agreements as widely as possible. Mexico's attitude demonstrates a desire to extend on a non-discriminatory basis some of the key liberalisation measures achieved under regional agreements, i.e. investment.

2.2.2. Trade in services

Mexico participated in and signed the WTO General Agreement in Trade in Services (GATS) and more recently the Financial Services Agreement concluded in December 1997. Mexico's commitments are annexed to its Schedule to the GATS and they grandfather certain deviations from the non-discrimination and national treatment principles. For example, foreign financial institutions must obtain authorisation from the Ministry of Finance and Public Credit (SHCP), financial institutions must remain under effective control of Mexican shareholders and there are thresholds limiting foreign investors' holdings. These levels were, however, raised from the 1995 commitment of 30% to 40% for insurance companies, multiple-banking institutions and securities firms (49% for limited-purpose financial institutions, foreign exchange houses, investment companies, etc.). In addition, foreign investment by governments and official agencies is not permitted.[13]

Under the GATS, specific market access and national treatment commitments are made according to four modes of supply for each services sector concerned (cross-border supply, consumption abroad, commercial presence, and presence of natural persons). Mexico's services schedules show that it undertook sector-specific commitments in a large number of sectors. For two modes of supply (consumption abroad and cross-border supply), there are no market access or national treatment limitations for almost all sectors, except financial sectors. In terms of commercial presence, limitations generally relate to conditions for foreign participation in activities reserved for Mexican nationals and

land ownership on the coastline and along the frontiers. Concerning the presence of natural persons, several commitments are made for intra-corporate transferees.[14] Under NAFTA, limited exceptions are permitted to the universal application of the agreed principles of MFN, national treatment and local presence. Given the architectural differences in which commitments are structured under NAFTA and the GATS, it would be too long to draw a list of these differences and outside the purview of this review. It is however fair to say that, at this point in time, Mexico's services commitments are broader in NAFTA than in the GATS.

2.3. Measures to avoid unnecessary trade restrictiveness

To attain a particular regulatory objective, policy makers should seek regulations that are not more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Examples of this approach would be to use performance-based, rather than design standards as the basis of a technical regulation, or to consider taxes or tradable permits in lieu of regulations to achieve the same legitimate policy goal. At the procedural level, effective adherence to this principle entails consideration of the extent to which specific provisions require or encourage regulators to avoid unnecessary trade restrictiveness and the rationale for any exceptions, how the impact of new regulations on international trade and investment is assessed, the extent to which trade policy bodies as well as foreign traders and investors are consulted in the regulatory process, and means for ensuring access by foreign parties to dispute settlement.

In Mexico, the principal tool for measuring the effects of new federal regulations is the regulatory impact assessment (RIA) (see Chapter 2.1.4). While Mexico has put into place a whole structure for organising regulatory reform within a coherent framework, including the requirement for regulatory impact statement for all new regulations, the principle of avoidance of unnecessary trade restrictiveness is not specifically mentioned among the guiding principles for the reform. It may be argued that this principle is informally taken into consideration when due account is made that alternative regulations may accomplish the same objectives at a lower cost and that the proposed regulations must minimise the negative impact they have on business. As well, nothing bar SECOFI from suggesting or promoting alternative regulations that are least trade restrictive. However since the principle of avoidance of unnecessary trade restrictiveness is not included with the retained guiding principles when regulatory impact assessments are carried out, there is no guarantee that it would be effectively taken into consideration.

Mexico still requires import licences for products covered under some 184 tariff lines. In many cases the licences are a mere formality which can now be obtained through computer links. [15] For the imports of used motor vehicles and used computer equipment, licences are simply not granted except for the imports of used computers by non-profit schools. The regulatory instrument applied in these cases results in a total import prohibition which is the most trade restrictive regulatory instrument. The purpose of this review is not to question the policy legitimacy of the decisions to protect Mexican automotive and computer industries. However, these cases illustrate the need to complement the current guiding principles for regulatory reform with an additional principle of the "avoidance of unnecessary trade restrictiveness" which would be systematically checked along with the other principles when regulatory impact assessments are carried out.

2.4. Measures to encourage use of internationally-harmonised measures

Compliance with different standards and regulations for like-products often presents firms wishing to engage in international trade with significant and sometimes prohibitive costs. Thus, when appropriate and feasible, reliance on internationally-harmonised measures as the basis of domestic regulations can readily facilitate expanded trade flows. National efforts to encourage the adoption of regulations based on harmonised measures, procedures for monitoring progress in the development and adoption of international standards, and incentives for regulatory authorities to seek out and apply appropriate international standards are thus important indicators of a country's commitment to efficient regulation.

For WTO Members, a broad requirement to use international standards as the basis of domestic regulations stems only from adherence to multilaterally-agreed trade rules. However, departures from this basic obligation are permitted. Article 2.4 of the WTO TBT Agreement requires Members to use relevant international standards (or relevant parts of them) as a basis for their technical regulations "except when they would be an ineffective or inappropriate means for the fulfilment of legitimate objectives pursued". A parallel orientation in Article 3 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) requires Members to base their sanitary or phytosanitary measures on international standards, guidelines, or recommendations, where they exist, although Members may introduce or maintain measures based on more stringent standards under certain narrowly-defined conditions.

As noted above in Section 2.1.3, the FMS Law calls upon the lead Regulatory Agencies and the National Standardisation Bodies (NSBs) to base technical standards on international standards, except when they are considered to be inefficient or inadequate to achieve the desired objectives. When elaborating NOMs, relevant agencies must justify on scientific bases the reasons for not using or deviating from international standards. Mexican Authorities consider that approximately 65% of the NOMs are partially or totally in accordance with international standards.

Although the burden of the proof falls on Regulatory Agencies and NSBs to make such a demonstration for each proposed standard, there is the risk of expediency consideration and comparison. This risk is however minimised as regard official standards, NOMs, as such considerations are taken into account during the preparation of associated RIAs. Furthermore, since RIAs are publicly available during the consultation process of proposed standards, attempts to ignore or improperly disqualifying international standards could be found with embarrassing consequences for the lead Regulatory Agencies in question.

As regard voluntary standards, it is a moot point whether NSBs are making genuine efforts to base their proposed voluntary standards on international standards. On the one hand, NSBs are no required to prepare RIAs along with their proposed standards, thus there is probably less transparency of factors considered. On the other hand, NSBs are privately-sponsored organisations which should have *a priori* no objections to adopt available international standards when these are cost efficient and less burdensome. NSBs are also required by the FMS Law to have the capacity to participate in international standardisation activities and to have adopted the WTO TBT Code of Good Practice for the Preparation, Adoption and Application of Standards. These requirements should help them to stay abreast with relevant international developments and best practices applied abroad.

It remains that for all Mexican Regulatory Agencies and NSBs, the adoption of international standards requires considerable human and material resources to get acquainted with them and to implement necessary operational testing and training involved. The task of translating in Spanish language highly technical terms for complex systems can represent significant costs and act as deterrent for the adoption of international standards. Overall evidence however suggests that the Mexican elaboration process of technical standards is favourably disposed towards the adoption of international standards.

2.5. Recognition of equivalence of other countries' regulatory measures

The pursuit of internationally-harmonised measures may not always be possible, necessary or even desirable. In such cases, efforts should be made in order to ensure that cross-country disparities in regulatory measures and duplicative conformity assessment systems do not act as barriers to trade. Recognising the equivalence of trading partners' regulatory measures or the results of conformity assessment performed in other countries are two promising avenues for achieving this result. In practice, both avenues are being pursued by Mexico in various ways. Recognising certification given to foreign products by foreign laboratories is one example. Such recognition can be accorded unilaterally, but also through the mechanism of a Mutual Recognition Agreement (MRA) between trading partners.

WTO obligations provide the chief context for the recognition of equivalence of other countries' regulatory measures and conformity assessment results. Both Agreements expressly encourage WTO Members to recognise other countries' technical regulations, SPS measures and results of conformity assessment procedures as equivalent, though in all cases Members retain ultimate discretion in deciding whether a satisfactory basis exists for doing so.[16] SECOFI has overall responsibility for monitoring Mexican compliance with these and other obligations under its trade agreements, in co-operation and co-ordination with relevant Agencies, and for responding to complaints received from foreign governments concerning perceived violations of such obligations.

Conformity assessment procedures are varied and they consist of testing, sampling, calibration, certifying and verifying products against prevailing approved technical standards. These procedures can be performed by several Government Agencies in Mexico and by private conformity assessment bodies. In order to carry out conformity assessment functions, private bodies need to be accredited by SECOFI and also need approval of the relevant Government Agencies to obtain the right to certify the Agencies' standards.

The main criteria followed in the accreditation process are that: the interested conformity assessment body indicates which standards it wants to assess and certify; it demonstrates its technical, material and human capacity; and it offers quality assurance of the good performance for the mentioned activities. The accreditation functions are actually carried out by SECOFI, although it is foreseen that a private entity (EMA) will carry out those activities in the near future after the authorisation process is obtained. SECOFI is responsible for the accreditation of private accreditation entities.

It is the responsibility of SECOFI to conclude agreements with international or foreign institutions for the mutual recognition of conformity assessment results carried out by accredited bodies in Mexico. Mexican accredited bodies can also negotiate mutual recognition agreements with foreign institutions or bodies but they need SECOFI's approval. The establishment of credible grounds for determinations of equivalence is resource-intensive, time-consuming and sometime politically sensitive process.

While there are no foreign-owned conformity assessment bodies currently operating in Mexico, there are no restrictions preventing foreign bodies from obtaining accreditation and the criteria are the same for all applicants. Under NAFTA, Mexico negotiated a four-year grace period, which ended in January 1998, in the obligation to accredit conformity assessment bodies in the territory of the other

parties in not less favourable conditions that the ones given to those bodies in its own territory. This grace period gave time to Mexican conformity assessment bodies to upgrade their technical and competitive capacity. Since January Canadian and American conformity bodies can seek their accreditation for certifying relevant Mexican standards. Mexico has negotiated so far two agreements with the USA for the mutual recognition of the test results for tires and telecommunications equipment. Mexico is negotiating with Canada an agreement on telecommunications equipment.

Possible approaches to recognition of results of conformity assessment procedures are also under consideration in APEC. Current discussions are addressing potential arrangements in such areas as electrical safety, electronic equipment and telecommunications equipment. If and when agreed, such arrangements would be open to participation by individual APEC economies. Recognition of standards and conformity assessment issues are similarly on the agenda of other incipient regional economic integration agreements in which Mexico is involved, notably the FTAA. Mexico is participating in these discussions and it is assessing the usefulness of mutual recognition agreements and application in new areas.

Since January 1998, corresponding to the end of the NAFTA grace period for accrediting conformity assessment bodies in the other parties, Mexico is definitely moving in the right direction on the issue of the recognition of equivalence of other countries' regulations and conformity assessment procedures.

2.6. Application of competition principles from an international perspective

The benefits of market access may be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective.

If private conduct affects the competition process impairing access to a particular market by foreign firms, the affected firms may file a complaint before the Federal Competition Commission (FCC). The FCC is an independent administrative agency responsible for the enforcement of the 1993 Federal Law of Economic Competition (LCFE) and its associated regulations. The FCC has no discretionary power to reject a case provided that the complaint fulfils the requirements set out in the LCFE.

The 1995-1996 case involving a complaint by a Mexican subsidiary of a multinational corporation, Singer Mexicana Manufacturera Electronica and Sim against two Mexican firms is illustrative of how market access issues are addressed by the FCC. In that case, the Mexican producers had entered into contracts with domestic retailers, granting a rebate if the retailers would not sell appliances produced outside the NAFTA area. The FCC found that these contracts were anti-competitive and ordered the firms involved to remove these clauses from their contracts. It further warned them that failure to comply would lead in the imposition of fines as provided in the LCFE.

In contrast, the FCC has rather limited powers to address competition problems that might arise from regulatory actions that impair market access for foreign firms. Under the LCFE, and certain other sector-specific regulations, the FCC has a limited competition law advocacy role to other governmental institutions. Although these opinions are not legally binding, they are often taken into account by other

regulators in Mexico. Prominent examples of successful advocacy are provided by the Railroad Service Law and Federal Telecommunications Law which incorporate competition provisions that emphasise market access opportunities for both domestic and foreign service providers.

A particular setting for concern is the exertion or extension of market power by a regulated or protected monopolist into another market. The substantive problem, sometimes called “regulatory abuse,” is not addressed by laws about monopolisation, or by regulatory laws applied to particular markets. Foreign firms and trade could be implicated in two ways. First, an incumbent domestic regulated monopolist might gain an unfair advantage over foreign products or firms in an unregulated domestic market. Or, an incumbent foreign regulated monopolist might use the resources afforded by its protection at home to gain an unfair advantage in another country. As explained above, beyond advocacy, the FCC has limited formal role to provide appropriate relief to remedy the problems created when regulatory decisions impair competition in other markets.

However, one ex-officio investigation carried out in the first year of operation for the FCC, involving PEMEX (Petroleos Mexicanos), the oil producing state monopoly, concerning gasoline stations shows the potential power of the FCC advocacy role in acting against regulatory abuse. The FCC charged PEMEX with unduly blocking entry to new competing gas stations by protecting the geographic territory of existing stations and erecting substantive barriers to entry. PEMEX imposed a “franchising” system, which required gas stations to obtain pre-clearance from PEMEX to sell anything that was not a PEMEX product (even food, soft drinks and other goods or services), and to pay a fee to PEMEX for such clearance. Some commentators have suggested that some foreign firms are particularly interested in investing in new service stations as a result of this decision, thus demonstrating the international dimension of this case.

The outcome of the FCC action was the signing of a consent agreement by PEMEX to remove all requirements to open up new gas stations, except ecological and safety standards; and to eliminate the "franchising" restrictive scheme. This action, in a period of six months, had already yielded great success. There are now over 400 new gas station contracts with PEMEX, more than PEMEX had authorised in the previous three years, showing greatly boosted investment. These CFC-induced structural remedies show the great benefits that may be obtained by enforcing basic competition concepts and by restraining new regulated monopolies from distorting markets not covered by their legal activity. This case also shows the importance of removing the *de facto* authority that public monopolies have exercised through the years, abusing their overwhelming market power.

3. ASSESSING RESULTS IN SELECTED SECTORS

This section examines the implications for international market openness arising from Mexican regulations currently in place for three sectors: telecommunications equipment; telecommunications services; and automobiles and components. For each sector, an attempt has been made to draw out the effects of sector-specific regulations on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied. Telecommunications services are reviewed in greater detail in Chapter 6.

Particular attention is paid to product standards and conformity assessment procedures, where relevant. Other issues addressed here include efforts to adopt internationally-harmonised product standards, use of voluntary product standards by regulatory authorities, and openness and flexibility of conformity assessment systems. In many respects, multilateral disciplines, notably the WTO TBT Agreement, provide a sound basis for reducing trade tensions by encouraging respect for fundamental principles of efficient regulation such as transparency, non-discrimination, and avoidance of unnecessary trade restrictiveness.

3.1. Telecommunications Services

The Mexican market for telecommunications services is one of the largest and fastest growing in Latin America. Despite uneven geographical service and relatively low telephone line density vis-à-vis the rest of the world (9.5 mainlines per 100 inhabitants in 1997, compared to 66 in the United States), the sector has registered dramatic growth in recent years and become a significant revenue earner for the Mexican economy. Public telecommunications revenue as a percentage of Mexican GDP grew from 0.56% in 1985 to 1.90% in 1997. Much of this growth has been precipitated by the opening of the market to long-distance (national and international) competition. International Telecommunication Union (ITU) estimates predict continued strong growth in the sector, presenting important opportunities for new entry into the market. Some foreign competitors have moved quickly to capitalise on these new market conditions, while structuring their investments in a manner consistent with relevant Mexican foreign ownership restrictions.[17]

The current regulatory setting for the provision of telecommunications services (see Chapter 6) is the result of major policy changes introduced from 1990 onwards. In 1990, the Mexican government privatised the state-controlled monopoly *Telefonos de Mexico*, granting it exclusive rights to domestic and international long-distance service until 1996. Article 28 of the Mexican Constitution was amended in March 1995 to eliminate the State monopoly for the establishment and operation of satellite systems. The enactment of the *Federal Telecommunications Law* (FTL) on 9 June 1995 introduced opportunities for competition and new entry into the market. At the multilateral level, Mexico made specific liberalisation commitments in the GATS negotiations on basic telecommunications covering services such as voice telephony, facsimile services, paging services, and cellular telephone services.[18]

Regulatory roles and institutions were also reorganised as part of telecommunications reform. The Ministry of Communications and Transport (*Secretaria de Comunicaciones y Transportes*, or SCT) acted as the sole regulatory authority for the industry until Telmex's formal legal monopoly came to an end in August 1996. The creation at that time of the *Comisión Federal de Telecomunicaciones* (COFETEL) placed day-to-day regulatory responsibilities such as tariffing, interconnection rates, frequency allocation, and establishment of license fees into the hands of an independent body with technical and operational autonomy. SCT continues to play a role by virtue of its remaining authority for the grant and revocation of concessions[19] and operating permits. SCT and COFETEL consult with interested parties when drafting regulations for the sector. The relationship between SCT and COFETEL is discussed in more detail in chapter 6.

The administrative procedure followed by SCT for the grant of a concession to install, operate, or exploit a public telecommunications network is set out in Chapter III of the FTL.[20] Applications by prospective service providers must contain, at a minimum: name and address of the applicant; a description of the services to be provided; the technical specifications of the project; investment plans, coverage and quality of service; a business plan; and documentation establishing financial, technical, legal and administrative capacity of the applicant. Additional criteria apply in respect of applicants seeking to use the radioelectric spectrum.

Rulemaking procedures for the sector are subject to the Federal Administrative Procedure Law (FAP Law) and guidelines on government interaction with the public (see discussion in section 2.1.2). Thus, all draft regulations must be published in the Official Diary before they can be enforced. Mechanisms for public consultation, however, are left to sector specific laws. COFETEL is also required by the FAP Law to submit all draft regulations with a potential impact on business activity along with a regulatory impact assessment (RIA) to SECOFI's Economic Deregulation Unit.

Both COFETEL and the SCT have web sites contributing to transparency in the sector. Nonetheless, some trading partners have expressed concerns about transparency in this sector, citing difficulties in identifying regulatory content and in understanding newly-issued rules as well as uncertainty about procedural avenues to be followed when pursuing complaints about existing regulations.

Regulatory content for the sector has broadly reflected the pro-competitive concepts underlying recent domestic reforms. The termination of Telmex's legal monopoly in August 1996 and opening of the long distance market to competition in January 1997 (when Telmex was forced to interconnect) were important watersheds. A degree of competition was introduced with the speedy grant of licenses to new concession holders.

However, throughout 1998, foreign carriers became increasingly vocal about alleged regulatory barriers to effective market access and presence in Mexico. These concerns culminated in the United States with calls for the launch of a WTO dispute settlement procedure against Mexico in respect of various regulatory issues, notably international settlement rates, foreign ownership restrictions and satellite infrastructure.[21]

Specific aspects of interconnection rate structures have also come under scrutiny. Domestic interconnection rates charged by Telmex to terminate inbound international calls have emerged as a trade concern, with foreign carriers claiming that Telmex's rates are much higher than those charged in other liberalised markets. Foreign competitors have also objected to Telmex's imposition of a 58% surcharge on all inbound switched international calls.[22] US carriers claim that this rate structure extracts from them $857 million per year. They argue that the fees are far above cost and that their combined impact, by severely depressing expected profitability, is effectively discriminatory. Affected foreign carriers also consider that imposition of these fees results from a regulatory failure to rein in abusive market power.[23] As of 1 January 1999, the 58% surcharge was replaced by a rate of 26.1 cents of a peso per minute (approximately 2.6 cents of one US$) for the delivery of the long distance traffic (detailed information is available on Cofetel's Internet site www.cft.gob.mx).

Telmex argues in regard to the interconnection issue that its significant loss of market share to foreign competitors since 1997 shows that competition exists in the market and that the fees are justified to compensate the company for the over $13 billion it invested to prepare the country's infrastructure for competition – improvements which foreign competitors now freely exploit.

Modalities for the negotiation of accounting rate agreements (settlement rates) between national and foreign carriers have been another source of conflict. As in many OECD countries, Mexico's accounting rate framework is established by commercial negotiation. However, foreign competitors object to the fact that under current rules, such negotiations can only be conducted by the dominant carrier Telmex, giving it effective authority over the process.

Finally, under existing regulations, only facilities-based carriers may provide international simple resale (ISR) services – procedures which allow carriers to use private lines for the routing of phone calls. While the rationale behind this approach is to encourage network build-out in support of universal service, non-facilities-based carriers argue that the restriction is a violation of Mexico's WTO commitments in the sector. However, Mexico's agreement to allow ISR is contingent on having the necessary regulations in place, which is still not the case.[24]

Foreign ownership in most sub-sectors remains subject to restrictions. Under the Federal Telecommunications Law, foreign investment participation in concessions for basic and long distance telephony may not exceed 49%. An exception is made in the area of cellular telephone services,[25] where

up to 100% ownership may be allowed with prior authorisation of the National Foreign Investment Commission. As a result of Constitutional amendments introduced in 1995, foreign investors may now own up to 49% of a Mexican firm operating satellite communications. No foreign investment restrictions apply in respect of value-added services.[26]

Broader legal authority for wider prohibitions or restrictions on foreign participation also exists. The *Ley de Vias Generales de Comunicacion* stipulates that foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in Mexican enterprises engaged in communications, transportation or other general means of communication activities as defined in the law. Article 12 of the law establishes that concessions for the construction, establishment or exploitation of "general means of communication" may only be granted to Mexican nationals or enterprises. Mexican enterprises with one or more foreign partners must show that the latter would accept to be treated as Mexican nationals with respect to the concession, effectively waiving any right of protection from their home governments. Other restrictions apply in respect of telecommunications transport networks, including local basic telephone services, long-distance telephone services (national and international), rural telephone services, satellite services, mobile telephony, and paging. Different legal sources underpin the latter group of possible restrictions,[27] introducing the risk of non-transparency.

The overall picture that emerges is largely positive, though some cautionary remarks are warranted. Faced with the dual challenge of expanding service and fostering competition in the sector, Mexico has made impressive progress towards liberalisation while still in early stages of infrastructure development – a rare achievement relative to many non-OECD countries. Key events such as the passage of the FTL and the establishment of an independent telecommunications regulator have set the stage for a trade- and investment-friendly regulatory regime. However, the experiences of some (mainly US) carriers seeking to compete in a liberalising Mexican long-distance market show that certain features of the regulatory framework may be undermining market openness.

Concerns relating to market openness may dissipate in the future. Still, greater efforts seem to be required in respect of transparency and openness of decision-making in terms of: clearer communication of regulatory content and avenues for complaint by adversely affected foreign parties; avoidance of unnecessary trade restrictiveness through more systematic analysis of proposed rules for the sector from a market openness perspective, including perhaps enhanced consultation with the trade policy community; and enhanced application of competition principles from an international perspective. Specific regulatory content, *e.g.* rules on interconnection fees, may also need to be reviewed in terms of their alleged discriminatory effects on foreign competitors.

3.2. Telecommunications equipment

Regulatory functions for this sector are performed by COFETEL. Two important roles are development of the incumbent network's technical interconnection standards and establishment of equipment attachment policies allowing customers and service providers to attach pieces of terminal equipment to the incumbent's network. COFETEL plays the lead standardisation role for the sector and is the only entity authorised to recognise test results from domestic or foreign test facilities.[28]

COFETEL standardisation activities, including administrative procedures for the preparation of official and voluntary standards, are subject to the provisions of the FMS Law discussed in section 2.4 of this chapter. Over 100 *Normas Oficiales Mexicanas* (NOMs) are in place for telecommunications equipment.

NAFTA provisions aimed at facilitating trade in telecommunications equipment devote considerable attention to standards issues as a core market access concern. Article 1304(1) requires each Party to ensure that its standards-related measures relating to the attachment of terminal or other equipment to public telecommunications transport networks, including measures relating to the use of testing and measuring equipment for conformity assessment procedures, do not introduce unnecessary obstacles to trade, and establishes a basis for the imposition of standards. Also Article 1304(6) requires each Party to adopt as part of its conformity assessment procedures "provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures."

A NAFTA Telecommunications Standards Sub-committee was established to develop a work programme aimed at "making compatible, to the greatest extent practicable, the standards-related measures of the Parties for authorised equipment". Though the Sub-committee make considerable progress at the outset, concrete achievements have yet to be realised in this area. This, together with the fact that NAFTA's coverage is limited to terminal equipment – not covering wireless – may be contributing to a shift in focus on the part of the US industry to APEC and US-EU MRA processes.

Apparent differences in interpretation of the obligations arising under NAFTA-related provisions have given rise to growing concerns about Mexican market openness in this sector. Implementation in practice of Article 1304(1) provides a ready example. As noted earlier, that Article establishes a basis for the imposition of standards for terminal equipment attachment under certain narrowly-defined conditions, such as the need to "ensure users' safety and access to public telecommunications transport networks or services". This and four other conditions were in essence grafted to NAFTA from Part 68 of the US Federal Communications Commission regulations – regulations designed to ensure a highly competitive equipment market in the aftermath of the AT&T break-up, in part by deterring the imposition of equipment standards except to address certain narrow issues.

In practice, however, Mexico has not shared this interpretation. Instead of espousing a minimalist regulatory approach, NAFTA partners contend that Mexico has sought to fit its over 100 official equipment-related standards under the five "exceptions" rubrics contained in Article 1304(1), raising questions about compliance with the overall thrust of the Article. While NAFTA clearly recognises the right of each Party to take standards-related measures and to establish the level of protection it deems appropriate, trade frictions surrounding the issue seem to point to an open question – whether the underlying objectives of Mexican equipment standards might be met in a less trade restrictive manner. Here, greater efforts towards recognition of equivalence of other countries' standards – perhaps based on the "functional equivalence" model employed by the US telecommunications regulator – may hold the key to reduced trade tensions.

Similar philosophical differences appear to be thwarting efforts to establish common ground for the mutual acceptance of test data under conformity assessment procedures. NAFTA Article 1304(6) required each Party to adopt, as part of its conformity assessment procedures, "provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures." Mexico's preferred approach to this issue has been to require government accreditation of laboratories, a stance visibly at odds with the more "hands-off" position taken by the United States and Canada. Both of Mexico's NAFTA partners continue to cite lack of progress in this area as a serious trade concern.[29]

NAFTA also lifted the 49% limit on foreign equity in telecommunications equipment manufacturers, with the result that all firms located in NAFTA countries regardless of national origin may obtain 100% ownership in equipment manufacturing firms without government approval. Mexico is not a signatory to the Information Technology Agreement.

In sum, the nature of the Mexican standards system and the particular approach taken by the regulator with respect to official standards and conformity assessment procedures for this sector have contributed to persistent and significant trade tensions with trading partners. Sector-specific NAFTA provisions on standards-related measures have aimed to alleviate these frictions – and might have provided a model for wider multilateral application – but fundamental differences on implementation issues have clouded concrete results in this area to date. Further efforts to recognise the equivalence of other countries' regulatory measures, particularly conformity assessment procedures and greater reliance on internationally-harmonised measures where appropriate, may go some distance to improving market openness.

Mexico might also look to the US example in moving some products to self-declarations of compliance, removing the need for an additional layer of certification procedures. Finally, given the extent of official standards applicable to this sector, a comprehensive re-evaluation of the fundamental objectives underlying regulations currently in place with a view to ensuring that they do not unnecessarily restrict trade seems warranted. Greater reliance on pro-competitive, industry-driven open standard-setting activities involving all interested players, domestic or foreign may however hold greater promise for easing trade frictions in the long term.

3.3. Automobiles and components

Concerns about market openness and domestic regulation of automotive industries around the world are not new. Due to the historic dynamism of global economic activity in the sector and traditionally interventionist policies of some governments aimed at protecting domestic automotive industries, trade tensions related to domestic regulatory issues in general and standards and certification procedures in particular have long figured on bilateral and regional trade agendas. This reflects the fact that automobiles remain among the most highly regulated products in the world primarily for reasons relating to safety, energy conservation, and the environment. Divergent national approaches to the achievement of legitimate domestic objectives in these key policy areas are therefore likely to remain a significant source of trade tension as global demand for automobiles continues to rise.

In Mexico, automotive production and trade is highly regulated under the Automotive Decree (*Decreto para el fomento y modernizacion de la industria automotriz*) not so much for the purposes of safety, energy conservation and environment but to speed up its modernisation and competitiveness through highly trade restrictive regulations albeit set to be eliminated at the end of December 2003.

Imports of new motor vehicles into Mexico remains nevertheless prohibited by individuals and are allowed only by manufacturers that comply with the Automobile Decree. Import licences are therefore only granted to manufacturers on the basis of their recorded import and export balance. For used vehicles, there is a *de facto* import prohibition from all countries as import licences are simply not granted. Under NAFTA, licences will be gradually issued from some imports of used vehicles originating from the US and Canada as of 2009 and the licence requirement will be eliminated in 2019. Mexico has also signed several other free trade agreements which each provide for the elimination of tariff at a given point in time.

Box 6. **Mexican automotive decree**

The Automotive Decree first introduced in December 1989 and amended subsequently provides for a set of measures designed to facilitate the modernisation of the Mexican automotive industry with a view to making it internationally competitive. Mexico essentially grandfathered the main provisions of the Decree for a period terminating at the end of December 2003 under NAFTA. After that, the horizontal NAFTA provisions will govern trade in motor vehicles within North America. In 1998, Mexico's tariff rate on vehicles is 5.5% under NAFTA and the MFN rate is 20%.

The Decree contains specific local content and trade balancing requirements to be applied by each manufacturer. National content requirement is established at 34% between 1994 and 1998 and it will be reduced by one percentage point each following year to 29% in 2003, and eliminated in 2004. Automotive manufacturers are required to achieve trade balancing requirements established as a percentage of the value of direct and indirect imports of auto parts which manufacturers incorporate into their production in Mexico for sale in Mexico. In 1994, the trade balancing requirement was reduced from $2 of exports for every dollar imported to 80 cents. This percentage will be gradually reduced every year to reach a level of 55 cents in 2003 and eliminated in 2004.

While the Automobile Decree still maintains significant trade distorting provisions, the overall approach contrasts sharply with the previous programme based on import substitution. Foreign direct investment is now welcome and the local content and trade balancing requirements are gradually relaxed and set to be eliminated in 2004. The Automobile Decree and Mexico's overall trade liberalisation were instrumental in Mexico becoming a large exporting country of motor vehicles with 11% of total world exports of commercial vehicles in 1997, up from 1% in 1990 (see Table 4). In 1997, Mexico's export ratio calculated as the volume of exports divided by the volume of production was 69% and 78% for passenger and commercial vehicles respectively. Exports were practically non-existent in 1980.

Tangible benefits have been materialised for Mexico with its new approach to regulate the motor vehicle sector. Automotive production accounts for about 11% of manufacturing production and 19% of total exports (including in-bond exports). Eight vehicle assembly firms are now operating, 16 truck and bus manufacturers and over 500 auto parts suppliers. The Mexican authorities further expect, that between 1997 and the year 2000, new investment in the automotive sector will amount to about US$18 billion to take advantage of the opportunity offered by the Mexican environment and market.

The net benefits are however tempered by the high consumer prices paid by Mexican consumers, with a price premium hovering around 25% above comparable vehicles in the United States for both new and used vehicles (unofficial sources). Given the export success of manufacturers established in Mexico and the fact that the trade balancing requirements are not currently exerting any real restraint on import levels on manufacturers, Mexican authorities should assess whether the high price supported by Mexican vehicle consumers could not be reduced.

Table 4. **Production, exportation and registration of motor vehicles in Mexico**

Year	1980	1990	1994	1995	1997
Production					
Passenger vehicles	303 056	598 093	856 563	699 312	853 197
Commercial vehicles	186 950	222 465	194 000	237 888	508 833
Exportation					
Passenger vehicles	13 633	249 921	497 049	598 803	591 485
Commercial vehicles	4 612	26 016	71 443	183 873	396 707
Export Ratio					
Passenger vehicles	0.4%	41.8%	58.0%	85.6%	69.3%
Commercial vehicles	0.2%	11.7%	36.8%	77.3%	78.0%
Shares of World Exports					
Passenger vehicles	0%	2%	4%	4%	4%
Commercial vehicles	0%	1%	3%	7%	11%
Domestic Registration					
Passenger vehicles	286 000	353 000	413 819	114 658	303 558
Commercial vehicles	166 000	198 000	205 311	72 823	82 000

Source: Comité des Constructeurs Français d'Automobiles, *1997 Analyses et statistiques*, pages 45-47, Paris 1998.

Technical standards in Mexico are applied for ensuring the safety of motor vehicles and for achieving environmental objectives. As the Mexican automotive industry is highly integrated in North America, Mexican vehicle production is essentially calibrated to meet the safety and environmental standards set in the United States and Canada which generally provide for high technical requirements. There are few official Mexican technical standards (NOMs) but more than 100 voluntary standards (NMXs). Contrary to the United States, Mexico does not allow for the self-certification of technical safety standards by manufacturers. Safety and environmental conformity assessment procedures can be carried out in relevant Mexican accredited conformity assessment bodies.

Since January 1998, Mexico applies Article 908 of NAFTA which provides that each party shall accredit and recognise certification procedures performed by conformity assessment bodies in the territory of another Party. If appropriate agreements are finalised among NAFTA Parties, US and Canadian environmental standards could be certified by accredited Mexican conformity assessment bodies and vice versa. In view of the self-certification of safety standards applicable in the United States, Mexican manufacturers are already self-certifying their vehicles destined for export to the United States.

NAFTA also provides for the establishment of an Automotive Standards Council to facilitate the attainment of compatibility among national standards-related measures of the parties. Within this Council, a mutual recognition agreement was achieved among NAFTA parties for tires. Mexico participates actively in the Council.

Box 7. **Global technical regulations for wheeled vehicles**

In recent years, support was voiced for strengthening the legal and administrative capacity of the 1958 Agreement of Working Party 29 of the United Nations - Economic Commission for Europe (UN-ECE) as the principal body for common development of technical standards and regulatory requirements for motor vehicles. As a result of multilateral negotiations, a new agreement was reached on 25 June 1998 on Global Technical Regulations for Wheeled Vehicles which shall facilitate the full participation of countries operating either the type-approval or the self-declaration systems of conformity of standards. The UN-ECE Agreement is entitled "Agreement concerning the establishment of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles".

The Agreement opens up the possibility for establishing "global technical regulations" proposed by its contracting parties and which must be approved by consensus. The USA has already ratified the Agreement and the adhesion of the EU, Canada, Australia and Japan is expected shortly. Mexico is not a member of the UN-ECE Working Party 29 given the absence of requests from manufacturers operating in Mexico which are all foreign-owned multinational firms. Cost involved in the participation in this Working Party is a consideration for Mexican Authorities.

There are no sector-specific processes in Mexico for the elaboration of technical standards for motor vehicles with respect to both safety and environment. Any proposals for official and voluntary standards must be included in the annual National Standardisation Programme. Proposals must be drafted by one of the consultative committees and are subject to the same procedure of public consultations and availability of related regulatory impact assessments. The majority of Mexican standards applied to motor vehicles are in the category of voluntary. With its high export propensity, it is in Mexico's interest to minimise redundancy in standards and conformity assessment procedures and to negotiate mutual recognition agreements with its major trading partners. This process has began with tires under NAFTA and with the end of the grace period granted to Mexico for accrediting conformity assessment bodies of other NAFTA parties, the stage is set for progress in mutual recognition of the certification of standards.

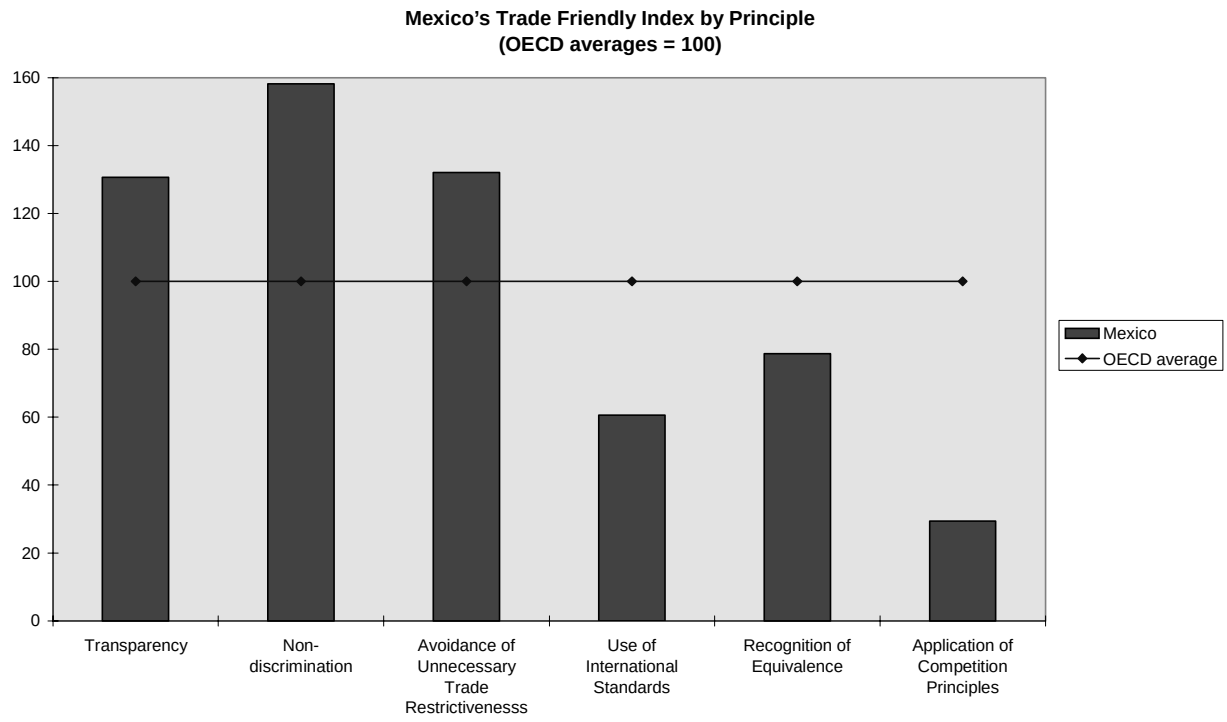
4. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

4.1. General assessment of current strengths and weaknesses

An analysis of the OECD indicators questionnaire on market openness undertaken carried out in early 1998 as part of the OECD Project on Regulatory Reform found Mexico to be well ahead of the OECD average with respect to three of the efficient regulation principles and to score relatively low with respect to the application of competition principles (see Chart 1 below). A word of caution should be noted about the results reproduced in this Chart given the large number of answers left blank by Member countries which has complicated the task of country comparison.

The results represented on the Chart are useful as they corroborate, to a certain degree, the results obtained during the country evaluation phase. Overall the Chart suggests uneven results for Mexico in applying the six efficient principles of market openness in comparison with OECD countries, with simultaneously above average OECD results for the first three principles and relative low results with the other three principles. As a result of the country review, however, important nuances most of them on the positive side were found in terms of the overall trade friendliness of Mexican regulatory procedures with the six efficient regulation principles.

Figure 1.



While not all of the six efficient regulation principles examined in this review are expressly codified in Mexican administrative and regulatory oversight procedures to the same degree, the weight of available evidence suggests that they are given ample expression in practice. This is most clearly the case for transparency and openness of decision-making and measures to ensure non-discrimination. The formulation of domestic regulation and technical standards is performed on the basis of extensive public consultations and transparent processes. Together these features act as a check and balance which reduce opportunities for regulatory capture by vested interest groups. Concurrently, there are few WTO complaints from trading partners with respect to any of its multilateral obligations and, when they happen, Mexico has shown good faith in seeking to find mutual acceptable solutions.

The overall deregulation programme is structured on a comprehensive and high level organisation encompassing all Mexican Ministries and Agencies. At the top, the Economic Deregulation Council composed of high level representatives from all segments of activities is providing a high political profile to the programme. At the operational level, each Ministry is required to assign a Deputy Minister in charge of regulatory improvements in their Ministry. The overall management of the deregulation programme is co-ordinated by the Economic Deregulation Unit (EDU) of SECOFI for co-ordinating major reforms. This structural arrangement seems particularly adapted to overcome enshrined resistance to change and inertia in Ministries which have developed over the years a closed attitude to opinion coming from outside of their own sphere of influence, particularly when these opinions touch upon essential operations under their purview.

The process of deregulation and review of proposed regulations is subject to public consultation, the duration of which varies according to sector and issues concerned. During these public consultation processes, no distinctions are made between nationals and non-nationals in terms of their access to the relevant information or their participation in public consultations or committees. There is also evidence that public reactions voiced by foreign business communities were duly taken into consideration. Finally, Mexican use of the Internet for disseminating information to the public is extensive and widespread which is particularly advantageous for foreign firms in terms of obtaining information at low transaction cost and in providing them equal opportunity with domestic firms.

The degree and quality of the regulatory transparency of government procurement and Customs procedures are crucial for foreign participants for ensuring their ability to pursuit business opportunities in Mexico. In both fields, Mexico has made significant investment in putting into place electronic-based systems which are improving significantly the transparency of procedures involved which, in turn, are resulting in transaction cost-savings for traders and added opportunities in submitting bids in due time for foreign participants.

To encourage the implementation of deregulation reforms at states and municipal levels, the Federal Government has signed deregulation co-operation agreements with all 31 Mexican States in which each state has committed to create and implement a regulatory reform programme similar to the one undertaken at the Federal level.

Although a constitutional amendment granted the Federal District of Mexico a similar status to that of the 31 States as of December 1997, the EDU and the Economic Deregulation Council worked with the Federal District to advance the regulatory reform agenda in the country's largest urban centre. The significant advances are mentioned in Chapter 2. It is further expected that the current and future administrations will continue along this path.

In accordance with WTO obligations, the Federal Government must take "reasonable measures" to ensure compliance by regional and local governments with international obligations.[30] The ongoing deregulation programme in Mexico seems to recognise the importance of these considerations. Public Seminars are also organised by SECOFI in order to reach a wide and diversified audience with the view to explain the objectives and means put into place under the deregulation programme.

While the third principle dealing with the avoidance of unnecessary trade restrictiveness is not formally included in the guiding principles adopted by Mexico under its deregulation programme, overall evidence suggests that related considerations are informally taken into consideration – and more so than in other OECD countries according to the Chart. However, there are a number of cases where Mexican import licence requirements are resulting in *de facto* import prohibitions, i.e. for used motor vehicles and used computer equipment. The actual uses of highly trade restrictive instruments suggest that the current set of guiding principles for the regulatory reform is incomplete and that an additional principle of "avoidance of unnecessary trade restrictiveness" should be adopted along with the other principles guiding the preparation of regulatory impact statements.

Mexican market openness might be further enhanced by making additional efforts with respect to the recognition of equivalence of other countries' regulations and conformity assessment systems, and reliance on internationally-harmonised standards as the basis of domestic regulations. The Mexican elaboration process of technical standards requires an explicit comparison with comparable international standards and an assessment of the degree of correspondence with them. Overall evidence suggests that Mexico is favourably disposed towards the adoption of international standards but the resource intensity implied for their evaluation acts as a real deterrent factor in view of ongoing fiscal restraint imperatives.

Limited progress has been achieved so far concerning the recognition of conformity assessment procedures performed in other countries. However, since January 1998 Mexico's grace period under NAFTA is over and the stage is now set to work towards reduction in duplicative certification procedures among NAFTA parties. It is however crucial for Mexico to ensure a wider geographical relationships in respect of mutual recognition agreements of conformity assessment procedures. Efforts will therefore be required in this direction. Ongoing negotiations for additional free trade agreements and other multi-country discussion under APEC and the FTAA offer opportunity to concretise positive developments in this field.

Moves towards regulatory harmonisation or mutual recognition of standards or conformity assessment procedures are promising steps, though the substantial commitments of time and resources required for such initiatives are exercising real constraint on the ability of Mexico to negotiate and conclude necessary international agreements. With the proposal to privatise the accreditation functions of conformity assessment bodies, a task currently performed exclusively by SECOFI, the latter will probably be able to free some resources and to reallocate them toward the more important task of negotiating MRAs for the recognition of other countries' regulatory measures and conformity assessment procedures.

Mexican competition law provides for equivalent treatment to foreign and domestic firms as a matter of procedure and substance. With respect to dealing with regulatory abuse which may give rise to market access issues, the competition law also appears to adequately address these concerns. In practice, however, the Mexican approach is weighted on the informal advocacy role of the FCC with less emphasis on the formal investigatory and remedial authority by the FCC. As the Mexican competition law is still relatively recent, this should be watched over time to see whether, or to what extent, this relative informality curtails its effectiveness as a means of dealing with market access problems arising from regulatory abuse.

4.2. The dynamic view: the pace and direction of change

Globalisation has dramatically altered the world paradigm for the conduct of international trade and investment, creating new competitive pressures in Mexico and elsewhere. At the same time, the progressive dismantling or lowering of traditional barriers to trade and increased relevance of "behind the border" measures to effective market access and presence has exposed national regulatory regimes to a degree of unprecedented international scrutiny by trade and investment partners, with the result that regulation is no longer, if ever it was, a purely "domestic" affair. Trade and investment policy communities have generally kept pace with these twin phenomena. Concrete steps to increase awareness of and effective adherence to the efficient regulation principles and deepen international co-operation on regulatory issues are encouraging trends in this context.

The economic transition staged in Mexico in the last decade and a half, which is extraordinary by any standards, clearly attests to the understanding by Mexican Authorities of the changing world economic paradigm. In particular, the significant privatisation programme implemented in Mexico in conjunction with the removal of previous restrictions on foreign direct investment and control over many Mexican industries, that used to be deemed as strategic, has already yielded significant opportunities for foreign traders and investors.

Increased reliance on inputs from domestic and foreign business communities is now fully recognised and structured for the pursuit of the deregulation programme and in the elaboration of technical standards. A business-driven approach to market-opening regulatory reform has already yielded concrete results and it should be maintained. As prior experience has shown, continued multilateral liberalisation of trade and investment should bolster future regulatory reform efforts.

4.3. Potential benefits and costs of further regulatory reform

The need for all governments to address market failures through sound regulatory action is an undisputed sovereign prerogative. Nonetheless, ill-conceived, excessively restrictive or burdensome regulation exacts a heavy price on commercial activity, domestic or foreign, and places a disproportionately heavy burden on small-and medium-sized enterprises. Foreign firms established in the Mexican market face the same regulatory burden as domestic firms.

Trade and investment friendly regulation need not undermine the promotion and achievement of legitimate Mexican policy objectives. High-quality regulation can be trade-neutral or market-opening, coupling consumer gains from enhanced market openness with more efficient realisation of domestic objectives in key areas such as the environment, health and safety. But it is doubtful that this can be achieved in the absence of purposeful, government-wide adherence to the principles of efficient regulation.

Market-opening regulation promises to promote the flow of goods, services, investment and technology between Mexico and trading partners. Expanded trade and investment flows generate important consumer benefits in terms of greater choice and lower prices, they raise the standards of performance of domestic firms through the impetus of greater competition and boost GDP. The transformation of the Mexican economic policies was instrumental in making Mexico one of the world's largest recipient of FDI among emerging economies, after China, during the 1990s (see Table 5). In 1997, Mexico received its highest level of inflows of foreign direct investment in fixed assets of the 1990s, reaching US$12.5 billion as already noted in Table 1.

Table 5. **Selected recipient countries of foreign direct investment**

Year	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**
World net inflows (billion US$)	197.5	152.3	166.9	213.2	233.5	331.9	330.2
% of world net inflows							
China	1.77	2.87	6.68	12.91	14.47	10.80	12.17
Mexico	**1.33**	**3.13**	**2.63**	**2.06**	**4.70**	**2.87**	**2.31**
Brazil	0.50	0.72	1.23	0.61	1.32	1.46	2.99
Malaysia	1.18	2.62	3.11	2.35	1.86	1.24	1.36
Poland	0.05	0.19	0.41	0.80	0.80	1.10	1.36
India	0.08	0.05	0.17	0.26	0.42	0.65	0.78

Source: World Development Indicators, 1998, The World Bank.

With about two thirds of exports accounted for by manufactured goods, the Mexican export performance reflects the improved competitiveness of Mexican firms in international markets which itself is partly a reflection of the overall trade and investment liberalisation and domestic deregulation approaches pursued in recent years. The growing importance of trade is reflected in the number of exporting firms in Mexico which has increased from 25 609 to 43 023 firms between 1993 and 1997 for a 68% increase (see Table 6).

Reforms in customs procedures have already resulted in tangible benefits in terms of a drastic fall in the maximum clearance time and labour productivity gains for Customs Officials and overall improvement in terms of integrity. Current integrated Internet-based applications linking the majority of interested parties in trade transactions raise the prospects of additional savings in terms of quicker responding time among parties in completing forms or retrieving them for their correction or modifications and the potential elimination of all paper forms. Mexico is already among the leading countries in the implementation of an integrated electronic-based system and ongoing improvement programmes suggest that it will maintain this leadership in the foreseeable future.

Another regulatory area where Mexico seems to be among the leading countries in innovative applications of the Internet is for government procurement tendering and bidding procedures. Future developments by SECODAM of its COMPRANET Internet-based system offer the possibility of additional efficiency gains in terms of time and cost saved in retrieving and delivering electronically tendering and for submitting bidding.

Table 6. **Number of exporting firms in Mexico by sectors**

Description	1993	1997*
Fruit & vegetables	2 176	2 836
Flour, seeds, seasoning	564	649
Various products of animal/vegetable origin, food preparation	789	1 288
Various drinks	172	313
Minerals	262	323
Chemical products & others	2 946	4 744
Leather and leather products	528	963
Wood and wooden products	881	1 711
Textiles	1 661	3 762
Footwear	532	1 183
Mineral manufacturing & ceramic products	1 149	2 144
Glass and glass products	538	1 007
Steel	1 680	2 856
Metal & metal products	1 621	2 682
Capital equipment	3 072	4 587
Machines & electric material	1 879	2651
Automobile equipment and accessories	847	1 601
Precision instruments	1 401	2 054
Furniture, light articles & pre-fabricated construction materials	1 116	2 822
Toys and sports articles	356	630
Electronics	1 439	2 217
Total	**25 609**	**43 023**

Source: SECOFI, * Data up to end-November 1997.

4.4. Policy options for consideration

Continue to foster good regulatory practices already instituted in areas such as transparency; and make public through the Internet the regulatory impact assessments (RIAs) prepared for proposed regulations. While Mexico is well advanced in disseminating Federal formalities, regulations and draft regulations through the Internet, the public availability of RIAs for all proposed regulations would further assist the public, including foreign participants, in understanding potential implications of those regulations. It would also act as an additional check and balance feature to minimise potential risk of regulatory capture.

Take measures to ensure uniformity in the preparation of RIAs and in the implementation of regulatory requirements by all Federal and Regulatory Agencies. The requirement to prepare a regulatory impact assessment for proposed regulations having a potential impact on business activities is still very recent and there is the need to ensure that this regulatory requirement is uniformly implemented by all Federal Ministries and Regulatory Agencies.

Complement the current sets of guiding principles for the preparation of regulatory impact assessment with the additional principle of "avoidance of unnecessary trade restrictiveness". This would allow to systematically check proposed regulations and legislation against a more comprehensive set of principles when regulatory impact statements are carried out.

Heighten awareness of and encourage respect for the OECD efficient regulation principles in state and local regulatory activities affecting international trade and investment. Given the important responsibilities of states and cities, the potential exists for conflicting regulations that would frustrate the free circulation of goods and services within the Mexican territory and deregulation reforms sponsored at the Federal level. With improved transparency in the preparation and adoption of Federal regulations and procedures, the absence or lack of transparency in the preparation and adoption of regulations and procedures at the state and municipal levels will also become more visible.

Intensify efforts to use existing international standards and to participate more actively in the development of internationally-harmonised standards as the basis of domestic regulations. Reliance on internationally-harmonised measures as the basis of domestic regulations can facilitate the expansion of domestic production capacity and support the export-orientation of Mexican firms.

Seek to ensure that bilateral or regional approaches to regulatory co-operation are designed and implemented in ways which will encourage broader multilateral application. Mutual recognition of regulations or conformity assessment procedures and other approaches to intergovernmental regulatory co-operation offer promising avenues for the lowering of regulatory barriers to trade and investment. Efforts carried out under regional agreements should actively be pursued in a broader perspective of international organisations with multilateral applications.

4.5. Managing regulatory reform

Mexico's accession to the GATT in 1986 and the negotiation of NAFTA in particular have had profound impact on domestic policy and regulatory formulation processes in Mexico. These trade and investment agreements have acted as catalysts for domestic regulatory reforms and provided strong policy anchors which have contributed to minimise the adverse effects of the crisis in 1995 and helped to stage an impressive recovery. These agreements were instrumental in locking in policy commitments to regulatory reform regarding both generic and sector-specific themes and provided transparent benchmarks by which to gauge progress towards reform objectives. Steady pursuit of additional international commitments in the context of the WTO and comprehensive regional free trade agreements can further strengthen the ongoing process of regulatory reform.

At the same time, time-lag between fast-changing competitive conditions and government-negotiated outcomes can be significant, pointing to the need to supplement these activities with domestically-driven efforts to achieve and maintain optimal market openness. In some cases, identifying and addressing recurrent patterns of trade friction through more focused, systematic application of the efficient regulation principles may dramatically reduce the scope for trade conflicts in the first instance. This alone should generate important gains to government in terms of encouraging optimal allocation of time and resources to pursue given policy objectives, be it at the multilateral, regional or bilateral level. When regulatory styles and content succeed in averting trade disputes altogether, net gains accrue to both Mexican consumers and global economic welfare.

NOTES

1. See the submission of the Mexican Government in the context of the 1997 WTO Trade Policy Review. Mexico indicated that it had unilaterally eliminated tariffs on an MFN basis on 1,200 products, thus increasing the number of duty-free products from 414 in 1993 to 1,658 in 1997. This tariff elimination primarily concerned inputs and machinery used in agricultural, chemical, electrical, electronic, textiles and publishing sectors.

2. See, in particular OECD "Open Markets Matter. The benefits of Trade and Investment Liberalisation", Paris 1998, OECD "The environmental effects of Trade", Paris 1994 and the 1995 Report on Trade and Environment to the OECD Council at Ministerial level.

3. See related discussion in Chapter 2 (Regulatory Quality and Public Sector Reform), The OECD Report on Regulatory Reform, Volume II: Thematic Studies (OECD 1997).

4. SECOFI is empowered to issue NMXs in areas not covered or insufficiently covered by NSBs.

5. Tenders must be submitted in writing in two sealed envelopes, one for the technical and the other for the economic tender. The opening of tenders is performed in two phases. In the first phase, the opening of technical envelopes takes place in a public meeting and tenders that do not meet all conditions are rejected. In the second phase for the qualified technical tenders, the opening of economic tenders is done and the one with the lowest bid is awarded the contract. A new tendering procedure takes place when all tenders submitted do not comply with the conditions established. Decisions on contract awards are noticed in public meetings in which all bidders can freely participate. Bid challenges must be notified to SECODAM for actions that contravene the Law of Acquisitions or trade agreements signed by Mexico.

6. See OECD 1996, Trade Liberalisation Policies in Mexico, Paris, page 48.

7. Source, Confederación de Asociaciones de Agentes Aduanales de la República Mexicana (CAAAREM).

8. NAFTA and the five other Free Trade Agreements, respectively with: Colombia and Venezuela (G-3); Costa Rica; Bolivia; Nicaragua; and Chile. Mexico also grants unilateral preferences to a number of developing countries under the Generalised System of Preferences.

9. Mexico is currently negotiating free trade agreements with: El Salvador, Guatemala, Honduras, Panama, Jamaica, Equator, Peru, Trinidad and Tobago, MERCOSUR and Israel.

10. Concerning secondary petrochemical products, the amendment of the Foreign Investment Law identified the secondary petrochemicals which can be produced privately and clarified the principles for private and foreign investment in the sector. Except for eight listed petrochemical products, all oil derivatives can be privately produced. For existing plants which are to be regrouped into saleable units, private investment is allowed up to 49% of the capital, the Mexican government keeping a majority share holding. For investment in new plants, private and foreign ownership is permitted up to 100% and the approval process for start-ups has been shortened. Source, *OECD Economic Surveys 1998 Mexico*, p. 77.

11. See, the submission of the Mexican Government in the context of the 1997 WTO Trade Policy Review, page 198.

12. The European Union requested WTO consultations in which it claims that Mexico applies Cost-Insurance-Freight (CIF) value as the basis of customs valuation for imports originating in non-NAFTA countries, while it applies Free-On-Board (FOB) value for imports originating in NAFTA countries. The EU alleges

that Mexican procedures are inconsistent with WTO obligations regarding regional trading arrangements. Consultations are following their courses.

13. See Mexico's services schedules in GATS/SC/56/Suppl.3 26 February 1998.

14. See WTO 1997, Trade Policy Review, Mexico, page 128-129.

15. In 1997, import licenses were required for 184 tariff lines, e.g., crude oil and basic petrochemicals, certain pharmaceuticals, arms and explosives, motor vehicles, drugs, and numerous used goods such as clothing, machinery and computer equipment. Even under NAFTA, Mexico was able to retain the import license requirement for new motor vehicles (for a period of 5 years for 10 items and 10 years for 20 items) as well as used motor vehicles (for 25 years for 30 tariff lines). An additional 90 tariff lines in used goods require permits for 10 years. Finally, 17 tariff lines remain prohibited on the 1997 Mexican tariff schedule. Source: World Trade Organisation, Trade Policy Review Mexico 1997, page 52.

16. See TBT Articles 2.7 and 6.1 and SPS Article 4.

17. One example was the creation in 1994 of AVANTEL, a venture between MCI Communications Corporation and Grupo Financiero Banamex-Accival (Banacci) to offer long distance and other telecommunications services in Mexico. MCI owns 45% of the company.

18. On cross-border supply, Mexico agreed "to place no limitations, except on market access, that would require international traffic to be routed through the facilities of an enterprise with a concession granted by the Ministry of Communications and Transport." See Mexico Trade Policy Review, WT/TPR/S/29 page 143.

19. Concessions (authorisations by SCT to use certain parts of the radioelectric spectrum) are required for the construction of public telecommunications networks; the establishment of private networks using that portion of the spectrum designated as "determined use"; the launching of satellites, and the use of satellite frequency bands; the use of foreign satellite frequencies for national service; and experimental operations. Concessions are renewable and normally granted for a period of twenty years. See "Regulatory Structure" by InfoMex Market Research on the Internet.

20. Ley Federal De Telecomunicaciones, Chapter III, Section III, Articles 24 and 25.

21. By 1998, MCI Communications, partner in AVANTEL, was vigorously objecting to what it deemed to be discriminatory elements of Mexico's regulatory regime, notably "the interconnection fees" (covering settlement rates, termination rates, or call-completion charges) paid by long-distance companies to Telmex for routing incoming international calls through its network to the final customer and rules allowing Telmex to charge long-distance competitors 58% of revenue earned on every incoming international call. Because Mexico receives 2.6 times as many international calls as it places, revenue from incoming calls is huge: estimated at about $850 million in fees in 1996. MCI threatened to cancel $900 million in planned additional investment in Mexico unless the rules were changed and requested USTR to challenge the fee structure in the WTO. Similarly, AT&T, partner in Alestra, formally requested USTR to initiate WTO dispute proceedings on Mexico's telecommunications policies in September 1998. See, for example, "AT&T Calls on USTR To Act Against Mexico On Telecom Policies" in Inside US Trade, 18 September 1998.

22. Telmex's stated justification for the surcharge is to fund infrastructure buildout and universal service.

23. AT&T, for example, has charged that "Telmex is able to extract [these] enormous payments because the Mexican regulatory system, unlike the regulatory systems in most European countries, gives Telmex effective bottleneck control over the termination of US international switched services in Telmex's home

country." See "AT&T Moves to Stop Telmex-Sprint Venture" in The Industry Standard: The Newsmagazine of the Internet Economy, 13 August 1998.

24. In the continued absence of such regulations, Telmex has maintained that these services remain unlawful in Mexico. See "AT&T Calls on USTR to Act Against Mexico on Telecom Policies", op.cit.

25. A US firm, IUSACEL, introduced cellular telephony services in Mexico in 1989. In 1990, a subsidiary company of Telmex named Telcel joined the market. Together, these two companies serve the entire area of Mexico City as well as some states. The rest of the country is served by eight concessionaire companies operating in nine different regions. No further concessions are planned in this sector in which foreign investment participation of up to 100% of property is permitted (prior authorisation from the CNIE is required after foreign participation exceeds 49%).

26. See WTO, "Trade Policy Review of Mexico", WT/TPR/S/29.

27. Constitucion Politica de los Estados Unidos Mexicanos; Ley de Vias Generales de Comunicacion; Ley de a Inversion Extranjera; Reglamento de Telecomunicaciones

28. See WTO, "Trade Policy Review of Mexico", WT/TPR/S/29.

29. See "Canada's International Market Access Priorities – 1998" at http://www.dfait-maeci.gc.ca.

30. GATT jurisprudence sheds light on how this obligation has generally been interpreted. A 1992 GATT panel report on US measures affecting alcoholic and malt beverages examined the application of Article XXIV in relation to various measures of US state and local governments relating to imported beer, wine and cider. The panel ruled, inter alia, that some state measures were discriminatory and that the United States had not demonstrated to the panel that conditions for the application of Article XXIV:12 had been met. See DS23/R, adopted on 19 June 1992, in Basic Instruments and Selected Documents, 39S/206.