

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

Spec(86)32/Rev.1
24 June 1986

DRAFT REPORT OF THE WORKING PARTY ON THE ACCESSION OF MEXICO

Revision

1. At its meeting on 12 February 1986, the Council appointed a Working Party to examine the application of the Government of Mexico to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which might include a draft Protocol of Accession.
2. The Working Party met on 29-30 April, 14-15 May, 19-20 June and 1986 under the Chairmanship of H.E. Mr. G. Reisch (Austria). The terms of reference and membership of the Working Party appear in document L/5963/Rev.2.¹
3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Régime of Mexico (L/5961 and Rev.1), and the questions submitted by contracting parties on the Mexican trade régime together with the replies of the Mexican authorities thereto (L/5976). In addition, the representative of Mexico made available to the Working Party the following material:
 - the National Development Plan
 - the National Programme of Industrial Development and Foreign Trade, 1984-1988
 - the Motor Vehicle Programme
 - the Pharmaceuticals Programme
 - the Export Promotion Programme (PROFIEEX)
 - the Customs Law
 - the Foreign Trade Law
 - the Agreement on Import Subsidies of 1 April 1985
 - the Understanding between Mexico and the United States Concerning Subsidies and Countervailing Duties (23 April 1985)
 - the Regulation Governing Import or Export Permits for Goods Subject to Restrictions of 14 September 1977
 - the Federal Law on Fees of 1982
 - the Decree of 9 May 1985 setting up Programmes of Temporary Imports for the Manufacture of Export Goods
 - the Drawback Decree of 24 April 1985
 - the Export Promotion Fund for Manufactures (FOMEX)

¹The list of representatives at the meetings of the Working Party has been circulated in Spec(86)29.

- the Law of 8 February 1985 Concerning Purchases, Leases and Services connected with Goods and Chattels
- the General Import Tariff (TIGI) (1986)
- the General Export Tariff (TIGE).
- the National Programme for Integral Rural Development 1985-1988
- the General Catalogue of Mexico's Import Tariff with trade data corresponding to the period 1982-1985
- the Agreement Establishing Priority Industrial Activities.
- 554 sub-divisions which are exempt from the 2.5 per cent on the general duty
- 1,207 sub-divisions with official prices
- 839 sub-divisions subject to a prior import permit
- 248 sub-divisions subject to a prior export permit
- 127 export sub-divisions subject to duty
- 40 sub-divisions of prohibited exports
- 307 sub-divisions for which prior permits are not required under the DIMEX Programme
- listing of 13 items subject to guaranteed prices
- 74 laws implementing the Mexican Constitution in trade and related areas promulgated up to April 1986
- Catalogue of the General Import Tariff listing the positions which are subject to import control as of 2 May 1986
- the Official Journal dated 30 April 1986 which reproduces the Decree reforming the General Import Tariff of Mexico
- Articles 25, 26, 27 and 28 of the Mexican Constitution
- the Forestry Law and its implementing regulations
- the Law concerning production, certification and trade in seeds
- the Law concerning animal and plant health and its implementing regulations
- the Agricultural Development Law and its implementing regulations
- 1983-1985 import statistics by suppliers

4. In an introductory statement, the representative of Mexico said that his Government welcomed the willingness of contracting parties to conduct the accession negotiations as expeditiously as possible. The Government of Mexico accorded great importance to the process of liberalization of international trade and to negotiations in a framework of justice and equity involving special and favourable treatment for developing countries. The process of Mexico's accession to the General Agreement was taking place at a difficult time for the Mexican economy. The burden of servicing the external debt, the fall in the prices of commodities, especially of oil, and the proliferation of protectionist barriers had brought about the most severe external-sector crisis in the country's modern history. For Mexico, the collapse of the oil market meant a loss of the order of 7-8 billion dollars per annum which represented approximately one-third of its export earnings and more than 12 per cent of its tax revenue. In this context, Mexico reaffirmed its political decision to push forward on the path of modernization and to make its production facilities more competitive with a view to a better incorporation in the international economy and the multilateral trading system.

5. Following its request for the initiation of the procedure of accession, consultations held with a number of Mexico's trading partners had helped to achieve significant progress in the process of Mexico's accession to the GATT. In document L/5976, the Mexican authorities had circulated suitable replies to the series of questions submitted by contracting parties concerning Mexico's Memorandum on Foreign Trade Régime. His delegation was ready to continue the exchange of views on specific questions or topics and to clarify any doubts members of the Working Party might have. He expressed the hope that the report of the Working Party, including a draft protocol of accession and a schedule of concessions by products, would be ready not later than the end of June. In this connection Mexico was prepared to bind tariffs and eliminate import permits on a proportion of its trade comparable with that of other countries which are already contracting parties and have a similar level of development and participation in world trade.

6. The representative of Mexico informed the Working Party of the unilateral decision of the Government of Mexico to adopt two measures that were closely connected with its trade régime. The first was to establish a maximum tariff level of 50 per cent ad valorem. The second was to reduce linearly, over a period of thirty months, the tariffs on the majority of headings which are currently at levels of between 20 per cent and 50 per cent. The 50 per cent rate will be used to protect certain sectors required by the economic and social development of the country. For raw materials, intermediate goods and articles of popular consumption which were not manufactured or were insufficiently manufactured in Mexico, the applicable tariffs would range from zero to 10 per cent by the end of the thirty-month period. Other goods would be taxed, depending on their degree of processing, by tariffs of 20 per cent to 50 per cent so that rates of 20 per cent and 30 per cent would apply to most products by the end of the thirty-month period. With regard to the first measure, Mexico would be prepared to bind, as part of its accession process, the maximum tariff of 50 per cent. As the second measure was a medium-term operation, Mexico would be prepared to consider additional bindings in product-by-product negotiations in the context of the next round of multilateral negotiations. New sectoral programmes undertaken by Mexico would be basically protected by tariffs instead of import permits as in the past. Whenever necessary, use would be made, as a transitional measure not to exceed eight years, of

tariff surtaxes which would not exceed 50 per cent of the rate established for the goods concerned. This duty will be reduced linearly and at the end of eight years, will reach the level originally established.

7. The representative of Mexico concluded by saying that, as a developing country, Mexico sought recognition of the particularly critical situation it was experiencing. It was hoped that participation in GATT would offer concrete opportunities that would help Mexico to move forward in the process of structural change, to increase competitiveness on international markets and to meet international commitments.

8. Recalling that tariff negotiations were required for accession to the General Agreement under Article XXXVIII, the Chairman noted that Mexico had invited, as of 13 February 1986, contracting parties wishing to enter into tariff negotiations to contact the Mexican authorities (GATT/AIR/2240). Some members of the Working Party indicated that they had been in touch with the Mexican delegation and that negotiations with a view to the exchange of tariff concessions were currently taking place. The Working Party agreed that efforts should be made to conclude the tariff negotiations not later than end June 1986.

I. General comments

9. Members of the Working Party welcomed the application of Mexico for full accession to the General Agreement. As the world's thirteenth largest economy and the largest market economy trading country still outside GATT, Mexico's decision was of great significance to the international trading system. Adherence to GATT principles made good economic sense for both developed and developing trading nations, the open multilateral trading system contributed to the effectiveness of specific policies as well as to economic growth and development. Mexico's renewed interest in GATT was a positive and courageous step which confirmed the desire to liberalize the trade régime and to develop trade policies in harmony with GATT principles. Mexico's decision to negotiate accession to GATT and to participate actively in a new round of multilateral trade negotiations was a timely and positive development. The successful outcome of the accession negotiations would contribute to the strengthening of the multilateral trading system and reinforce the links between Mexico and contracting parties. It was also noted that having regard to its participation in international trade, Mexico might be expected to make a significant contribution to the success of the new round of multilateral trade negotiations.

10. In acknowledging Mexico's present status as a developing country, a number of members stated that the Working Party should seek to arrive at a mutually acceptable outcome that would take into account Mexico's development needs and enable Mexico to benefit from the full range of GATT rights, while upholding the principles and rules of the General Agreement.

11. Some members noted that their economies faced difficulties at present, in the financial and trade fields similar to those affecting Mexico. These members expressed the hope that Mexico's accession, while strengthening the country coverage of the General Agreement, would also contribute to increasing the negotiating power of developing countries and in particular that of the Latin American developing countries in GATT. In this respect, some members noted that as a developing country, Mexico was entitled in the accession negotiations to the special and more favourable treatment provided for in Part IV of the General Agreement and in the Enabling Clause.

12. The Working Party carried out an examination of various aspects of the Mexican trade régime and the possible terms and conditions of a protocol of accession. During this examination, the delegation of Mexico provided additional information on, and clarification of, Mexico's economic and commercial policy. The main points brought out in the discussions are set out below in paragraphs 13 to 81.

II. Tariff system

13. The Working Party noted that imports into Mexico were subject to a cumulation of charges, namely: customs duties, surtaxes, additional charges, additional duties, fees and certain taxes. The following charges were levied on the value of the goods: general import duty, surtaxes, 2.5 per cent additional charge, 0.6 per cent federal fee, and certain taxes. The following charges were levied on the amount of the general import duty: 3 per cent or 10 per cent additional duties. Points raised by members with regard to Mexico's tariff system are summarized hereunder, having been grouped under the following headings: tariff structure (paragraphs 14-19), additional charge (paragraph 20), additional duties (paragraph 21), and Federal Law on Fees (paragraph 22); and understandings (paragraph 23).

Tariff structure

14. In connection with Mexico's tariff structure, the Working Party examined the operation of the tariff system including: procedures for modifying tariff rates; Mexico's tariff reform programme; Mexico's proposals regarding the binding of tariffs; and the modalities for the imposition of surtaxes.

15. In response to questions concerning the operation of the tariff system, the representative of Mexico said that the column with the heading "General rate" would list the tariff rates applicable to countries which are not contracting parties to the General Agreement. Any private individual or entity could request the Tariffs and Foreign Trade Commission to change a tariff rate. If the results were not satisfactory, the interested party could appeal to the Fiscal Court and the Supreme Court of Justice. In the Mexican legal system, tariff rates were considered to be import taxes and as such could only be modified by the Mexican Congress. Congress had, however, delegated this authority to the President of the Republic to whom the Tariffs and Foreign Trade Commission submitted recommendations. If the President accepted the recommendations, he would issue a decree that would be published in the Official Journal and enter into force following publication. These procedures were in conformity with Article X of the General Agreement.

16. With reference to the tariff reform programme, the representative of Mexico said that approximately 4,000 tariff positions had been modified and duties lowered. A copy of the Official Journal, dated 30 April 1986, which reproduces the Decree reforming the General Import Tariff had been deposited with the secretariat. He recalled that in accordance with this tariff reform programme, depending on their degree of processing, products would be subject to tariff rates that would range from zero to 30 per cent, at the end of the thirty-month period. Some of those tariff rates might be bound as a result of negotiations with interested contracting parties. In certain areas with sectoral development programmes, surtaxes would be applied to certain products as an exception and not as a general rule.

17. Regarding the binding of tariffs, the representative of Mexico said that as a developing country, Mexico would assume through negotiations with contracting parties, commitments equivalent to those assumed by contracting parties at a similar level of development and with similar participation in international trade. In response to a further question, the representative of Mexico said that, in the Latin American region, Argentina and Brazil could be considered to be at a level of development similar to Mexico. Consequently, Mexico would be willing to assume commitments similar to those assumed by these countries.

18. The representative of Mexico said that as part of its contribution to GATT upon accession, Mexico would be ready to bind duties, at a maximum rate of 50 per cent, for the whole of the Mexican tariff, including agricultural and industrial products. This commitment might be reflected either in the protocol of accession or in the report of the Working Party. The Mexican offer was conditional upon its acceptance by contracting parties as an important part of Mexico's initial contribution for accession to GATT. As a counterpart, contracting parties should request a more limited number of tariff concessions with respect to individual products. Otherwise, Mexico would have to negotiate tariff concessions on a product by product basis. As a contracting party, and in the context of the new round, Mexico would envisage further tariff reductions and bindings. In response to requests for clarification made by some members, the representative of Mexico said that the Mexican proposal was not a political undertaking but a commitment to bind in GATT the whole tariff at a maximum rate of 50 per cent provided that such a commitment was of interest to contracting parties. The binding offered by Mexico would concern the general duty established in the Mexican General Import Tariff and would not include other taxes or charges such as the 2.5 per cent charge, the 3 per cent additional duty and the 10 per cent additional duty. In binding the whole tariff at a ceiling rate, no exceptions were foreseen for textiles, agricultural products, products subject to import permits, etc. As Mexico's accession to GATT would have to be approved by the Senate, the commitments undertaken by Mexico in the protocol of accession concerning tariffs and the elimination of import permits, would have to be constitutionally approved. Thus, the Executive could only increase the bound duties or re-establish import licensing in accordance with the relevant provisions and procedures of the General Agreement.

19. The representative of Mexico added that in the nine sectors subject to sectoral development programmes, surtaxes of up to 50 per cent might be applied to the general duties on a temporary basis for a period of time not exceeding eight years. After this period, Mexico's general import duties would not exceed 50 per cent. The surtaxes foreseen would be of a temporary nature in order to give time for adjustment in the sectors concerned. Their incidence would also diminish over thirty months. The application of surtaxes on the normal rates would be examined by the Tariffs and Foreign Trade Commission, which in this case would submit their recommendation to the President of the Republic whose decision will then be taken and published in the Official Journal. It was expected that surtaxes would be incorporated into the General Import Tariff. In response to a member who had asked for the GATT justification of the surtaxes, the representative of Mexico said that the surtaxes were import duties which, in accordance with the General Agreement, could be applied to unbound items without restrictions. With respect to bound items, if as a result of sectoral development or structural adjustment programmes the imposition of surtaxes became necessary, the total duty rate applied by Mexico would not exceed the agreed bindings. When necessary to increase the duties above those levels, it would be done in conformity with the relevant GATT provisions and procedures.

Additional charge

20. The representative of Mexico said that an additional charge of 2.5 per cent on imports established by legislation which Mexico considers mandatory was destined for specific domestic economic activities and for purposes of export promotion. In his view, this charge was consistent with the General Agreement and the exemption in favour of pre-existing legislation. He added that the list of 554 items exempt from the 2.5 per cent charge which was established every year by Congress was available in the secretariat for consultation by delegations. The 2.5 per cent charge was applied in a general way without discrimination as to country of origin or consignment. As a matter of course, Congress exempted from this charge products subject to tariff rates between zero and 10 per cent.

Additional duties

21. In response to questions concerning the possible elimination of the 3 per cent and 10 per cent additional duties, or their incorporation into the General Import Tariff, the representative of Mexico said that the 3 per cent and 10 per cent additional duties had been established by Congress in the Customs Law which Mexico considered to be mandatory legislation, and could not be modified by the Executive. The additional duties were import taxes levied on imports only and not internal taxes. Moreover, these duties were levied on the amount of the general import duty and thus their impact was minimal. The additional duties were not discriminatory. These duties were intended to cover the approximate cost of the services rendered by the Mexican Administration at the Federal, State and local levels. The 3 per cent additional duty contributed to the financing of the wide range of additional services resulting from the existence of local customs offices that had to be provided by those municipalities where customs offices were in operation. The 10 per cent additional duty was related to the cost of services rendered by the postal administration which had to classify the product, determine its value, calculate the duty, collect the payment, issue a receipt, deliver the product, transfer the payment to the Treasury, etc. The representative of Mexico said that, in his opinion, these duties were consistent with the General Agreement and in particular with Articles II and VIII thereof. A member said that, in his opinion, Article VIII required that user fees be related to the cost of the services rendered. It was not clear that a flat rate was consistent with the General Agreement. The representative of Mexico said that flat rates had been established because it would be too cumbersome, and certainly more costly, to evaluate on a case-by-case basis the cost of the services provided by the administrative authorities, the municipalities and the postal administration with respect to each and every shipment coming into Mexico.

Federal Law on Fees

22. The spokesman for a group of contracting parties said that, in their view, the percentage rate for the issuance of the import permit established in the Federal Law on Fees was incompatible with Article VIII of the General Agreement. A percentage rate could not represent the approximate

cost of services rendered in individual cases and discriminated against products of high value. The representative of Mexico said that it was his Government's view that the 0.6 per cent fee on the value of the goods was consistent with Article VIII, since the Article did not refer to individual costs but to the approximate cost of services rendered. Having regard to the multiple services rendered by the Administration at all stages of the import process, and to the rationalization measures that enabled importers to obtain import permits in 42 local offices, in his opinion, the fee charged at present was well below the actual cost of the services rendered to importers by the Mexican Administration.

23. The representative of Mexico stated that his Government intends to apply its taxes and charges referred to in paragraphs 20, 21 and 22 in accordance with the provisions of the General Agreement, in particular Articles III and VIII. The Working Party agreed that if by 31 December 1990 the above mentioned taxes are still in effect, the matter will be reviewed by the CONTRACTING PARTIES.

Customs valuation

24. Noting that Mexico had not proposed that the protocol of accession cover the question of official prices, the spokesman for a group of contracting parties enquired whether Mexico would eliminate the system of official prices as of accession and intended to join the Agreement on Customs Valuation. Another member said that, in the view of his Government, Mexico's customs valuation system which fixes official prices for certain imports was inconsistent with Article VII. His Government took note, however, of Mexico's commitment to a timetable for phasing out this practice by the end of 1987. This was a very positive step towards compliance with provisions of Article VII of the General Agreement. In response, the representative of Mexico recalled that, as had been indicated in the Memorandum on Foreign Trade Régime, Mexico would eliminate official prices by the end of 1987 and apply the Brussels definition of value. This time period was necessary in order to prepare the administrative personnel to apply the new regulations concerning anti-dumping and countervailing duties. Only 8.5 per cent of imports were subject to official prices and

the invoice value was applied to 91.5 per cent of the imports. Importers could appeal, if necessary, against a determination of value before the Fiscal Court and the Supreme Court of Justice.

25. The representative of Mexico confirmed that his Government will bring all customs valuation procedures for imported goods into conformity with Article VII of the General Agreement and eliminate its official pricing system no later than 31 December 1987. The Working Party noted that Mexico would eliminate official prices by the end of 1987.

Value Added Tax (VAT)

26. In response to questions concerning the value added tax (VAT), the representative of Mexico said that the luxury goods to which the 20 per cent VAT rate applied were as follows: caviar, smoked salmon, brood of eels, champagne, colour TV sets with a screen exceeding 75 cm², motor cycles of more than 350 cc, motorized water ski equipment, motorcycles for water, motorized surfboards, firearms and accessories, magnesium wheel rims, mobile roofs for vehicles, and airplanes excluding those used for fumigation. With respect to purchases for export purposes, the zero rate was applied both to export consortia and to other exporters. Moreover, the VAT rates applied equally to domestic and imported products.

Export duties

27. Replying to questions concerning export duties, the representative of Mexico said that out of a total of 3,000 tariff positions only 127 were subject to duty. Some of these sub-divisions had generic descriptions. The basic aim of the export duty was to encourage a greater degree of transformation for certain basic products. In general, agricultural products, semi-manufactures and manufactures were not subject to export duties. In a few instances, such as with respect to lemon oil, the export duty served to encourage the use of a common trading facility. Export duties were of a general application and did not discriminate as to the destination of the products.

III. System of controls

28. The Working Party examined the system of prior import permits applied by Mexico including the automatic refusal mechanism, import quotas and certain measures being implemented in the context of sectoral development programmes. The Working Party considered their justification in terms of the General Agreement and noted the commitments which Mexico was willing to undertake with regard to these matters. Points raised by members with regard to the Mexican system of import controls are summarized hereunder, having been grouped under the following headings: import permits and import quotas (paragraphs 29-34), National Development Plan and sectoral and regional programmes (paragraphs 35-40), agricultural sector (paragraphs 41-46) and fisheries (paragraph 47). Additional points concerning the system of import control are reproduced in the sections entitled: Federal Law on Fees (paragraph 22), Foreign Trade Law (paragraphs 55-56), unfair trade practices (paragraphs 57) and Protocol of Accession (paragraphs 71-81).

Import permits and import quotas

29. The representative of Mexico declared that, in conformity with its policy of gradual substitution of tariff protection for prior permits, Mexico will continue to eliminate prior import permits to the fullest extent possible. Residual quantitative restrictions and import permit requirements will be notified and justified in accordance with relevant provisions of the General Agreement, in particular Articles XI, XII, XVIII, XIX, XX, and XXI. The initial notification would be made within a period of six months after accession as a contracting party. In addition, he stated that Mexico will ensure that residual quantitative restrictions and import permit requirements are applied in a manner consistent with Article XIII of the General Agreement and shall apply all restrictions in accordance with the principle of nondiscrimination. The representative of Mexico further confirmed that his Government would, if requested, consult with the contracting parties concerning the effect of these measures on their trade.

30. Referring to the degree of openness, transparency and security to importers afforded by the system of prior import permits, the representative of Mexico said that, in his opinion, Mexico was complying on

a de facto basis with the provisions of the Agreement on Import Licensing Procedures. A copy of the Catalogue of Mexico's General Import Tariff which listed the import régime applicable to all tariff items as well as the list of items subject to import controls as of 2 May 1986 had been deposited with the secretariat. At the present time, only 818 items out of a total of 8,147 tariff items in the Mexican Tariff were subject to prior permit requirements. Over 90 per cent of the tariff items representing approximately 65 per cent of imports were free of import restrictions. The prior permit system was not used to discriminate against sources of supply. The private sector carried out 75 per cent of imports.

31. The representative of Mexico said that prior import permits were necessary to prevent or regulate the importation of the following categories of products:

- i. luxury or non-essential goods (230 items)
- ii. essential agricultural products
- iii. energy products
- iv. used automobiles and parts and pieces in accordance with the Motor Vehicle Programme
- v. products in the Pharmaceuticals Programme (120 items). This Programme was expected to conclude in 1989. The elimination of prior permits as well as tariff bindings might be negotiated with respect to specific products of interest to contracting parties
- vi. products regulated by international agreements such as coffee and cacao
- vii. textile products. Trade liberalization for textiles might be negotiated if the MFA were liberalized or if these products were exempted from restrictions
- viii. drugs
- ix. arms, weapons, explosives and products of interest to national security
- x. products of interest to public health
- xi. products whose commercialization would affect human rights and dignity
- xii. Rule 8
- xiii. some capital goods
- xiv. products considered as being sensitive for the Mexican economy

32. In response to further questions concerning the use of import permits, the representative of Mexico reiterated that import permits were not used to divert trade. Import permit requests were considered expeditiously. Ten days was the average time period required by the Administration to decide on a prior permit request. The automatic refusal was in some cases related to the concept of infant industries and protection thereof. Nevertheless, there were mechanisms for the reconsideration of refusals

which took into account the intended use of the product in question. The list of products subject to automatic refusal would be revised in the near future. In accordance with the Law which regulates Article 131 of the Constitution, for reasons of health, human dignity, environment protection, and national security, the import of a limited number of items would continue to be restricted. In his view, these restrictions were consistent with Articles XX and XXI of the General Agreement, or were covered by the pre-existing legislation provision. As a contracting party, Mexico would submit relevant information with respect to the import restrictions maintained pursuant to Article XX of the General Agreement.

33. The Working Party noted that in the context of bilateral or multilateral negotiations, Mexico was ready to negotiate the elimination of prior import permits and the establishment of import quotas with respect to products of interest to contracting parties. The Working Party also noted that Mexico was willing to undertake in this area commitments similar to those of other developing countries at the same level of development and participation in international trade with already contracting parties. In this connection, a member said that his Government considered that Mexico's prior import licensing and quota system was inconsistent with Article XI of the General Agreement. Mexico should eliminate this system as a method of import control. In his Government's view, GATT provided adequate recourse to protective measures when justified and necessary. After accession, Mexico should not maintain import restrictions inconsistent with GATT obligations. The representative of Mexico said that his Government was engaged in a dynamic process of economic restructuring and trade liberalization and had declared its willingness to undertake commitments with regard to the matters referred to in paragraphs 29, 30 and 34 of the report.

34. Noting that Mexico maintained import quotas for a number of products not covered by sectoral development programmes, a member asked whether the quotas were compatible with Article XI of the General Agreement and under what GATT provisions these measures would be justified. In response, the representative of Mexico said that the establishment of import quotas gave security of access to the Mexican market. It was Mexico's intention to continue to remove quantitative restrictions while having regard to the provisions of Article XVIII and other Articles of the General Agreement.

National Development Plan and Sectoral and Regional Programmes

35. The representative of Mexico confirmed that his Government intends to implement its National Development Plan and its Sectoral and Regional Programmes in accordance with paragraph 1 of its Protocol of Accession, and in conformity with the relevant provisions of the General Agreement. He further confirmed that his Government will use trade policy instruments to implement future Sectoral and Regional Programmes deriving from the National Development Plan in a manner consistent with the relevant provisions of the General Agreement.

36. The representative of Mexico said that as a developing country Mexico would make use of the instruments foreseen in the General Agreement, in particular in Part IV, to promote certain development programmes in those areas where the national interest was involved. The trade policy instruments used by Mexico to implement these programmes include, inter alia, tariffs, import permits, quotas, export incentives, bilateral and multilateral trade negotiations and the streamlining of administrative procedures.

37. The representative of Mexico confirmed that the sectoral development programmes currently envisaged related to petrochemicals, electronics, textiles, footwear, capital goods, pulp and paper, foodstuffs, iron and steel, and electrical household goods. However, as a mixed economy country, Mexico did not curtail the activities of private entrepreneurs who might decide to develop other sectors in which Mexico might enjoy comparative advantage. Concerning Mexico's intentions with respect to the maintenance and future use of the prior import permit system or other form of quantitative import restrictions, including the specific GATT justification of such restrictions, the representative of Mexico said that in the view of his Government, in the context of the sectoral development programmes, these measures were justified in general terms by, inter alia, the provisions of Article XVIII, Part IV and some CONTRACTING PARTIES' Decisions. While some of the import restrictions maintained by Mexico were related to certain provisions of the General Agreement such as Article XI, in a number of areas such as agriculture, textiles, steel products, etc. Mexico also had to take into account the situation of international markets and the restrictions currently applied by Mexico's trading partners. The National Development Plan which contemplated the gradual substitution of import permits by tariffs already provided for a dynamic approach to this matter.

38. With reference to domestic content and export performance requirements in the development programmes for agriculture and industry, the representative of Mexico recalled that domestic content requirements were in force in a number of contracting parties and were incorporated in preferential arrangements such as the GSP and others. He said that these requirements appeared in the Motor Vehicle Programme and other import substitution schemes. Such requirements which were feasible when import permits were generally applied had affected the competitiveness of some sectors of the Mexican industry, and thus were being reviewed, except in the case of the Motor Vehicle Programme. This implied a serious effort of adjustment for Mexico's industrial sector, and in particular for small industries. While recalling that, in his Government's opinion, export performance requirements are not a trade related issue, the Mexican representative for purposes of information only stated that, except for the auto and pharmaceutical sectors, there is no legal regulation in Mexico designed to require investors to export a given percentage of their total output. A member said that, in the view of his Government, the domestic content requirements applied by Mexico as part of its development plans and programmes were inconsistent with Article III, paragraph 5 of the General Agreement, and should be eliminated as an instrument of development policy. The member also stated that, in the view of his Government, export performance requirements maintained under these programmes also conflicted with GATT obligations.

39. Recalling certain provisions of the Motor Vehicles and Pharmaceuticals Programmes, a member enquired whether Mexico intended to renew these programmes when they expired. The representative of Mexico said that prior permits would be maintained in the context of the Pharmaceuticals Programme until 31 December 1989. No date had been established for the elimination of import permits for the automobile industry. The Mexican Government had indicated that the next Administration would be expected to adopt a decision concerning the continuation of the system of prior permits with regard to these Programmes. However, the possibility of an earlier termination could not be discounted. In the case of the motor vehicle industry, such possibility appeared difficult; in the case of pharmaceuticals, prior permits might be eliminated in 1989 when the five-year protection period would expire. The local content requirements established in these Programmes had no expiry date.

40. The use of fiscal and financial incentives in connection with industrial development programmes is referred to in paragraphs 50, 51 and 54 below. The use of surtaxes in the context of sectoral development programmes is referred to in paragraphs 16 and 19 above. Further points concerning sectoral development programmes appear in the section entitled Protocol of Accession, paragraph 80 of the report.

Agricultural sector

41. With reference to the agricultural sector, the Working Party examined the objectives and instruments contemplated in the National Development Plan and the National Programme for Integral Rural Development as well as Mexico's land tenure system, the use of export subsidies and guaranteed prices, and Mexico's desire for a special reference to agriculture in the protocol of accession. The representative of Mexico said that the objectives outlined in these Programmes included improving the standard of living of the rural communities, increasing production in order to attain food sovereignty, improving the balance of agricultural trade and controlling inflationary pressures. In his view, these objectives were consistent with the objectives and provisions of the General Agreement, in particular Article XXXVI thereof. Agricultural products represented almost half of the 35 per cent of imports still subject to import permits. The approximately 90 tariff positions subject to this requirement were listed in the Catalogue of the General Import Tariff deposited with the secretariat. He noted, furthermore, that Mexican agricultural production was not sufficient: corn, oilseeds, fodder and other products had to be imported. Mexico's annual imports of agricultural products exceeded US\$1,500 million. These imports were carried out on an m.f.n. basis from whatever sources that put forward the best offer in terms of price and financing.

42. Replying to questions concerning Mexico's land tenure system, the representative of Mexico recalled that as a result of the Mexican Revolution of 1910, the Constitution enacted in 1917 had set out the principle that agricultural land should be owned by those who worked it. The Mexican Government had been empowered to implement this principle and had carried out an extensive land reform programme. The system of communal property called "ejidos" whereby farmers cultivated but could not dispose

of the land had been established. This system coexisted with the private property of agricultural land subject to certain limitations. Having regard to the special characteristics of the country, its mountainous geography, lack of plains and very little water, it was necessary for the Government to invest in infrastructure and support agricultural production. With a population of approximately 80 million people, a population growth rate of 2.5 per cent per annum and low mortality, the land tenure system was aimed at ensuring employment opportunities to the rural population, preventing the concentration of land property and providing the essential foodstuffs. Almost 40 per cent of the working population was employed in the agricultural sector. The system of import permits could not be eliminated because the production of the "ejidatarios" would not be able to sustain the competition of agricultural products originating in countries which possessed a richer natural endowment or vast capital resources. The Mexican Government had to ensure the complete utilization of the domestic production. In response to certain questions, he said that Mexico would not invoke Article XXI and did not intend to use the concept of national security with respect to the agricultural sector.

43. A member requested information on the use by Mexico of export subsidies and guaranteed prices with respect to agricultural products as well as future prospects in this respect. The representative of Mexico said that Mexico did not subsidize and would not subsidize the export of agricultural products in a form not consistent with the provisions of the General Agreement. In noting that GATT allowed the subsidization of agricultural production under certain circumstances as provided for in Article XVI of the General Agreement and the Code on Subsidies, he stressed that Mexico supported the production of basic goods only. Mexico did not provide credits on preferential conditions to agricultural exports. In essence, guaranteed prices were applied to thirteen products which conformed to the basic diet of the population in order to encourage domestic production and diminish the demand for foreign exchange. In order to avoid inflationary pressures and prevent additional expenditures to the population, the level of guaranteed prices was not set too high. He added that Mexico was not self-sufficient and had to import some of these products which, in some instances, were subsidized in the country of origin. For purposes of information, Mexico had submitted the to the secretariat the list of the products subject to guaranteed prices.

44. In noting that the representative of Mexico had stated that the National Programme for Integral Rural Development was consistent with GATT Articles, a member enquired the reason for Mexico's request for a special reference to agriculture in the protocol of accession. The representative of Mexico said that the programme in question could be justified under Articles XVIII and XXXVI. Replying to some further questions concerning Mexico's intentions in the agricultural sector and the possible use by Mexico of GATT provisions to provide adequate protection to this sector, the representative of Mexico said that the concept of food sovereignty meant that Mexico should be able to encourage agricultural production, having regard for the choices made in the allocation of national resources and domestic productive structures. In this regard, achieving maximum production of basic foodstuffs is an important objective. In his view, the protocol of accession and the report of the Working Party should acknowledge Mexico's needs and allow for the use of GATT provisions in a dynamic and flexible manner to implement the necessary policies and to meet Mexico's needs in the agricultural sector. In the context of the provisions for agriculture in the protocol of accession, Mexico would be ready to continue its programme of gradual replacement of prior permits by tariff protection to the extent compatible with its objectives in this sector and having regard for the objectives set by the CONTRACTING PARTIES for the liberalization of trade in agricultural products in the global context of a new round of trade negotiations in the GATT.

45. Commenting on the information provided by the Mexican representative, a member expressed disagreement with the concept of food sovereignty. In his view, the Working Party would have to seek a reasonable balance between the free market approach and Mexico's need to protect the agricultural sector. Another member said, that in the view of his Government, GATT rules provided adequate avenues for necessary protection of the sensitive areas in Mexico's agricultural sector when justifiable need existed. Special exemptions additional to those provisions were not necessary. Furthermore, the import licensing requirements and other quantitative restrictions were, in his Government's view, inconsistent with Article XI of the General Agreement and should be eliminated unless justified under appropriate GATT rules. Another member said that his Government considered that the CONTRACTING PARTIES would be acting against their best interests if special rights, in the form of a permanent and open ended waiver with

respect to agriculture were to be accorded to Mexico. As a developing country, Mexico should accept the same rights and obligations as those accepted by countries at similar stages of development under the General Agreement at present. He suggested that instead of the broad policy approach to agriculture through a special provision in the protocol of accession, Mexico might envisage circumscribing the requirement to continue applying import permits to a few among the 90 agricultural products currently subject to such requirement.

46. The Working Party took note of the information provided by the Mexican representative with respect to the provisions of the National Programme for Integral Rural Development and the import restrictions currently applied by Mexico to a number of agricultural products. The Working Party also noted the assurances reproduced in paragraphs 29 and 44 above with respect to Mexico's position concerning the liberalization of trade in agricultural products by gradually eliminating prior import permits and quantitative restrictions according with the development of this sector. Moreover, the Working Party noted that for specific products of interest to contracting parties, Mexico would be ready to negotiate tariff bindings or import quota concessions on a bilateral basis.

Fisheries

47. A member enquired about the protective measures other than tariffs maintained in the fisheries sector and their justification under the GATT. The representative of Mexico said that, in accordance with the National Development Programme and fishing legislation, some fishery products were at present subject to fishing concessions and import controls. The import of certain luxury products such as caviar, smoked salmon and high-price canned goods was prohibited. The fishing of products such as lobsters, shrimps and abalone had been exclusively franchised to fishing cooperatives. Therefore, export permits would be needed for these products. This would also be the case for tuna fish as long as fishing rights agreements had not been reached with the interested trading partners. In his view the export controls applied by Mexico were consistent, inter alia, with the provisions of Article XVIII and Part IV of the General Agreement. The fishing cooperatives did not constitute a State monopoly; as private entities these cooperatives operated in accordance with commercial considerations and competed against each other.

IV. Fiscal and financial aid

48. The Working Party examined the import and export incentives being implemented by Mexico. The Working Party noted that, under certain conditions, the Department of Trade and Industrial Development could authorize import subsidies on a non-discriminatory basis. The Working Party examined the export promotion programmes under PROFLEX including Mexico's drawback system. Having regard to certain provisions of the Understanding between Mexico and the United concerning Subsidies and Countervailing Duties, the Working Party took note of the assurances given by the representative of Mexico that Mexico did not maintain export subsidies inconsistent with the General Agreement. Points raised by members with regard to fiscal and financial incentives for imports and exports are summarized hereunder, having being grouped under the following headings: import subsidies (paragraph 49); Rule 8 system (paragraph 50); export incentives (paragraphs 51-54). Additional points concerning financial aid are reproduced in the section entitled agricultural sector (paragraph 43).

Import subsidies

49. In response to a question concerning the nature of the import subsidies, the representative of Mexico said that a subsidy of up to 100 per cent of the ad valorem duty shown in the General Import Tariff could be authorized by the Department of Trade and Industrial Development in relation to imports of raw materials, parts and components for the exclusive use of the importer, only if domestic supply was insufficient in the short run to meet demand owing to lack of domestic capacity or production. The importer was free to choose his sources of supply.

Rule 8 system

50. A member requested information on the developmental guidelines to receive Rule 8 treatment. The representative of Mexico said that in accordance with the General Import Tariff Law, products to be manufactured or assembled in Mexico imported by enterprises that had registered as being engaged in development programmes, were classified in a single tariff position and subject to simplified customs clearance procedures. This system which facilitated imports was not linked to export performance

requirements. In setting these programmes, the existence of domestic production might be verified in order to ensure its utilization and that it was being accorded the same treatment as imported goods.

Export incentives

51. Concerning the incentives of a fiscal and financial nature which Mexico might anticipate using in connection with industrial development programmes, the relevant industrial sectors and the justification of these incentives under the General Agreement, the representative of Mexico said that fiscal incentives which were aimed at promoting investment and the creation of employment applied to the manufacturing sector. In his view, incentives not related to exports were consistent both with the provisions of the General Agreement and the Agreement on Subsidies and Countervailing Duties. Incentives under the PROFIEEX programmes were aimed at increasing productivity, and did not in any way constitute an export subsidy. Pursuant to Mexican legislation, fiscal incentives were granted to Mexican enterprises exclusively.

52. In response to a number of questions concerning export promotion programmes under PROFIEEX, the representative of Mexico said that the statement that export incentives schemes established under PROFIEEX aimed at affording a neutral status for exportable production meant that Mexican exports would not be subject to certain obligations such as duties, charges and taxes levied on like products when destined for the domestic market. Mexican exporters were thus placed on an equal footing to compete with exporters from other countries. The financial aid provided by PROFIEEX to foreign trade enterprises was covered by the Understanding between Mexico and the United States concerning Subsidies and Countervailing Duties. In the case of financing programmes interest rates complied with internationally recognized standards. The drawback system applied by Mexico concerned duties or taxes paid with respect to raw materials, parts and components of exported products. The refund of duties or taxes corresponded to the equivalent in pesos of the amounts paid by the exporters without interest. Import taxes and refunds were determined on the basis of the official market exchange rate. Under Mexico's VAT legislation the rate applicable to exported products was nil. With respect to exported goods some other taxes on production, trade and consumption

were either not charged or rebated. A member noted that the exemption from taxes affecting specific products was understandable; however, in his opinion, there was some question as to the compatibility of other exemptions such as those concerning tax "occulte" (telephone, transport, etc.) with trade obligations.

53. In response to a further question concerning tax exemptions in favour of the suppliers of inputs to manufacturers of exports, the representative of Mexico said that indirect exporters, i.e. those which provided supplies to final exporters, were also eligible to receive the duty drawback of the Mexican import duties on the original import. He also described the operation of the domestic letter of credit mechanism which provided financial aid to indirect exporters on the same conditions as financial aid given to final exporters. The Government of Mexico controlled the operations of this mechanism closely to prevent tax fraud.

54. Responding to further questions concerning the use of subsidies under the National Development Programme and their conformity with Article XVI of the General Agreement, the representative of Mexico recalled the provisions of the Understanding between Mexico and the United States concerning Subsidies and Countervailing Duties which had recognized, inter alia, that the United States had not found any element in Mexico's development programme, apart from those referred to in the Understanding, which constituted an export subsidy. As Mexico had decided not to grant export subsidies under the CEDIS Programme in respect of any product and had agreed not to maintain any price practices in the energy sector which would constitute an export subsidy, his Government considered that in Mexico there were no export subsidies inconsistent with the General Agreement. The "financial engineering" schemes for Mexican firms participating in foreign tenders were designed to place Mexican exporters on an equal footing with exporters from other countries.

V. Foreign Trade Law

55. The Working Party examined various provisions of the Foreign Trade Law, in particular those dealing with the imposition of import permits under certain conditions and with unfair trade practices. Some members noted that Article XIX of the General Agreement required m.f.n. application

of restrictions and the determination of injury for measures taken to be consistent with GATT obligations. These members asked whether sections 4 and 5 of the Foreign Trade Law mandated import permits when another country had taken a safeguard measure which covered a Mexican exporter or if there was an element of discretion. The representative of Mexico said that his Government considered the Foreign Trade Law mandatory in this respect. If a contracting party adopted measures which affected Mexican exports, notwithstanding the possibility of seeking compensation or having recourse to the relevant dispute settlement procedures, Mexico would have to apply the measures provided by the Foreign Trade Law with respect to the contracting party taking such action. If no agreement was reached with the contracting party taking action under Article XIX, in case of serious injury, or threat thereof, to domestic producers of products affected by the action, Mexico would proceed to suspend substantially equivalent concessions or other obligations under the General Agreement. As a contracting party, Mexico would naturally comply with the notification and consultation mechanisms of the General Agreement.

56. With reference to Sections 4 and 5 of the Foreign Trade Law, another member enquired under what conditions increases in imports would warrant the introduction of prior permits. The representative of Mexico said that an assessment of the situation had to be made on a case-by-case basis having regard, inter alia, to the nature of the product, the quantities being imported, the size of the Mexican market, the effects on domestic production, etc.

Unfair trade practices

57. Replying to a question concerning the relationship between Sections 4-5 and Sections 7-19 of the Foreign Trade Law, the representative of Mexico said that the latter laid down specific provisions to counteract unfair trade practices such as dumping and subsidization. As an emergency measure in case of serious injury or threat thereof to a domestic industry, Mexico might make the import of the goods in question subject to prior permit. A member stated that, in his opinion, no GATT provision would sanction the introduction of import permits in such a case.

58. Having regard to Article VI of the General Agreement, a member asked how Mexico justified the lack of material injury in the Foreign Trade Law

and what sort of agreements with foreign governments were foreseen in this respect. The representative of Mexico said that the unfair trade practices covered by Mexican legislation were dumping and subsidization. In this respect, Mexico would use the GATT definitions and follow practices similar to those of certain contracting parties. As explained in the reply to question LVI, the Foreign Trade Law did not provide for the automatic application of the injury test. In accordance with Article 14, the injury test could, nevertheless, be extended to countries which agreed to give to Mexico such a test. An agreement to this effect had been negotiated with the United States.

59. With reference to the imposition of provisional measures to counteract unfair trade practices, a member enquired how could Mexico establish a preliminary affirmative finding within five working days of having received the request for an investigation. The representative of Mexico said that the provisions and time limits for provisional determination and final decision in the Foreign Trade Law were mandatory. Neither the Foreign Trade Law nor the GATT required prior consultations with foreign governments, or with the parties concerned, before initiating an investigation. However, as provided in the General Agreement, Mexico would always be open to consultations with interested contracting parties. In Mexico, the request for an investigation of unfair trade practices had to be submitted by domestic producers representing at least 25 per cent of the domestic production of the goods concerned. If no injury test was required, it was sufficient that domestic producers demonstrated the existence of the subsidy or dumping. Mexican legislation did not permit retroactive measures or duties; consequently, provisional measures had to be imposed rapidly and were reviewed thirty days after the provisional determination had been made. The administrative procedure had to be completed within six months. During the intervening period the importer of the goods in question could provide adequate fiscal sureties which would be collected or cancelled according to the final decision. As the Law was recent the procedure described above was in its initial stages of implementation. Mexico was in the process of establishing a data bank that would facilitate the verification of the information accompanying the request for an investigation.

60. The representative of Mexico said that, in accordance with the Foreign Trade Law, the application of duties could be suspended, inter alia, when action was taken to eliminate the unfair practices concerned or when exporters undertook, with intervention by their governments, to limit their exports to agreed quantities. The use of the latter option by exporters was entirely voluntary. Detailed regulations implementing Mexico's Foreign Trade Law with respect to unfair trade practices would be issued in the next few months. With these procedures Mexico intended to remedy the negative effects of unfair trade practices and not to protect domestic industries. The regulations would comply with international rules.

61. Some members of the Working Party noted that they believed certain provisions in Mexico's legislation concerning unfair trade practices were not entirely consistent with the General Agreement. Some members also said that, in the view of their Governments, Mexico should require a finding of material injury before applying countervailing or anti-dumping duties. One of these members added that it would be highly desirable that Mexico join the Subsidies and Anti-Dumping Agreements which established special consultation mechanisms, and required the determination of material injury to a domestic industry in order to impose anti-dumping or countervailing duties.

62. Concerning the application of Article VI of the General Agreement, the representative of Mexico declared that Articles 14 and 15 of the Foreign Trade Law have provisions which grant the material injury test in order to apply countervailing duties to those countries which have subscribed an international agreement with Mexico regarding subsidies and countervailing duties. He stated that accordingly, Mexico will grant this test as established in paragraph 6(a) of Article VI to the contracting parties to the General Agreement. He also confirmed that the Foreign Trade Law provides for the application of a material injury test in order to apply anti-dumping duties. Concerning the application of safeguard measures, the representative of Mexico declared that, in taking this kind of action, Mexico will abide by the provisions of Article XIX of the General Agreement, including the serious injury test. Taking the above into consideration, the Working Party took note of assurances given by the representative of Mexico that his Government will apply the Foreign Trade Law in accordance with Articles VI and XIX.

Government procurement and State-trading

63. A member enquired whether Mexico distinguished between State trading enterprises and government procurement. In response, the representative of Mexico stated that the Government Procurement Law did not distinguish between these two activities. Under Article 134 of the Mexican Constitution, the Federal Government and the State-owned enterprises were required to issue invitations to tender in order to award contracts for purchases, leases and the provision of services connected with goods and chattels. In accordance with the Mexican legislation, in order to promote national development, preference should be given to the use of goods or services of national origin. The tendering system recognized intellectual property rights. Tenderings were open to suppliers from all countries whether or not members of GATT without discrimination. All purchases carried out by State-owned enterprises were advertised in the Official Journal and in the Mexican press. The intervention of the Comptroller General of the Federation guaranteed that the quality, quantity, price and other relevant details of the transaction were adequate to serve the interests of Mexico, but had no influence in the award of the contract or the origin of the product.

64. Responding to a number of questions concerning compliance with Article XVII of the General Agreement in trade by State-owned enterprises, the representative of Mexico stated that in this respect the Government Procurement Law provided mandatory legislation which had precedence. The practices of CONASUPO, PRONASE and other State-owned enterprises had to comply with the Mexican legislation. With regard to CONASUPO's tendering practices, the representative of Mexico said that the Agricultural Cabinet determined the level of imports. The imports of grains, oilseeds and dairy products were being partially transferred to the private sector and there was no discrimination as to import purchases. PRONASE was a State-owned enterprise which developed and produced seeds adequate to the Mexican needs. This enterprise which had been instrumental in the initiation of the "green revolution" also ensured that seeds comply with the phytosanitary requirements. The Working Party took note of the information provided by the representative of Mexico.

65. A member said that, in the view of his Government, Article XVII of the General Agreement applied to the commercial activities of State-owned enterprises, and required that their purchases of imports for the production process or for sale in general trade be governed by the commercial considerations listed in the Article. He added that, in the view of his Government, the purchasing criteria applied by Mexico in its State-owned enterprises occasionally did not appear to correspond to this obligation.

66. The representative of Mexico stated that Mexican laws and regulations governing State-owned enterprises in force as of the date of this Protocol, are fully consistent with the obligations of Article XVII, including nondiscrimination and the application of commercial criteria for trade transactions. The Government of Mexico will ensure that purchases by State-owned enterprises will be made in accordance with Article XVII, including notification and other procedures. The Working Party took note of these assurances.

Countertrade

67. In response to a question concerning the meaning of "intercambio compensado", the representative of Mexico said that this expression referred to countertrade. This activity was not carried out by the Government but by enterprises. The Government, however, would not authorize the import of luxury goods through countertrade transactions. With regard to authorized imports, the corresponding duties had to be paid.

VI. MTN Agreements

68. The representative of Mexico declared that, within a six-month period after Mexico's accession to the General Agreement, Mexico will send notice of intention to accede the following Codes: Licensing Procedures, Anti-Dumping, Standards and Customs Valuation. Concerning the Code on Subsidies and Countervailing Duties, the representative of Mexico stated that in the same period Mexico will initiate negotiations of accession to this instrument. In joining the Codes, Mexico will abide by the provisions of the General Agreement and the Codes granting special and more favourable treatment to developing countries.

VII. Exchange rate system

69. With respect to the dual exchange rate system, a member requested further information on the use of these rates, in particular the rate applicable to the repatriation of foreign capital investments. The representative of Mexico said that the official or controlled exchange rate which was applicable to 80 per cent of the foreign exchange income, covered exports and imports of goods and related costs such as freight and insurance, external credit operations, royalty payments, etc. The free market rate covered tourism, frontier transactions, workers' remittances, direct foreign investment including profits, capital repatriation, certain insurance services, passenger transport, etc. The differential between these two rates varied according to market conditions and expectations. Nevertheless, the objective of the Mexican authorities was to maintain both rates as close as possible.

VIII. Trade relations with other areas and countries

70. In response to a question concerning the application of trade preferences under the 1980 Montevideo Treaty, the representative of Mexico said that the 2.5 per cent charge was not applied to imports originating in LAIA member countries only if the products in question were included in a partial scope agreement. Other import measures such as the 3 per cent and 10 per cent additional duties, import permits, quantitative restrictions, official price valuation and tariff surtaxes were applied to LAIA member countries. However, in certain cases special quotas had been established in the context of LAIA. In such cases there was no automatic refusal of the import permit.

IX. Protocol of Accession

71. The representative of Mexico noted that the 1986 economic and trade environment was not the same as that in 1979. Unfortunately, in the case of Mexico, the evolution had been negative and had implied a substantial deterioration in these matters due to the conjunction of factors mentioned in the Memorandum on Foreign Trade Régime. Some of these factors, such as high interest rates, protectionist measures in a number of developed countries, lower prices for primary products and in particular oil had

deeply affected the Mexican economy. For instance, in 1986, the reduction in foreign exchange earnings due to a lower price for oil would be between US\$7 billion and US\$8 billion. Considering that annual interest payments exceeded US\$10 billion, the reduction in income being experienced by Mexico was enormous and implied a net transfer of resources towards the developed countries at a time when domestic economic growth had become virtually impossible. Mexico had been adjusting domestic economic policies with the result that the share of the public sector in GDP had fallen and the real disposable income of the workers had decreased. In order to avoid having to resort to unilateral trade restrictions, an increase in exports appeared as the only way to enable Mexico to service its foreign exchange obligations.

72. With reference to the terms and conditions of accession, the representative of Mexico acknowledged that a standard protocol was the usual starting point. However, in light of Mexico's unique social, economic and geographic conditions and difficulties, his authorities hoped that accession to GATT might be reflected in an enlarged standard protocol. Additional provisions might be desirable to address the following specific concerns of Mexico. First, the recognition of Mexico's status as a developing country entitled to special and more favourable treatment as provided for in Part IV and in other relevant GATT instruments. Secondly, taking into account the provisions of Article XX of the General Agreement, the recognition that energy resources may be exploited and commercialized in accordance with Mexico's sovereign national interests. Thirdly, the recognition that Mexico would have the possibility of using the support measures provided for in the National Development Plan and the Sectoral and Regional Development Programmes in order to achieve the objectives and targets established in these programmes, by using the trade policy instruments in a manner consistent with the General Agreement and the terms of its protocol of accession. Fourthly, reference to the special conditions of the agricultural sector. While ready to pursue the process of the elimination of import permits and to negotiate concessions in this sector, Mexico would need to be able to maintain the protection necessary to ensure domestic production. Mexico would, nevertheless, continue to extend to all contracting parties equality of treatment and conditions with respect to the importation of agricultural products.

73. Several members referred to the underlying principles that would be involved in developing appropriate terms and conditions for the protocol of accession of Mexico to the General Agreement. In supporting Mexico's desire to accede to GATT as expeditiously as possible, a number of members stressed that the terms and conditions of the protocol of accession of Mexico to GATT should take account of the interests of all concerned. Several members said that the 1979 draft Protocol of Accession did not constitute, at this juncture, a suitable point of reference. Circumstances had changed both in Mexico and in the economies of contracting parties, as well as in the multilateral trading system with the implementation of the MTN Agreements and the tariff concessions negotiated in 1979. Some of these members considered that, in factual terms, Mexico would now derive more benefits from accession to GATT than those anticipated at the time of the 1979 proceedings. In this respect, some members felt that the basic principle was that Mexico, in line with its importance in world trade, should be expected to subscribe to GATT obligations and to join in their interpretation as elaborated in some of the MTN Agreements. It was also noted that Mexico had applied to join the General Agreement as it presently stands and that the protocol of accession should not lock Mexico into special derogations or exceptions that would limit Mexico's subsequent participation in GATT. Moreover, the Working Party could not be expected to take up issues which were a subject matter for the future multilateral trade negotiations.

74. Recalling the basic GATT principles, namely m.f.n treatment, national treatment, fair and transparent import procedures, the use of tariffs rather than quantitative restrictions, and consultation and negotiation to resolve disputes, some members said it was expected that Mexico would move towards these obligations in all sectors, albeit at different speeds. Short transition periods and the temporary protection permitted by the provisions of the General Agreement, in addition to the recognition in Part IV and the Framework Agreement of the special situation of developing countries provided in their view adequate safeguards for Mexico's development needs.

75. For these reasons a number of members said that Mexico should accede to the General Agreement under the terms of a standard protocol of accession which did not contain derogations from normal and appropriate GATT obligations. Exemptions for agriculture or specific industrial sectors were also, in their opinion, neither necessary nor warranted. A

standard protocol which would encompass Part IV and the Enbaling Clause would allow sufficient flexibility for the implementation of the provisions of the General Agreement. The protocol should also contain commitments by Mexico to phase out practices inconsistent with the provisions of the General Agreement within a relatively short period of time. Restrictive measures maintained by Mexico after accession should be justified under appropriate GATT provisions and be limited in duration and scope.

76. A number of members suggested that in certain areas the most expeditious manner for Mexico to adjust to GATT disciplines would be to agree to the acceptance of the relevant MTN Agreements.

77. In expressing preference for a standard protocol of accession, a member noted that even though recent protocols of accession had no express reference to Part IV or the developing country status of the acceding countries, nobody had questioned this status. The acceding countries had not encountered problems in making use of the flexibility provided for developing countries in the General Agreement. The representative of Mexico agreed that Mexico would be entitled to the special and more favourable treatment accorded to developing countries even without a special reference in the protocol of accession. However, Mexico's public opinion which was not well acquainted with all the fine points of GATT practices had insisted on the need to include such a provision. Moreover, a provision to this effect had been included in the 1979 draft Protocol.

78. Referring to the treatment of agriculture in the protocol of accession of Mexico, some members stated that their authorities attached a great deal of importance to this matter. In their view, derogations would not be desirable because in the past such an approach had, unfortunately, not constituted an incentive to carry out the necessary economic adjustments. The representative of Mexico recalled that one of the guidelines set by the President of the Republic to the Secretary of Trade and Industrial Development was to obtain the recognition of the priority character of Mexico's agricultural sector, since this sector constitutes a fundamental pillar for the country's economic and social development. In this respect, reference was also made to the issues covered in the section of the report entitled "Agricultural Sector" reflected in paragraphs 41-46 above.

79. The Working Party noted that the tariff items in the energy sector subject to import and export permits were listed in the Catalogue of the General Import Tariff and the listing deposited with the secretariat, respectively. Without questioning the principle of national sovereignty over energy resources, a number of members took exception to the interpretation that paragraph (g) of Article XX meant that the energy sector was not covered by the provisions of the General Agreement. Noting that measures adopted in this sector should be consistent with GATT obligations, some members said that paragraphs (d), (i) and (j) of Article XX as well as Article XVII would appear to be relevant in this respect. The representative of Mexico said that the inclusion in the protocol of accession of a paragraph with respect to energy resources was not intended to establish special rights but rather to underline the importance of this sector and secure the acknowledgement of its constitutional status in Mexico. Having regard to Article 27 of the Constitution, the State's sovereign rights over energy resources could not be subject to concessions or contracts. Thus, export permits would have to be maintained. In a number of contracting parties, for security reasons, energy resources were subject to import and export permits. In his view, Mexico's policies were consistent with the provisions of Articles XVII and XX of the General Agreement.

80. The spokesman for a group of contracting parties enquired as to why Mexico had requested a special paragraph in the protocol of accession concerning the National Development Plan if in the reply to question XXII, in document L/5976, sectoral development programmes were considered to be consistent with Article XVIII, Part IV and the CONTRACTING PARTIES 1979 Decision concerning Safeguard Action Taken for Development Purposes. The representative of Mexico said that this reply referred to the Motor Vehicle and Pharmaceuticals Programmes. Recalling the issues covered in the section of the report entitled "National Development Plan and Sectoral and Regional Programmes" reflected in paragraphs 35-40 above, he said that in future sectoral development programmes protection would be basically provided through tariffs. A member said that, in his opinion, Part IV did not exempt contracting parties from basic GATT obligations. This was confirmed by the negotiating history of Part IV. Moreover, the invocation of Article XVIII was subject to certain formalities.

81. With reference to the suggestion made by some members that a standard protocol of accession be used for Mexico, the representative of Mexico noted that all protocols of accession provided that Part II of the General Agreement would be applied to the fullest extent not inconsistent with legislation existing on the date of the protocol. To this effect, Mexico had deposited with the secretariat, for the information of contracting parties, the texts of seventy-eight laws implementing provisions of the Mexican Constitution in trade and related areas promulgated up to April 1986. He noted that this was an illustrative list. Some of this legislation might be related to international trade issues indirectly. He added that under the Mexican legal system, all legislation enacted by the Legislature was considered mandatory and had to be implemented by the Executive branch. References to pre-existing legislation appear in paragraphs 20, 21, 32, 35, 55, 59 and 64 of the report. A member said that, in the view of his Government, the extension of the pre-existing legislation provision ("grandfather clause") to Mexico's trade practices was dependent on the actual nature of the legislation in force, and that derogations of GATT obligations based on its application must be addressed on a case-by-case basis.

Conclusions

82. The Working Party took note of the explanations and statements of Mexico concerning its foreign trade régime, as reflected in the present report. The Working Party took note of the assurances given by Mexico in relation to certain specific matters which are reproduced in paragraphs 19, 23, 25, 29, 35, 62, 66 and 68 of this report.

83. In the light of the discussions held and of the assurances provided by Mexico, it being understood that the rights of contracting parties with respect to Mexico's application of the provisions of the General Agreement are fully preserved, the Working Party reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Mexico should be invited to accede to the General Agreement under Article XXXIII. For this purpose the Working Party has prepared the Draft Decision and Protocol of Accession reproduced in the Appendix to this report. It is

proposed that these texts be approved by the Council when it adopts the report. When the tariff negotiations between Mexico and contracting parties in connection with accession have been concluded, the resulting Schedule of Mexico would be annexed to the Protocol. The Decision would then be submitted to a vote by contracting parties in accordance with Article XXXIII. When the Decision is adopted, the Protocol of Accession would be open for acceptance and Mexico would become a contracting party thirty days after it accepts the said Protocol.

APPENDIX

ACCESSION OF MEXICO

Draft Decision

The CONTRACTING PARTIES,

Having regard to the results of the negotiations directed towards the accession of the Government of Mexico to the General Agreement on Tariffs and Trade and having prepared a Protocol for the accession of Mexico,

Decide, in accordance with Article XXXIII of the General Agreement that the Government of Mexico may accede to the General Agreement on the terms set out in the said Protocol.

DRAFT PROTOCOL FOR THE ACCESSION OF MEXICO
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "contracting parties" and "the General Agreement", respectively), the European Economic Community and the Government of the United States of Mexico (hereinafter referred to as "Mexico").

Taking note of Mexico's [declared]¹ present status as a developing country, because of which Mexico [shall] [may]¹ enjoy the special and more favourable treatment which the General Agreement and other provisions deriving therefrom established for developing countries,

Having regard to the results of the negotiations directed towards the accession of Mexico to the General Agreement,

Have through their representatives agreed as follows:

Part I - General

1. Mexico shall, upon entry into force of this Protocol pursuant to paragraph 9, become a contracting party to the General Agreement, as defined in Article XXXII thereof, and shall apply to contracting parties provisionally and subject to this Protocol:

(a) Parts I, III and IV of the General Agreement, and

(b) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.

¹Inserted at the request of one delegation.

2. (a) The provisions of the General Agreement to be applied to contracting parties by Mexico shall, except as otherwise provided in this Protocol, and in accordance with paragraph 82 of L/[6010], be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which Mexico becomes a contracting party.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII; and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of Mexico shall be the date of this Protocol.

3. Regarding agriculture, the CONTRACTING PARTIES recognize the priority status which Mexico accords to this sector in its economic and social policies. In this connection, and in order to improve its agricultural production, to maintain the land-tenure system and to protect the income and employment opportunities of the producers of these products, Mexico will continue implementing its programme of gradual replacement of prior import permits by tariff protection to the extent compatible with its objectives in this sector, in accordance with the provisions of paragraph 29 of L/[6010].

4. The CONTRACTING PARTIES are aware of Mexico's intention to implement its National Development Plan and its Sectoral and Regional Programmes, as well as to institute the instruments needed for their execution, including those of a fiscal and financial nature, in conformance with the provisions of the General Agreement and in accordance with the provisions of paragraph 35 of L/[6010].

5. Mexico will exercise its sovereignty over natural resources, in accordance with the Political Constitution of Mexico. Mexico may maintain certain export restrictions related to the conservation of natural resources, particularly in the energy sector, on the basis of its social and development needs if those export restrictions are made effective in conjunction with restrictions on domestic production or consumption.

Part II - Schedule

6. The schedule in the Annex shall, upon the entry into force of this Protocol, become a Schedule to the General Agreement relating to Mexico.

7. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the Schedule annexed to this Protocol shall be the date of this Protocol.

(b) For the purpose of the reference in paragraph 6(a) of Article II of the General Agreement to the date of that Agreement, the applicable date in respect of the Schedule annexed to this Protocol shall be the date of this Protocol.

Part III - Final Provisions

8. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for signature by Mexico until 31 December 1986. It shall also be open for signature by contracting parties and by the European Economic Community.

9. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been signed by Mexico.

10. Mexico, having become a contracting party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever is the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 4 of Article XXVI thereof.

11. Mexico may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 10 and such withdrawal shall take effect on the sixtieth day following the day on which written notice thereof is received by the Director-General.

12. The Director-General shall promptly furnish a certified copy of this protocol and a notification of each signature thereto, pursuant to paragraph 8, to each contracting party, to the European Economic Community, to Mexico and to each government which shall have acceded provisionally to the General Agreement.

13. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

14. Done at Geneva this day of (month) one thousand nine hundred and eighty six, in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the Schedule annexed hereto, each text being authentic.

ANNEX

SCHEDULE LXXVII - MEXICO

[Text to be supplied later]