

NOTEBOOKS ON THE PROMOTION OF COMPETITION PRINCIPLES
México



TRADE POLICY

with a **COMPETITION** **PERSPECTIVE**

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NOTEBOOKS ON THE PROMOTION OF COMPETITION PRINCIPLES

The Notebooks on the Promotion of Competition Principles are a compilation of essays or reports that are aimed at the adoption of free market participation and competition principles in different areas of public policy. COFECE encourages this discussion on competition and identifies areas of opportunity for other authorities to promote, within their spheres of authority, the efficient functioning of markets to the consumer's advantage. The content of these notebooks is not definitive in nature and may be enhanced with new elements.

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COFECE is the sole responsible for the content in this document.

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MOTIVATION

COFECE has several powers and tools at its disposal for the implementation of its mandate. In addition to those relative to formal investigative procedures and sanction of anticompetitive conducts or the notification of mergers, to mention some, there are actions focused on the promotion of a competitive culture and the promotion of the application of competition principles in the design of public policy. This takes into consideration that the obstacles imposed by the State are those that most affect economic dynamics and limit growth opportunities.

Trade policy can affect the process of free market participation and competition when, it unjustifiably:

- a. Establishes entry barriers and requirements to participate in economic activities,
- b. Restricts or prevents supply options in detriment of companies and consumers,
- c. Distorts productive decisions,
- d. Diminishes the capacity to compete, or
- e. Provides special protection to certain sectors or offers differential treatment.

Considering this, this Notebook on the Promotion of Competition Principles identifies the aspects of trade policy that may restrict competition, affect the competitive position of companies and diminish consumer's welfare. In other words, it identifies areas of opportunity and proposes actions that contribute to the efficient functioning of markets and therefore the economic development of the country.

• **EXECUTIVE
SUMMARY**

Benefits of foreign trade to economic growth and competition.

Openness to international trade has a direct effect on conditions of competition in markets since:

- It allows for a more diverse supply of goods and services;
- It exerts discipline on domestic prices and on businesses' market power in national territory;
- It increases businesses' competitiveness through access to new markets or inputs in more competitive conditions;
- It promotes innovation and technological change;
- Overall, it creates consumer welfare.

Generally speaking, and according to numerous economic studies¹, openness to international trade increases household income, gives rise to economic growth, drives productivity, attracts more direct foreign investment and leads to more favorable consumer prices.

Nevertheless, the positive impacts of international trade can be dimmed by the effects of certain trade barriers, which limit the entry of foreign goods and services and generate incentives that favor inefficiency among domestic businesses that enjoy such protections.

The Mexican legal framework, as is the case in other nations, allows for measures such as tariffs, countervailing duties, quotas and technical regulations, among others. However, in particular circumstances, these instruments may be used as a covert means to unduly restrict international trade. Therefore, such instruments should only be adopted in specific and exceptional cases, and be duly justified by the pursuit of public objectives. In order to maximize its benefits, Mexico's foreign trade policy ought to consider the perspective of economic competition, which would imply a preponderant vigilance of market efficiency and consumer welfare.

Types of protection

The trade protections countries employ are commonly classified into (i) tariffs and non-tariff measures. Tariffs are taxes on imports and as such have a direct impact on the price of commercial goods. Mexico imposes most-favored-nation (MFN) or preferential tariffs. The MFN tariff is that published in Mexico's General Import and Export Tariff Law (Tarifa de los Impuestos Generales de Importación y de Exportación) that, in compliance with taken on before the World Trade Organization (WTO), cannot be discriminatory. In turn, a preferential tariff is negotiated within the framework of a trade treaty or agreement and applies to products that originate with the trade partner in question.

Non-tariff measures are instruments distinct from tariffs that restrict or prohibit imports or exports, such as quotas, import permits, public health and phytosanitary measures, technical regulations or country-of-origin labeling. This category includes countervailing duties, with an

¹ Among them: OECD (2012), Policy Priorities for International Trade and Jobs, (ed.), D. Lippoldt, documento electrónico disponible en: www.oecd.org/trade/icite; Spence, M. and M. M. El-Erian (2008) Growth Strategies and Dynamics Insights from Country Experiences, Working Paper No. 6, Commission on Growth and Development; Frankel, J. A., y Romer, D. (1999), Does trade cause growth?, en American Economic Review, pp. 379-399.

effect similar to that of tariffs since they imply payment of percentage (or a per-unit-of-measurement amount) on top of the products' declared value.

Tariff structure, supply problems and openness efforts

In 2016, Mexico's simple-average MFN tariff was 5.6% and the weighted MFN tariff was 3.86%. In comparison to the rest of the world, this places Mexico at a mid-point between more open nations and those that are more restrictive. It should be noted that the effectively paid tariff tends to be a great deal lower (0.6% in 2014), given that most imports enjoy preferential treatment under some treaty, agreement or program. Nevertheless, this low effectively paid tariff hides a bias, as it does not consider the prohibitive effect certain tariffs can impose; i.e., some products, burdened with high MFN tariffs and unable to claim any preferential status, simply cease being imported.

While the free trade agreements Mexico has signed guarantee preferential access to a wide range of products, these agreements do not entirely resolve supply problems. The fact is that in recent years, imports from trade partners nations as a share of total imports have been reduced (from 70.3% in 2013 to 66.5% in 2016).

Of Mexico's ten biggest trading partners² (by share of imports) there are four with which Mexico has no trade agreement (China, South Korea, Malaysia and Taiwan), which translates into higher effectively paid tariffs (4.53, 1.63, 2.79 and 3.33% in 2014, respectively)³. Protections are accentuated even more by commercial sector. For example, Mexico's three largest footwear providers are China, Vietnam and Indonesia, who pay 24.1, 25.9 and 25.6% in effective tariffs, respectively; whereas imports from the three following trade partners (Italy, Spain and the US) pay between 0.3 and 0.8% only.

Commodities like fish (frozen tilapia), unroasted coffee and canned pineapple are largely supplied to Mexico by countries with which there is no standing free trade agreement (China, Vietnam and Indonesia, respectively). In those cases, importers are willing to pay high tariffs to acquire those products since free-trade-agreement partners cannot provide them at competitive prices.

Other staples that are subject to high MFN tariffs and that exert a high impact on consumer welfare are rice, beans, frozen beef and frozen chicken chunks. These products are imported from free trade partners; however, global supply is concentrated in other countries with which Mexico does not have standing trade agreements. Thus if tariffs were not in place, or were lower, the nation could supply itself with those products from other countries that offer better competitive advantages, which would in turn lead to lower consumer prices.⁴

² Mexico's ten biggest trading partners by share of imports are the US, China, Japan, South Korea, Germany, Canada, Malaysia, Taiwan, Italy and Spain.

³ These are the tariffs effectively paid in customs houses and they are lower than MFNs because they benefit from other mechanisms (quotas or PROSEC protections, for example). They do not reflect temporary imports that enter Mexico under the aegis of a tariff exemptions program.

⁴ United Nations ComTrade publishes a list disclosing each product's exportable supply.

Given the above, special attention must be paid to tariffs when they impede, restrict or increase prices on imports that the nation's do not produce or cannot supply under competitive conditions. In such cases, maintaining high protection levels is not advisable, above all when it comes to consumer goods that represent a major share of Mexican household expenditure, or inputs relevant to production processes. For this reason it makes sense to unilaterally reduce certain tariffs or expand Mexico's free trade agreement network to include strategic countries.

Additional competition concerns

Footwear, apparel and steel

In 2008, Mexico's Ministry of the Economy carried out unilateral tariff reductions, and extended this policy in 2012. This was one of the measures undertaken by the Federal Government to raise the Mexican economy's growth-potential and productivity.

On several occasions this process was the object of a de-acceleration with respect to the footwear and apparel sectors. The roll-back was even suspended in the case of finished footwear. In parallel, non-tariff-related measures have been instituted for the latter sector, such as estimated-price and **specific-customs**-house mechanisms. Together, these render imports of these products from non-partners more expensive and eliminate more favorable consumer choices.

Steel—in addition to holding first place among tariff headings subject to dumping-related countervailing duties—has benefitted from a unilateral 15% MFN-tariff hike, a measure that has been renewed for four six-month periods. It is worth mentioning that between 1Q 2015 (previous to the tariff hike) and 1Q 2016 (following the increase) imports of affected products went down by 23.5%. This, added to supervisory measures like “automatic notices,” restricts the supply of an input that is fundamental to a number of economic activities.

Reviewing the impact of these measures as well as their pertinence is therefore advisable.

Quotas

According to the Foreign Trade Act (LCE), Mexico's Executive Branch is empowered to establish measures regulating the import or export of products. One such measure is called an import quota, which is generally used as a method to counteract supplying issues or increased prices.

Quotas are a mechanism Mexico's Federal Government uses generally when there are supply problems or as a measure to counteract domestic price increases.

The protocol for determining and allocating quotas can give rise to a number of risks. In the interests of competition, public bidding should be favored as the allocation protocol when demand exceeds supply. When other mechanisms turn out to be more suitable, it is advisable to establish transparent allocation protocols and criteria that do not favor particular economic actors within Mexico (privileging, say, larger actors or those with greater presence).

Additionally, when quota-allocation becomes a recurring measure, it is in fact preferable to enact a tariff reduction that will eliminate the need to manage quotas and will offer certainty to importers.

PROSEC

There are twenty-four sectors or industries covered by Mexico's "Sector Promotion Programs" (Programas de Promoción Sectorial; acronym in Spanish: PROSEC), which allow pre-registered producers to import production inputs and machinery at favorable tariff rates.

On one hand, the fact the PROSEC's are actively used shows that Mexico's standing free-trade-agreement network is insufficient to guarantee competitive conditions for the nation's overall industrial sector. As well, this program has increased the complexity of the country's customs system, along with other trade policy instruments.

After nearly fifteen years of PROSEC's implementation and following the negotiation and implementation of free trade agreements as well as unilateral opening processes, it may indeed be time to re-think their validity. In other words, the moment may have come to eliminate PROSEC and simultaneously extend tariff-related benefits—in a non-discriminatory manner—to the entirety of Mexican industry.

This is relevant to competition because it does not create exclusive benefits that favor only certain economic actors; at the same time, it does increase the competitive capacities of other actors.

Dumping

Related to protecting itself from unfair international trade practices, it is convenient to guarantee that countervailing duties only apply if they can be shown to not be contrary to the public interest. Put another way, the damage they afford the overall economy cannot be greater than the improvement generated to the domestic industry affected by the imports. In this sense, it is relevant to consider the advisability of introducing a "public-interest" test through which the industrial users of inputs and consumers of are taken into account as stakeholders in a given investigation.

Mexico needs to establish methodologies and technical criteria and make them transparent in order to apply the substantive concepts of its Foreign Trade Act as a means of providing enhanced certainty and predictability.

Other relevant recommendations include applying a "lesser duty" rule (i.e., that any fee be imposed only at the percentage needed to correct the damage rather than being the equivalent of the dumping margin); consider the petitioners' market position; and officially and more actively initiate countervailing duty review protocols.

Regulatory Transparency

It is critical to assure that federal guidelines for animal and vegetable health do not unduly restrict international trade. Similarly, all import requirements with regard to animal- and vegetable-origin products should be transparent, have a clear justification and be available for public review at any time.

Mexico's Ministry of the Treasury has also issued a series of legal instruments that are not currently subject to the regulatory improvement protocols stipulated in the nation's Federal Administrative Procedure Act (*Ley Federal de Procedimiento Administrativo*). Such is the case, for example, with the General Rules of Foreign Trade (*Reglas Generales de Comercio Exterior*), which do not regulate financial considerations and accessories and can have a major impact on the free market entry and competition processes.

COCEX

Mexico's Foreign Trade Commission (*Comisión de Comercio Exterior*; acronym in Spanish: COCEX) is a technical advisory organ comprised of Mexico's Ministries of (i) the Economy; (ii) Treasury and Public Credit; (iii) Agriculture, Livestock, Rural Development, Fisheries and Food; (iv) the Environment and Natural Resources; (v) Public Health; and (vi) Foreign Relations, as well as (vii) the nation's central Bank (*Banco de México*) and (viii) COFECE. It is charged with issuing opinions on matters of foreign trade that are the jurisdiction of the nation's executive branch.

COCEX meets regularly and recommendations it issues are arrived at via majority vote. One advantage COCEX offers is its ability to consider the impact a given trade measure will exert in different public policy areas.

That said, in practice, COCEX role could be strengthened so that it exerts a true counterweight when it comes to decision-making; for example, by making session transcripts, as well as respective votes and the reasoning behind them, available to the public; by taking stakeholder positions under consideration; and by providing follow-up with regard to the use, implementation and impact of measures adopted.

Furthermore, COCEX's makeup could be more balanced. Of the six members that currently report to Mexico's Executive Branch, only two are autonomous.

Final considerations

Mexico's insertion into the global economy has in general rendered positive results. The nation has become a relatively open economy, consolidating its position as a platform for exports to the United States and offering access to a wider array of products and industrial inputs. At the same time, Mexican products have gained significant ground in international markets.

Nevertheless, a series of obstacles and barriers persist in Mexico that, in addition to affecting free market access and competition, injure consumers and distort the efficiency of production chains. To maximize its benefits, Mexico's foreign trade policy ought to consider economic competition. Among other things, this would imply preponderantly safeguarding market efficiency and consumer welfare as well as avoiding the concession of exclusive advantages. Such an agenda should include tariffs and non-tariff measures.

Due to the positive impact an open economy asserts and in an international, it is critical to adhere to a pro-free-trade agenda that lends ample opportunity to Mexican consumers and businesses, while simultaneously strengthening the domestic competitive environment. Fortifying and expanding the links between trade policy and competition can steer public policy in that direction.

I. INTRODUCTION

I. Introduction

Regardless of the impact trade policy has on multiple macroeconomic variables (see Box 1), openness to international trade has a direct effect on competition within markets (see Box 2) because, among other effects:

- a. It allows for a more diverse supply of goods and services;
- b. It exerts discipline on domestic prices and on businesses' market power;^{5,6}
- c. It increases businesses' competitiveness through access to new markets or inputs in more competitive conditions;
- d. It promotes innovation and technological change;
- e. It minimizes the risk of collusion,⁷ and
- f. Overall, it creates consumer welfare.⁸

Nevertheless, the positive impact of international trade can be dimmed by the effects certain trade barriers create, which not only limit the entry of foreign goods and services into domestic markets, but also give rise to incentives favoring inefficiency among the domestic businesses that enjoy such protections.⁹

The Mexican legal framework, as is the case in other nations, allows for measures such as tariffs, countervailing duties, quotas and technical regulations, among others. However, in particular circumstances, these instruments may be used as a covert means to unduly restrict international trade. Therefore, they should only be adopted in specific and exceptional cases, and be duly justified by the pursuit of public objectives. Similarly, in all cases, the possible impact such measures may generate on market efficiency must be considered.

5 For example, it has been shown that excessive profit margins in certain sectors immediately diminished once the North American Free Trade Pact (NAFTA) entered into effect. López Noria, G. (2015), El efecto de la liberalización comercial sobre los márgenes de precios a costos marginales del sector manufacturero, en *El Trimestre Económico*, vol. LXXXII (3), no. 327, July-September, 2015, pp. 583-616.

6 Motta, M. and F. Onida (1997). Trade Policy and Competition Policy, in *Giornale degli Economisti, GDE (Giornale degli Economisti e Annali di Economia)*, Bocconi University, vol. 56(1-2), pp. 67-97, June.

7 Given the difference both in terms of incentives and in the characteristics of foreign businesses compared to domestic operations when they compete in the same market. Martin, S. (1999). *Trade and Competition: An Industrial Economist's Perspective*. Blackwell Publishers Ltd. p. 895.

8 The theoretical and empirical literature on welfare gains derived from international trade is vast. Texts that summarize research on the subject include Grossman and Rogoff (eds.) (1995) *Handbook of International Economics Volume III*, North-Holland, Harrigan and Choi (eds.) (2003), *Handbook of International Trade*, Blackwell, and Feenstra's 2003 study, *Advanced International Trade: Theory and Evidence*, Princeton University Press.

9 Academic research shows that businesses enjoying tariff protections evince lower productivity, partly due to the fact they have fewer incentives to invest. Brandt, L., J. Van Biesebroeck, L. Wang, and Y. Zhang (2014), *The impact of entry into WTO on Chinese Enterprise Productivity*. CEPR Discussion Paper No. 9166. Other studies show that if trade barriers are temporary, businesses behave differently, using such extraordinary gains to take actions to improve productivity and ready themselves for future competition. De Loecker, J., & Van Biesebroeck, J. (2015), *Effect of International Competition on Firm Productivity and Market Power*.

In order to maximize benefits, Mexico's foreign trade policy ought to consider the perspective of economic competition. Among other considerations, this would imply a preponderant vigilance of market efficiency and consumer welfare. It would additionally avoid granting exclusive advantages. This is particularly relevant in the current context, in which a possible increase protectionism by some countries obliges Mexico to defend free trade more than ever, to diversify import sources and export markets, as well as to promote competed domestic markets as part of a modern vision that strengthens the competitive environment and does not give rise to additional distortions and harm. With this in mind, the present document analyzes the status of Mexican trade policy in order to identify opportunity areas that will allow for a strengthening of the link between trade policy and competition policy.

Sections Two and Three present historical developments and the current situation as regards the use of tariffs and countervailing duties, in order to identify sectors that enjoy high protection levels, as well as supply-related needs not covered by the trade agreement network currently in effect. In turn, Section Four identifies trade-policy issues that give rise to competition concerns and where areas for improvement may lie, specifically regarding: (i) decrees corresponding to footwear and apparel, (ii) tariffs and countervailing duties in the steel sector, (iii) anti-dumping systems, (iv) quotas, (v) regulatory transparency, (vi) sector promotion programs and (vii) the workings of Mexico's Foreign Trade Commission. Finally, conclusions summarize major findings and recommendations.

It should be noted the present report does not pretend to cover every aspect of trade policy. While measures such as tariffs and countervailing duties are emphasized, there are myriad other relevant aspects (for example, international trade in services or investment, subsidies, and technical or country of origin regulations). In any case, the principles highlighted here constitute a contribution to promoting competition through strengthened trade policy.

Box 1. The impact of openness to international trade on macroeconomic variables

- According to the OECD, the fourteen major multi-country econometric studies undertaken since 2000 have concluded that international trade has a positive impact on raising incomes.¹⁰ Additionally a number of case studies analyzing the experiences of the twelve countries with the fastest growth in the last sixty years have concluded that one characteristic they had in common was leveraging the power of the global economy to achieve that growth.¹¹
- According to the US-based Heritage Foundation's Economic Freedom Index, the degree to which an economy is open to exchange in goods, services, capital and people is a GDP determinant.¹² Its 2015 index demonstrates how the top third of countries with the greatest openness to trade exhibit the highest per-capita income.
- It has been argued that international trade exerts a positive impact on economic growth¹³ and that trade liberalization can contribute from 1.5 to 2% of a nation's annual growth.¹⁴
- According to a number of economic studies, international trade and deregulation have achieved a major, worldwide reduction in prices and profit margins as well as considerable productivity gains.¹⁵
- Countries that have fewer distortions in their export sector grow more rapidly than in those with more distortions.¹⁶
- Given complementarities among countries, the greater the level of international trade, the greater the flow of direct foreign investment the country enjoys.¹⁷

10 OECD (2012), Policy Priorities for International Trade and Jobs, (ed.), D. Lippoldt, electronic document available at: www.oecd.org/trade/icite.

11 Spence, M. and M. M. El-Erian (2008) Growth Strategies and Dynamics Insights from Country Experiences, Working Paper No. 6, Commission on Growth and Development.

12 Riley, B. and T. Miller (2014), 2015 Index of Economic Freedom: Why Trade Matters and How to Unleash It, The Heritage Foundation. Available at: http://thf_media.s3.amazonaws.com/2014/pdf/SR161.pdf

13 Frankel, J. A. and Romer, D. (1999), Does Trade Cause Growth?, in American Economic Review, pp. 379-399.

14 Wacziarg, R. and Welch, K. H. (2008). Trade Liberalization and Growth: New Evidence, in The World Bank Economic Review, 22(2), pp. 187-231.

15 Chen, N., Imbs, J. and Scott, A. (2009). The Dynamics of Trade and Competition. Journal of International Economics, 77(1), 50-62.

16 Edwards, S. (1993), Openness, Trade Liberalization, and Growth in Developing Countries, in Journal of Economic Literature, 1993, V 31(3), pp. 1358-1393.

17 Giuseppe Nicoletti, Stephen S. Golub, Dana Hajkova, Daniel Mirza and Kwang-Yeol Yoo, The Influence of Policies on Trade and Foreign Direct Investment, OECD Economic Studies No. 36, 2003/1

WEF (2013), Foreign Direct Investment as a Key Driver for Trade, Growth and Prosperity: The Case for a Multilateral Agreement on Investment, World Economic Forum.

Fontagné, L. (1999), Foreign Direct Investment and International Trade: Complements or Substitutes?, OECD Science, Technology and Industry Working Papers, 1999/03, OECD Publishing.

Box 2. The pro-competition impact of international trade in selected countries

- In Mexico, experience has shown that protecting certain industries through tariff-related measures does not necessarily translate into higher performance in these sectors. For example, machinery and equipment production grew 42.6% between 2001 and 2010 with a 3.4% effective protection rate; in contrast, apparel, with a 34.8% effective protection rate, grew a mere 5.2% in the same period,¹⁸ irrespective of improvements in quality and innovation to sectors open to international trade.
- When India undertook a solid international trade liberalization agenda in the 1990s, it strongly fostered competition, which resulted in a reduction of excessive profit margins in certain markets.¹⁹ Something similar occurred in **Turkey** in relation to its 1984 imports program for five industries, which reduced market profit margins.²⁰ In both cases, imports disciplined local businesses.
- Chile underwent a major trade opening process in the 1970s and 80s by exposing domestic industry to foreign competition. Sectors facing foreign competition displayed major gains in productivity and efficiency.²¹
- Based on information from Indonesian businesses in the period from 1991 to 2001, a study showed that lower tariffs on end-products can increase businesses' productivity by means of increased competition, while cheaper inputs can also increase productivity and generate positive effects in variety and quality.²²

18 Zabludovsky, J. and Acevedo, E. Evaluación de la apertura comercial internacional (1986-2012), in Leycegui, B. Reflexiones sobre la política comercial internacional de México 2006-2012. (2012). p. 65.

19 Krishna, P. and D. Mitra (1998) Trade Liberalization, Market Discipline and Productivity Growth: New Evidence from India, in Journal of Development Economics vol. 56, pp. 447-462.

20 Levinsohn J. (1991) Testing the Imports-As-Market-Discipline Hypothesis, NBER Working Paper No. 3657.

21 Lavcnik, N. (2002). Trade Liberalization, Exit and Productivity Improvements: Evidence from Chilean Plants, in The Review of Economic Studies, 69(1), 245-276.

22 Amiti, M. and Konings, J. (2007). Trade Liberalization, Intermediate Inputs, and Productivity: Evidence from Indonesia, in The American Economic Review, 97(5), 1611-1638.

- **II. THE GENERAL
OUTLOOK**

II. The General Outlook

II.1 Types of protection

The trade protection measures countries employ are commonly classified into two types:

a. Tariffs are levies (taxes) on imports and as such they have a direct impact on commercial goods prices. They can be expressed as ad valorem (i.e., a percentage of the product's value), as a specific tariff (i.e., a per-unit or -measure amount), or a mixed-type tariff. The tariff paid on a product that is imported into Mexico can be:

i. *Most Favored Nation (MFN)*: the tariff published in Mexico's "General Import and Export Tariff Law" (*Tarifa de los Impuestos Generales de Importación y de Exportación*; acronym in Spanish: TIGIE). In compliance with obligations taken on before the World Trade Organization (WTO), MFN tariffs cannot be discriminatory (must be applied equally, regardless of the country of origin) nor can they exceed the "bound" tariff (i.e., the tariff to which Mexico agreed before the WTO as the maximum import tariff, by product),²³

ii. *Preferential*: any tariff negotiated within a free trade treaty, or other trade agreement, for products originating from the trade partner in question, which grants a lower tariff in comparison to MFN (as a valid exception to the Most Favored Nation principle in accordance with WTO rules).²⁴

b. Non-tariff protections: Instruments distinct from tariffs, that restrict or prohibit imports or exports. The most common include quotas, import permits, customs procedures, public health and phytosanitary measures as well as technical regulations such as country-of-origin labeling. This category includes measures imposed on commodities originating in certain countries in response to unfair practices (subsidies or below-normal-value sales), known as "countervailing duties", with an effect similar to that of a tariff since they imply payment of a percentage (or per-unit-of-measurement amount) on top of the products' declared value.

²³ Called for in the Marrakech Protocols Appendix LXXVII of the General Agreement on Tariffs and Trade (GATT).

²⁴ Allowed for under GATT Article XXIV to the degree that the Free Trade Agreement "substantially" covers "all trade" and implies no increase to barriers that third-party member states may face. The 77th Tariff Concessions List to which Mexico subscribes, as well as those of all WTO members, can be accessed at:

https://www.wto.org/spanish/tratop_s/schedules_s/goods_schedules_table_s.htm#mm

II.2 Historical development

II.2.1 Tariffs

Since Mexico joined the General Agreement on Tariffs and Trade (GATT) in 1986, its tariff policy has gone through distinct phases, largely marked by moments of negotiated trade as well as unilateral measures.

Before 1986, the average Mexican tariff hovered between 22 and 27%, with TIGIE operating on between ten and sixteen separate tariff levels. Mexico's subsequent GATT entry—an event that marked the nation's insertion into the international economy—brought on a marked decrease in tariffs, to an average of 10% and a reduction to five tariff levels. (See Graph 1, below). That said, the bound tariff to which Mexico committed remained relatively high at 50%.

The enactment of the North American Free Trade Agreement (NAFTA) in 1994 not only saw the beginning of trade liberalization with the US and Canada, it also marked the start of a period of strategic and negotiated trade opening; specifically, one in which access to other markets is obtained as a result of opening up the Mexican market. As such, between 1995 and 2005 Mexico negotiated and signed eleven free trade agreements²⁵ with 40 nations.

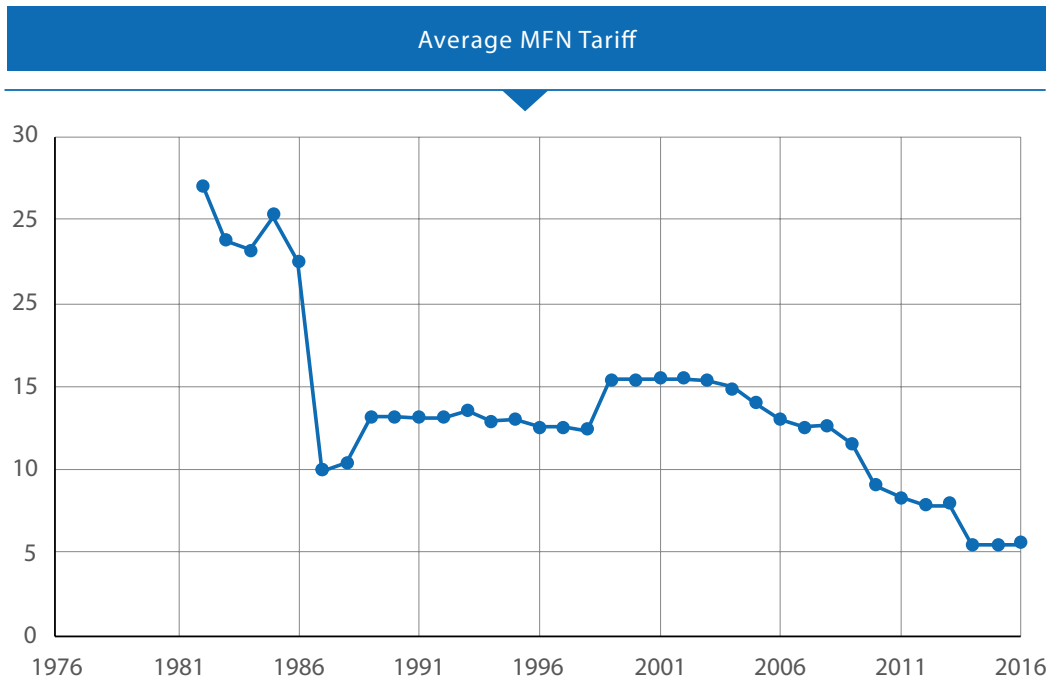
In parallel, fostering programs were implemented. These facilitated imports of inputs through benefits of tariff elimination or reduction. For example, the Sector Promotion Programs (*Programas de Promoción Sectorial*; acronym in Spanish: PROSEC)²⁶ in 2002 and the Manufacturing, Assembly and Export Services Industry Support Program (*Programa de Fomento para la Industria Manufacturera, Maquiladora y de Servicios de Exportación*; acronym in Spanish: IMMEX)²⁷ in 2006. Their aim was to generate conditions for the country to be able to export at international quality and price levels. Nevertheless it is important to note that during that same decade of trade negotiations, the opening of trade to countries outside the free trade agreement network was conspicuously halted. Thus by 2000 Mexico's trade with its free trade agreement partners reached 90% its total trade. (See Graph 2).

25 The eleven FTAs that were signed during this decade were: NAFTA, FTA Mexico – Costa Rica, FTA Mexico – Colombia, FTA Mexico – Nicaragua, FTA Mexico – Chile, FTA Mexico – North Triangle, FTA Mexico – Israel, FTA Mexico – European Union, FTA Mexico – EFTA, FTA Mexico – Uruguay, FTA Mexico – Japan.

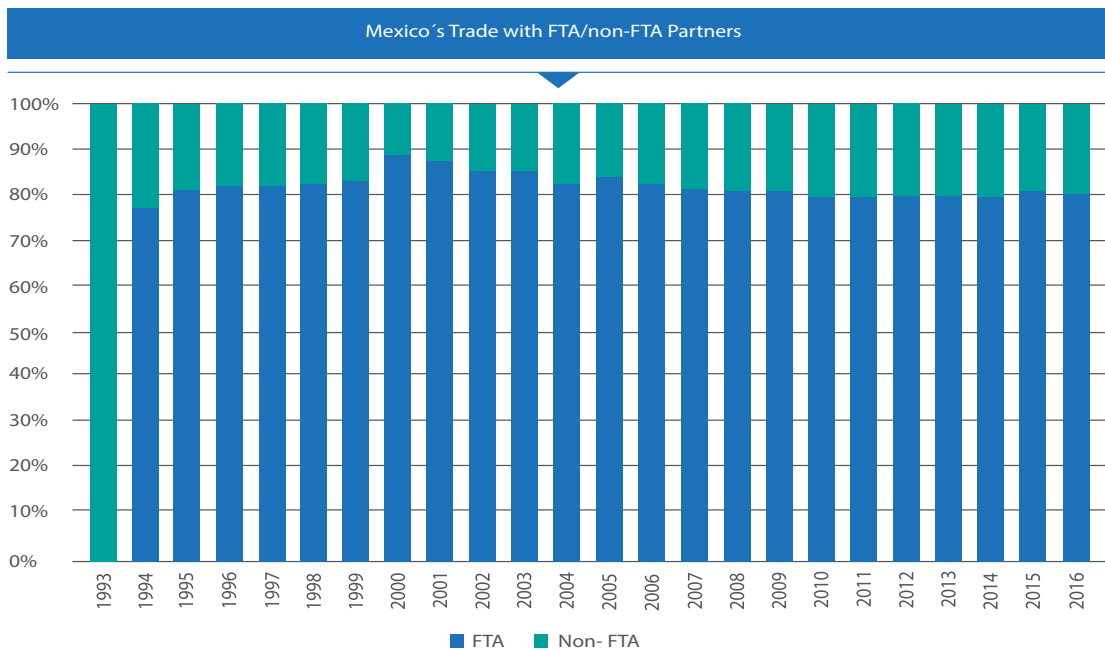
26 PROSECs were designed as an answer to requirements from NAFTA'S Article 303 that limits refunds of import duties. NAFTA is the sole agreement that contains this stringent discipline promoting unilateral import duty reductions whether through the PROSECs or by unilateral MFN tariff reductions.

27 Mexico's Decree establishing miscellaneous PROSECs (Decreto por el que se establecen diversos Programas de Promoción Sectorial), designed to keep the nation's production apparatus competitive in international markets as it supported production chain integration, was formally promulgated and published in Mexico's Official Federal Gazette (*Diario Oficial de la Federación*) on 2 August 2002 (notwithstanding certain precedents featuring more reduced coverage from 1998 and 2000). Additionally, A Decrees with the purpose of supporting and granting facilities to the manufacturing, assembly and export services industries to undertake industrial processes or services export products, or provide export services (Decreto por el que se modifica el diverso para el fomento y operación de la industria maquiladora de exportación, which created the Decreto para el fomento de la Industria Manufacturera, Maquiladora y de Servicios de Exportación), was published on 1 November 2006. This Decree is originated in the maquila regime, in the 80s.

Graph 1. Tariff trends in Mexico (1982-2016)



Graph 2. Total Percentage of Mexico's trade with free trade agreement partners²⁸



²⁸ Created with foreign trade statistics about Mexico published by that nation's Ministry of the Economy. Available at: <http://www.gob.mx/se/acciones-y-programas/comercio-exterior-informacion-estadistica-y-arancelaria?state=published>

In addition to the above, in 2008, Mexico's Executive Branch decided to undertake a major reduction to an important number of TIGIE-schedule tariffs, i.e., unilaterally and applicable to any country. A second series of tariff cuts was carried out in 2012 (although, as will be explained later, this process was later reversed). By 2016 the TIGIE was made up of 12,498 tariff headings and the trend—despite some recently adopted and inconsistent measures, as will be presented below—continues to move toward foreign trade liberalization.²⁹

On the international front, negotiated open trade agreement efforts include the *Alianza del Pacífico*, created by Chile, Colombia, Mexico and Peru in April 2011; updating agreements with the EU and with the European Free Trade Association, as well as free trade agreement initiatives with Turkey and Brazil. In 2016, the Trans-Pacific Partnership (TPP) was signed by twelve nations in the Asia-Pacific region but its recent rejection from the United States prevents its entry into effect in accordance with the treaty's Article 30.5 and thus remains without effect for signatory nations. In light of that event, Mexico's federal government has expressed interest in negotiating bilateral treaties with the six nations that would represent new markets for Mexico through TPP: Australia, Brunei, Malaysia, New Zealand, Singapore and Vietnam.

II.2.2 Countervailing duties

Parallel to the trade liberalization process (be it unilateral or negotiated) various nations have used their anti-dumping systems actively. These systems seek to combat unfair practices wherein products are sold below their "normal value."³⁰ That said, at times the system is used to counteract the effects of liberalization³¹ or to unduly protect certain industries.

Since 1987, the date in which Mexico established its first anti-dumping fee on caustic soda from the United States, it has frequently recurred to this system, reaching a zenith in 1993 when it kicked-off 56 investigations.³²

29 For the effects of this paragraph, the number of tariff headings is as listed by the TIGIE in October 2016.

30 In compliance to Article 31 of Mexico's Foreign Trade Act (Ley de Comercio Exterior), "normal value" is understood as the comparable price of an identical or similar imported product in the country of origin's domestic market.

31 Over time, the imposition of these measures has become easier and more common around the world. Brown, C. y McCulloch, R. Antidumping and Market Competition: Implications for Emerging Economies. The World Bank (2012).

32 Available at: http://www.gob.mx/cms/uploads/attachment/file/72234/Estadisticas_de_la_UPCI.pdf

Starting in 1994, anti-dumping fee review was made subject to NAFTA standards—for commodities originating in the United States and Canada—and, starting in 1995, to WTO Anti-Dumping Agreement rules.³³ Only regions with greater degrees of integration have replaced these measures with competition policy for inter-regional effects, relegating anti-dumping to an exclusively foreign-facing policy tool.³⁴

From 1994, Mexico saw a major reduction in the number of dumping-motivated inquiries and duties. That year, investigations were reduced to less than half (22 inquiries initiated) while a year later a mere four were initiated. Additionally, in 1996 the imposition of countervailing measures was notoriously reduced to only four, while in previous years seventeen had been imposed.³⁵

China has constantly been the country subject to the most countervailing duties imposed by Mexico. For this reason, when China joined the WTO in November 2001, Mexico negotiated a series of limitations to China's Protocol on the Accession to the WTO, and to the Agreement establishing the WTO (the "Peace Clause") in order to temporarily safeguard the validity of countervailing duties imposed on twenty-one products (corresponding to 1310 tariff headings).³⁶ At the end of a six-year period, the duties were eliminated and temporary, transitional tariffs were established in their place. These were eliminated on 11 December 2011.³⁷ This brought about a major reduction of Mexico's imposition of countervailing duties.

In the years following the expiration of the "Peace Clause", activity was significantly reduced. During 2007 and 2008, not a single countervailing duty was imposed, with just between one and two annually in the subsequent three years. That said, this activity has recently revived, topping out at nine duties imposed in 2015 and seven between January and October 2016, as shown in the Graph 3 (below).

33 The agreement establishes as a basic principle that such dumped imports must give rise to major harm on a branch of domestic production and that a causal relationship exists between such imports and that harm. To determine such harm, it is necessary to undertake an examination of the volume of dumped imports and their effect on prices as well as their consequent repercussions to a given branch of domestic production. Additionally, to determine a causal relationship, different factors that might be harming the industry in question, not related to dumping, must be examined. The agreement features an "extinction clause" that establishes that measures imposed as an outcome of dumping investigations will enjoy a maximum five-year lifetime unless it may be determined that their suppression would lead to the continuation or repetition of the dumping as well as the harm.

34 In general this occurs in integration models that differ from Mexico's, as in customs unions. Nevertheless, there are noteworthy cases such as free trade agreements (between Chile and Canada, for example, or Chile and the European Union) in which countries commit to not applying anti-dumping systems to one another.

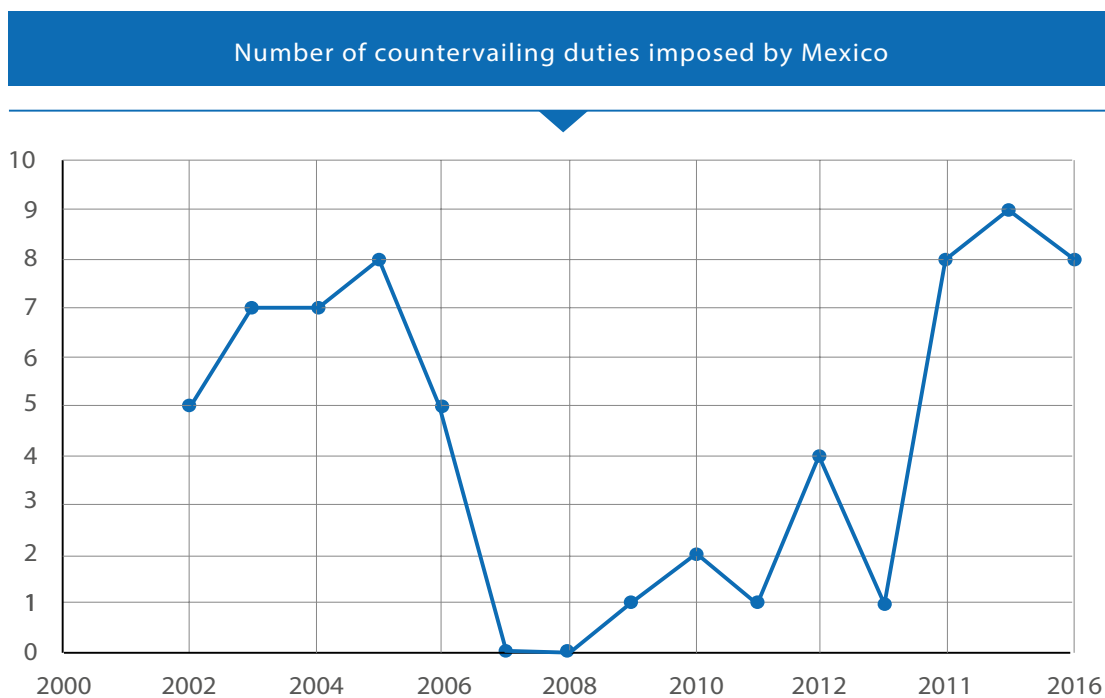
35 Data taken from UPCI statistics, available at:

http://www.gob.mx/cms/uploads/attachment/file/72234/Estadisticas_de_la_UPCI.pdf

36 The commitments Mexico negotiated are contained in Appendix 7 of China's Protocol of Accession, which can be consulted at: <https://www.gob.mx/cms/uploads/attachment/file/50776/A430.pdf>.

37 The Mexico-China Agreement on Trade Remedy Measures (Acuerdo entre el Gobierno de los Estados Unidos Mexicanos y el Gobierno de la República Popular de China en Materia de Medidas de Remedio Comercial) was published in Mexico's Official Federal Gazette on 13 October 2008. As an outcome of the agreement, an Agreement implementing a temporary transition measure on diverse products of Chinese origin (the Acuerdo por el que se implementa una medida de transición temporal sobre las importaciones de diversas mercancías originarias de la República Popular China) was published on 29 January 2009.

Graph 3. Dumping-related countervailing duties imposed by Mexico, 2002-2016³⁸



It is worth pointing out that each fee includes a determined number of tariff headings. Historically the chemical sector has seen the greatest number of tariff headings subject to countervailing duties (706). With regard to standing countervailing duties, the steel sector has the greatest share (83).³⁹

³⁸ Information gathered from UPCI statistics (until November 2015) and complemented by Official Federal Gazette publications.

³⁹ As of February 2017.

**• III. THE CURRENT
SITUATION**

III. The current situation

III.1 Tariff Structures

In 2016, Mexico's simple-average MFN tariff was 5.6%;⁴⁰ the weighted MFN import tariff was 3.86%. In comparison to the rest of the world, this places Mexico at the mid-point between more open nations and those that are more restrictive.⁴¹

The above notwithstanding, we should point out that the effectively paid tariff is much lower than the MFN tariff. In fact, in 2014 that tariff was only 0.6% given that in general most imports that reach Mexico claim one or another preferential tariff under the aegis of a free trade agreement or are subject to benefits from programs like PROSEC or IMMEX.⁴²

That said, we should also emphasize this 0.6% tariff is biased. While it apparently reflects an open system, its calculation does not consider the prohibitive effect certain tariffs can impose. That is, certain specific products, subject to especially high MFN tariffs and lacking any preferential tariff status, simply cease being imported. This same effect may stem from countervailing duties.

Table 1 (below) refers to 2014 because the calculation for the effectively paid tariff—a special, non-public calculation—was undertaken based on information available for that year. Therefore, whenever the value of the effectively paid tariff is used, the timeframe referenced is 2014.

40 In accordance with TIGIE modifications published in Mexico's Official Federal Gazette on 7 October 2016.

41 In accordance with public information provided by WTO member states available on that organization's Integrated Database (IDB). The last available information corresponds to 2015.

42 The amounts corresponding to import duties effectively paid at customs for each transaction are provided by Mexico's Revenues Administration System (Sistema de Administración Tributaria; acronym in Spanish: SAT) on a recording that registers all import. To determine percentages corresponding to effectively paid tariff, the proportion that paid monies represented is calculated for all imports under each tariff heading in comparison to the total value of those imports.

Table 1. 2014 tariff structure by sector⁴³

Sector	Number of tariff headings	Average bound tariff	Average MFN tariff	Average effectively paid tariff	2014 imports	Share
Agriculture	1,547	41.4	15.4	0.5	28,449	7%
Industrial	10,655	34.5	4.2	0.7	327,618	82%
Oil	73	34.6	0.2	0.0	33,223	8%
Special operations	42	35.0	0.6	0.0	10,360	2.6%
Total	12,317	35.4	5.5	0.6	399,651	100%

In general terms, imports destined for domestic markets pay a higher tariff than those destined for export. Definitive imports (i.e., those that will remain within Mexico) pay an effective tariff of 1.29%, whereas temporary imports (those that are exported after production processes) pay a mere 0.02%, as a result of programs implemented to promote exports.

As can be observed in Table 2, a large proportion of imports come from trade partners that belong to free trade agreement networks. Nevertheless, not every import from those countries must prove country of origin and claim a preferential tariff; 59% of goods that enter Mexico are already subject to a 0% MFN tariff.

The same graph also shows how, in recent years, imports from Mexico’s free trade agreement partners have gone down in comparison to total imports (from 70.3% in 2013 to 66.5% in 2016). This means dependence on non-trade-partner nations has grown.

⁴³ A simple, non-weighted average tariff was chosen in order not to disregard the prohibitive effect that certain tariffs can generate.

Table 2. Total Mexican imports, by free trade agreement origin (in millions USD)⁴⁴

Partner	2013		2014		2015		2016	
	Imports	Share	Imports	Share	Imports	Share	Imports	Share
Total Mexico	381,210	100%	399,977	100%	395,232	100%	387,065	100%
USA	187,262	49.1	195,278	48.8	186,802	47.3	179,583	46.4
European Union	43,090	11.3	44,525	11.1	43,722	11.1	42,323	10.9
Japan	17,076	4.5	17,545	4.4	17,368	4.4	17,751	4.6
Canada	9,847	2.6	10,045	2.5	9,948	2.5	9,632	2.5
Central America	4,875	1.3	4,274	1.1	2,112	0.5	2,083	0.5
<i>Alianza del Pacífico</i>	2,935	0.8	3,439	0.9	3,084	0.8	2,989	0.8
EFTA	1,943	0.5	2,174	0.5	1,889	0.5	1,841	0.5
Israel	616	0.2	641	0.2	695	0.2	707	0.2
Uruguay	284	0.1	373	0.1	373	0.1	338	0.1
All trade partners	267,928	70.3	278,294	69.6	265,993	67.3	257,247	66.5

a. The agricultural sector⁴⁵

Because of its sensibility, the agricultural sector has enjoyed greater tariff protection than the industrial sector over time. Its simple-average MFN tariff in 2016 was 14.3%, compared to 4.0% in the industrial sector. That said, a large proportion of imports are subject to preferential tariffs,⁴⁶ making the 2014 average effective tariff paid a mere 0.5%.

Nevertheless, we must not lose sight of the existence of high MFN tariffs on specific commodities (as shown in Graph 4) that in some cases effectively prohibit imports from countries that cannot claim any preferential status. Such is the case with sugar (fructose, subject to a 100% tariff in 2016), potatoes (100%), tobacco (cigarettes 67%), chicken meat (100%), as well as roast and instant coffee and coffee extracts (50%).⁴⁷

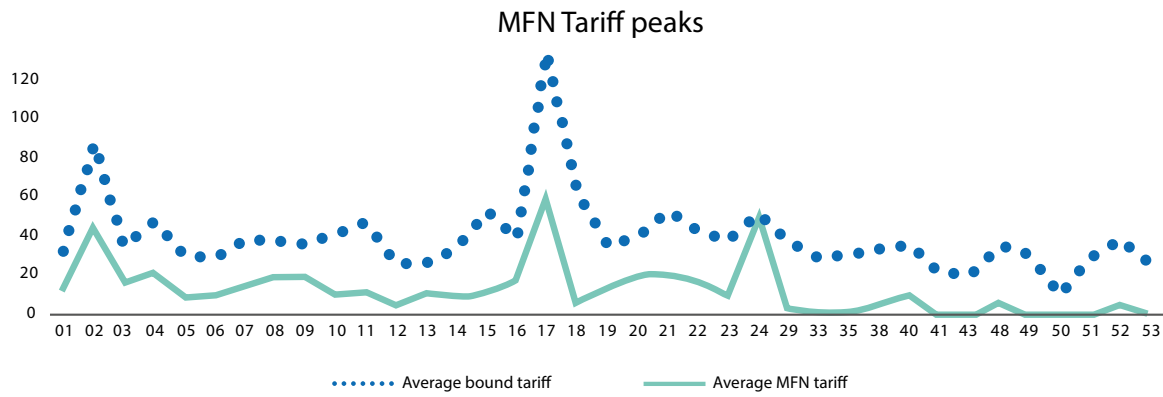
44 Created with foreign trade statistics published by Mexico's Ministry of the Economy. Available at: <http://www.gob.mx/se/acciones-y-programas/comercio-exterior-informacion-estadistica-y-arancelaria?state=published>

45 For the present document, the agricultural sector as defined by the WTO in its Agriculture Agreement, specifically Annex 1, is considered. The agreement can be referenced at: https://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#ann1

46 In 2014, 83% of agricultural imports claimed preferential tariff status.

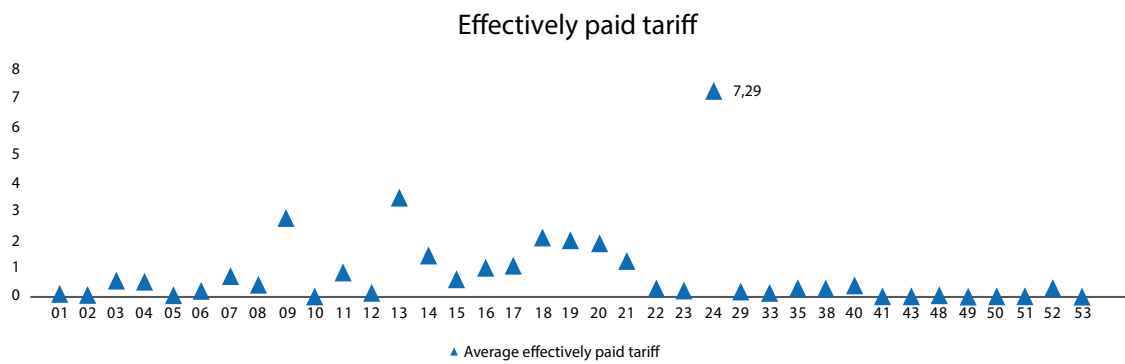
47 In the case of chicken and coffee, there are quotas, currently in effect, that Mexico offers unilaterally, i.e., that can be used for imports of any origin. In such cases, the prohibitive effect could be mitigated. These cases will be analyzed below.

Graph 4. Average bound, MFN and effectively paid tariffs, by TIGIE chapter for the agricultural sector (2014)



Description of chapters that show tariff peaks

Category	Description	Category	Description	Category	Description	Category	Description	Category	Description
02	Meat products	04	Dairy products, eggs, honey	09	Coffee and tea	09	Sugars	24	Tobacco



Description of chapters with the highest effectively paid tariffs

Category	Description	Category	Description	Category	Description	Category	Description	Category	Description		
09	Coffee	13	Juices and vegetable extracts	18	Cocoa	19	Bakers' wares	20	Preparations of fruits	24	Tobacco

Put another way, a MFN tariff this high hampers or restricts the import of certain commodities originating in countries with which Mexico does not have a free trade agreement, despite the fact that these countries could serve as efficient suppliers. For example, in the case of chicken thighs and legs, all imports from 2008 to 2016 came from the United States and reached \$180 million USD in 2016 alone. The same occurs with turkey meat, which reached \$152 million USD in imports in 2016.⁴⁸

In the case of dairy products, in 2016 the United States provided 99% of Mexico's fresh cheese imports, tariff free; Europe provided 1% because it was obliged to pay an MFN tariff of 45%, arising from the fact this product was excluded from the free trade agreement with the region.

Additionally, 94% of powder milk imports⁴⁹ (from a 2016 total of \$579 million USD) entered Mexico from the US and Canada tariff free; 3.5% came from Europe (since the product was excluded from the free trade agreement with the region) and 1.9% came from Australia and New Zealand (countries with which Mexico has no standing free trade agreement) paying a 45% MFN tariff.⁵⁰

As can be seen, a high tariff significantly limits supplies from other regions. At times, this occurs in addition to concentrated market structures. For example, Mexico's powder milk market, alongside that of condensed and evaporated milk, tops out at a Herfindahl-Hirschman concentration index value of 4890.⁵¹

b. The Industrial Sector

The simple-average MFN tariff in 2016 was 4.0% for the industrial sector, while the 2014 effectively paid tariff was 0.7%. Nevertheless, just as was the case with agricultural commodities, this 0.7% does not reflect the existence of MFN tariffs that could in some cases give rise to prohibitive effects. Such is the case with leather, apparel or footwear manufactures, as is shown in Graph 5.

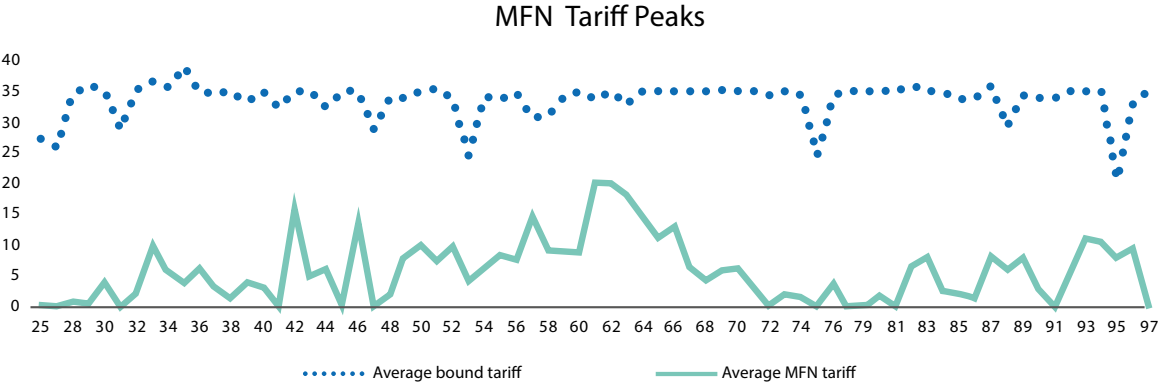
48 Data gathered from the Ministry of the Economy's online tariff information system (Sistema de Información Arancelaria Vía Internet; acronym in Spanish: SIAVI).

49 Corresponding to tariff heading 0402.10.01.

50 Mexico offers WTO member states a duty-free powder milk quota that also offers benefits to nations with which Mexico has no free trade agreement, depending on the beneficiary in Mexico and in accordance with allocations called for in the Quota agreement for powder milk from WTO members (Acuerdo por el que se da a conocer el contingente arancelario para importar, exenta de arancel, leche en polvo originaria de los países miembros de la Organización Mundial del Comercio), published in Mexico's Official Federal Gazette on 19 December 2012 and reformed on 25 July and 30 December 2013.

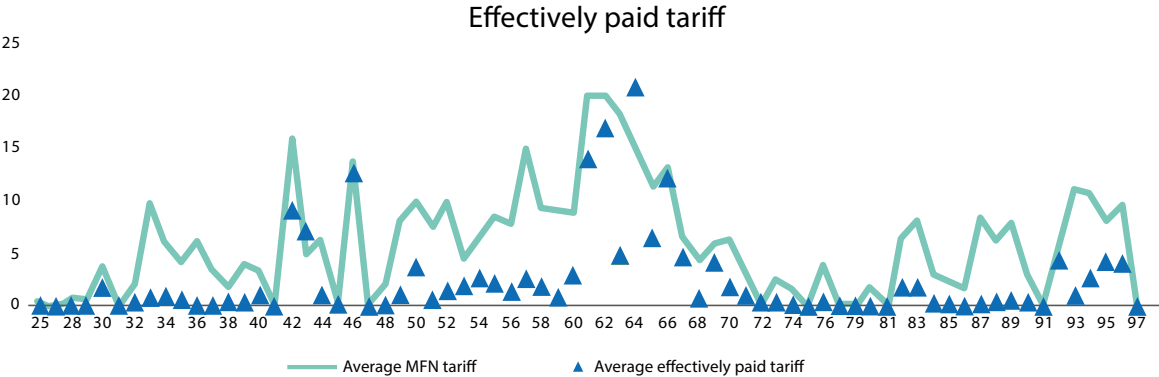
51 Data gathered from COFECE's proprietary Reporte sobre las condiciones de competencia en el sector agroalimentario, page 83, graph 1.9b. Available at: https://www.cofece.mx/cofece/images/Estudios/COFECE_reporte%20final-ok_SIN_RESUMEN_ALTA_RES-7enero.pdf

Graph 5. Average bound, MFN and effectively paid tariffs, by TIGIE chapter for the non-agricultural sector (2014)



Description of chapters that show tariff peaks

Category	Description	Category	Description	Category	Description	Category	Description	Category	Description
33	Perfumery	42	Articles of leather	46	Basketware & wickwork	52	Cotton	57	Carpets
62	Articles of apparel	66	Umbrella	70	Glass	76	Aluminum	83	Miscellaneous articles of base metal
87	Vehicles	93	Arms and ammunition	96	Miscellaneous manufactured articles				



Description of chapters with the highest effectively paid tariffs

Category	Description	Category	Description	Category	Description	Category	Description	Category	Description
42	Articles of leather	46	Basketware & wickwork	61-62	Articles of apparel	64	Footwear	66	Umbrellas

These high levels of MFN protection punish the consumers of industrial products originating in nations that do not enjoy preferential tariffs.

In the case of cotton apparel,⁵² 2016 saw the import of merchandise valued at \$8.6 million USD, of which 78.5% came from Bangladesh, China, India, Cambodia, Thailand, Tunisia, Turkey and Vietnam, nations with which Mexico has no free trade agreement and which must pay a 45% tariff.

With regard to footwear in general⁵³, 84% of 2016 imports came from nations that pay high tariffs, such as Vietnam, China, Indonesia, India, Cambodia, Thailand, Taiwan and Myanmar. This represents about 27% of the apparent national consumption for that year. A mere 3% of imports came from the United States and 11% correspond to Italy, Spain, Germany and Portugal, which enter Mexico tariff-free.

III.2 Countervailing duties

As of February 2016, there are 50 countervailing duties in effect covering 47 products (that fall into 122 tariff headings) and affecting 17 nations, with China as the most-often affected (see Table 3 below). Standing duties are concentrated in the ceramics and glass, agriculture, wood and paper, rubber and rubber manufactures, chemical products, metals, steel and articles of steel, electrical machinery and equipment, textiles and tailoring sectors. Of a total 50 duties in effect, 26 correspond to the steel sector; in 2015 the 83 headings into which these iron and steel products fall reached a value of \$2.929 billion MXN.⁵⁴ (See Graph 6 below).

52 Contained in tariff heading 6111.20.03.

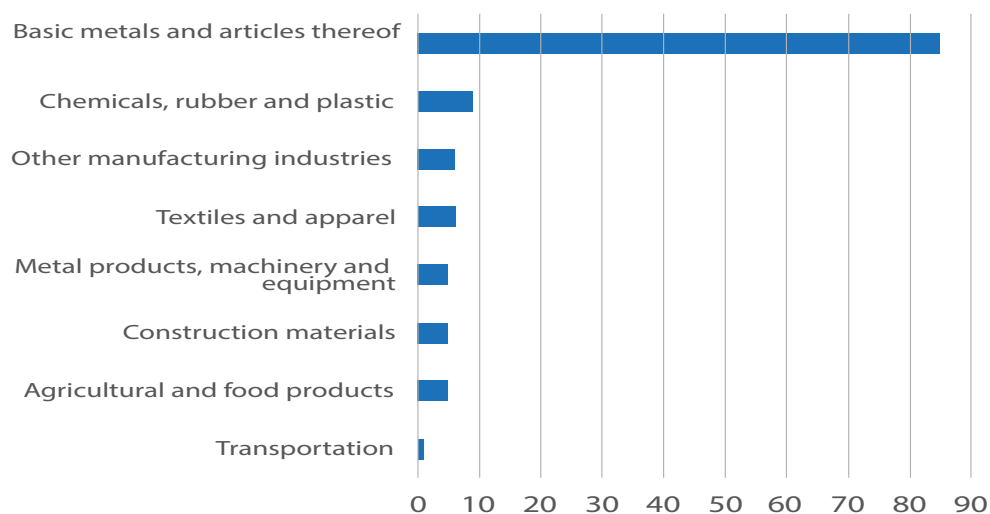
53 Chapter 64 of the Mexican Tariff.

54 This computation does not consider the imports' countries-of-origin but shows the trade importance of products subject to countervailing duties.

Table 3. Number of tariff lines subject to countervailing duties currently in effect, by country of origin (as of February 2017)⁵⁵

Ranking	Country	Number of tariff lines subject to countervailing duties
1	China	78
2	Russia	21
3	Japan	16
4	Ukraine	16
5	United States	14
6	Spain	13
7	India	10
8	Portugal	7
9	Germany	7
10	France	7
11	Korea	5
12	Romania	4
13	Brazil	3
14	Kazakhstan	2
15	United Kingdom	2
16	Argentina	2
17	Chile	1

Graph 6. Number of tariff lines subject to countervailing duties currently in effect⁵⁶



⁵⁵ Created with data gathered from the UPCI's Mercancías sujetas a cuotas compensatorias published in February 2017.

Available at: http://www.gob.mx/cms/uploads/attachment/file/188689/Cuotas_vigentes_01-02-17.pdf

⁵⁶ Compiled with data from the UPCI's Mercancías sujetas a cuotas compensatorias published in February 2017.

Available at: http://www.gob.mx/cms/uploads/attachment/file/188689/Cuotas_vigentes_01-02-17.pdf

55% of imports of products subject to countervailing duties correspond to intermediate goods and 44% to consumer goods.

a. The Agricultural Sector

The 0.5% effectively paid tariff in the agricultural sector is not only biased downwards by the existence of certain prohibitive tariffs, but also by the standing countervailing duties in two sub-sectors. These are enforced independently at customs to, and can inhibit imports of, epoxidized soybean oil from the United States and Argentina⁵⁷ (imposed in 2005 and 2016, respectively), and canned mushrooms from China and Chile⁵⁸ (imposed in 2006). It should be noted that although a countervailing duty is applicable to chicken legs and thighs from the United States, imposed in 2012, it has remained inactive to avoid disruptions of domestic supply.

Therefore, for example, because of the countervailing duty applied to soybean oil, the US share as a supplier nation has notably decreased. While imports of this product from the US represented 93% of total imports a year before the imposition of the duty, that percentage declined to 10% in 2016. Total imports have increased in the same period by 26%, though not uniformly, with Brazil now the product's main principal supplier.

As regards canned mushrooms, China's share declined from 56% one year before the imposition of the duty, to 2% in 2016, and Chile's share disappeared entirely after 2009. Meanwhile, overall imports increased by 104%. Those nations' imports were replaced with imports from other trading partners, largely the Netherlands, Spain, Poland and, most recently, France, which together represent 94% of the \$12.8 million USD of canned mushrooms that were imported in 2016.

b. The Industrial Sector

Of the 50 countervailing duties in effect as of February 2017, 47 are related to the industrial sector. Products with the highest duties include corrugated bars (57.69%) from Brazil; cold rolled steel sheets (103.41%); graphite electrodes (250%); plastic atomizers (86%); steel cable, mesh, piping and handles from China⁵⁹; amoxicillin and dicloxacillin (64.9%) from India; steel pipes (99.9%) from Japan; and sheeted steel plates from Romania (67.6%) and the Ukraine (60.1%). In all of these cases, duties have dis-incentivized the imports of products subject to dumping. In the case of corrugated bars and amoxicillin, total worldwide imports have decreased, implying replacement by domestic product. With regard to all the other products, total imports have substantially increased, implying a change in supplying countries.

⁵⁷ 62.45% (USA) and 24.66% (Argentina).

⁵⁸ A maximum fee of \$0.3712 USD/kg. for Chile and \$0.6121 USD/kg. for China, with an exception for the company known as Calkins & Burke Limited, to which a \$1.1891 USD/kg. duty is applied.

⁵⁹ The specific duties applied to these products are as follows: steel cable 2.58 USD/kg and coaxial cable 4.32 USD/kg; steel nails 0.54 USD/kg; galvanized mesh 0.45 or 2.08 USD/kg; steel pipe 1252 or 1568.92 USD/metric ton; and steel handles 10.21 USD/kg.

Other cases involving smaller countervailing duties have given rise to effects worthy of mention. There is, for instance, the duty imposed on caustic soda from the United States. A year before the imposition of the duty (1992), the United States enjoyed 92% market share which bumped up to 98.9% in 2016. The difference is marginal in relative terms but not in absolute ones; total imports grew 1047% in that period.⁶⁰ The same thing occurs with China in the case of steel nails. That nation enjoyed only 11% market share one year before the imposition of the duty (2002) and it now enjoys 55%. The market share of dishware from China has increased slightly, in conjunction with total imports. In these cases, despite the imposition of countervailing duties, imports from these countries have increased in significant terms. Put another way, the duties did not manage to halt trade flows from these countries but did make their respective products more expensive in the Mexican markets.

III.3 The Domestic Market

While free trade agreements into which Mexico has entered guarantee access to commodities under favorable conditions, they do not completely address supply needs. Some are mainly or most competitively supplied by countries that enjoy no preferential tariffs. This implies restricting or increasing the costs of supply from those sources. Major trade partners lacking a free trade agreement with Mexico pay effective tariffs of up to 5.6%. This figure is underestimated if one considers account that some imports are never been carried out due to, as was previously mentioned, certain prohibitive tariffs.

Table 4 portrays Mexico's 15 largest trading partners (with or without free trade agreements) as well as the average MFN- and effectively paid tariffs, the value of those imports and their share of the total, with an emphasis on those cases where a non-trade-agreement partner effectively pays more than a 2% tariff.

⁶⁰ Therefore, the price of an important chemical ingredient for the manufacture of soap has risen.

Table 4. Mexico's largest trading partners, by share of imports

Position	Country	Average MFN tariff	Totals			Definitive			Temporary		
			Effectively paid tariff	2014 imports (in million USD)	2014 share	Effectively paid tariff	2014 imports (in million USD)	2014 share	Effectively paid tariff	2014 imports (in million USD)	2014 share
1	United State	3.6	0.10	195,278	49%	0.18	95,860	52%	0.02	72,328	42%
2	China	6.8	1.80	66,256	17%	4.53	26,330	14%	0.03	38,124	22%
3	Japan	5.5	0.20	17,545	4%	0.76	4,776	3%	0.02	9,527	6%
4	South Korea	5.9	0.30	13,772	3%	1.63	2,727	1%	0.02	9,496	6%
5	Germany	5.8	0.40	13,762	3%	0.72	6,476	4%	0.05	4,727	3%
6	Canada	6.4	0.10	10,045	3%	0.25	4,847	3%	0.01	3,805	2%
7	Malaysia	5.6	0.30	6,561	2%	2.79	739	0%	0.01	5,687	3%
8	Taiwan	6.3	0.80	6,368	2%	3.33	1,453	1%	0.04	4,847	3%
9	Italy	7.1	0.50	5,217	1%	0.77	3,290	2%	0.07	1,434	1%
10	Spain	7.2	0.40	4,753	1%	0.57	3,316	2%	0.03	587	0%
11	Brazil	6.2	0.90	4,473	1%	1.75	2,296	1%	0.05	1,240	1%
12	Thailand	7.1	0.80	4,354	1%	4.04	839	0%	0.01	3,179	2%
13	France	6.4	0.50	3,786	1%	0.77	2,490	1%	0.04	1,100	1%
14	India	6.5	2.80	3,727	1%	5.64	1,869	1%	0.06	878	1%
15	The Netherlands	5.5	0.30	3,688	1%	0.37	3,430	2%	0.13	225	0%
Subtotal Top 15		6.1	6.1	359,584	90%	1.87	160,739	88%	0.04	157,183	92%
Total		6.5	6.5	399,977	100%	1.29	183,651	100%	0.02	171,726	100%

To more promptly identify supply issues that free trade agreements do not resolve, Table 5 looks at certain products with high MFN tariffs which are imported largely come from countries with which Mexico does not have a trade agreement. In these instances, importers are willing to pay greater tax duties as a means of acquiring specific products our free trade agreement partners cannot provide at competitive prices.

Table 5. Representative Goods Principally Supplied by “Non-Free-Trade-Agreement” Nations⁶¹

Product	Imports (millions USD, 2016)	% of “non-FTA” imports	MFN tariff, 2016
Chilled fish filet (tilapia)	138	99.8% from China	17%
Chilled chicken cuts	177	57% from Brazil	100%
Canned pineapple	17	69% from Thailand; 16% from Indonesia	20%
Mango	5	33% from Thailand; 8% from India	20%

Some of the products mentioned above may be imported under a tariff-free quota, as is the case with chicken and tilapia. This would mitigate tariffs’ prohibitive effects; however, quotas are either not always entirely used, or may be insufficient and imports from non-partner nations end up paying the MFN tariff, increasing the product’s price in Mexico.

For example, quota-use statistics from Mexico’s Ministry of the Economy⁶² state that in 2015, just 6.8% of the unilateral chicken-meat quota (equaling 20,400 metric tons) was allocated. The quota is made available for the import of six different tariff headings; that year 25,858 metric tons of product, from the frozen chicken chunks heading only, were imported from Brazil.⁶³ This means that for part of the product that enters Mexico, the importer chooses not to apply for the quota and pays the corresponding tariff (125% in 2015).

61 Created using data from the Ministry of the Economy’s Online Tariff Information System (*Sistema de Información Arancelaria Vía Internet*; acronym in Spanish: SIAVI).

62 Available at: <http://www.sicex.gob.mx/portalSicex/Transparencia/rendecue.htm>

63 According to that reported in the Ministry of the Economy’s Online Tariff Information System (*Sistema de Información Arancelaria Vía Internet*; acronym in Spanish: SIAVI).

With regard to the tilapia, a 100% use of the 55,000-metric-ton quota was reported in 2015. A total of 98,000 metric tons of this product from non-free trade agreement countries, subject to quotas, was imported (tilapia from China and catfish from Vietnam). This means that while the quota for importing tariff-free products is used, it is not sufficient to cover the supply required and certain volumes of the product continue to be imported by paying the corresponding tariff.

Additionally, there are staple products that play a major role in consumer welfare that are subject to high tariffs. In these cases, imports come from free trade agreement nations even though supply sources are concentrated in non-free-trade-agreement countries, as portrayed in Table 6 below. Were those tariffs not in place, or were they lower, Mexico could access supplies from other countries that offer greater competitive advantages and therefore lower consumer prices.

Table 6. Representative goods mainly supplied by non-free-trade nations and subject to high tariffs⁶⁴

Product	% of worldwide "non-FTA" supply	Average MFN tariff (2016)	Import value (in millions USD), 2016	Import origin, 2016
Chilled chicken cuts	48%	122%	293	88% United States and Chile
Chilled, boneless beef	76%	25%	37	71% United States and Canada
Semi-milled or wholly milled rice	83%	20%	157	65% United States and Uruguay
White or black bean	65%	45%	86	99% United States and Canada

⁶⁴ Created using data gathered from the Ministry of the Economy's Online Tariff Information System (Sistema de Información Arancelaria Vía Internet; acronym in Spanish: SIAVI) and the UN ComTrade database; at the subheading level.

According to the 2014 National Household Income and Expenditure Survey (*Encuesta Nacional de Ingresos y Gasto de los Hogares*; acronym in Spanish: ENIGH) undertaken by Mexico's Census Bureau (acronym in Spanish: INEGI), 52% of household spending is dedicated to consumer goods. These figures change depending on household income. Lower income households (those in the first decile) dedicate 68% of spending to consumer goods whereas more affluent households (in the tenth decile) devote 43% to the same end.

It is therefore important to identify those consumer goods that are protected from foreign competition and which may therefore be affecting the purchasing power of Mexican families. Hence, special attention must be paid to tariffs when they impede, restrict or increase prices on imports that our trade partners do not produce or cannot supply under competitive conditions.

• **IV. SPECIFIC CONCERNS FROM THE COMPETITION PERSPECTIVE**

IV. Specific concerns from the competition perspective

IV.1 Decrees in the footwear and apparel sectors

In an effort to reduce the complexity of the Mexican customs system, the Ministry of the Economy carried out a unilateral tariffs reduction in 2008 and in 2012.⁶⁵ This was one of the measures undertaken by the Federal Government to raise the Mexican economy's growth-potential and productivity.

Nevertheless, on a number of occasions this process was the object of a de-acceleration with respect to the footwear and apparel sectors⁶⁶ and indeed these tariff roll-backs were even suspended in the case of finished footwear.⁶⁷ In parallel, non-tariff measures were implemented to counteract the reduction in tariffs and even provide greater protection against foreign competition.

In September 2014, an estimated-price mechanism⁶⁸ was put in place for footwear. The policy works through a reference price on imports and seeks to prevent products—in this case footwear—from entering Mexican territory at undervalued prices.⁶⁹ The measure implied the deposit of a cash guarantee into an escrow account, to be later refunded to the importer. This additional payment is calculated based on the tariff and, where applicable, the countervailing duty, in relation to the amount that would result from the difference between the good's declared value at customs—when this is lower—and the estimated price. The refund is made when it has been proven that the imported good was not subject to undervaluation. This scheme was quickly replicated for the textile and tailoring sectors.⁷⁰

65 Decrees published in Mexico's Official Federal Gazette on 24 December 2008 and 23 November 2012, respectively.

66 A decree that held back 2008's tax relief for two years, for the footwear and tailoring sectors, was published in Mexico's Official Federal Gazette on 31 December 2012. The tariff rollback was again postponed for a year in December 2013. Decrees available for review at: http://www.dof.gob.mx/nota_detalle.php?codigo=5283875&fecha=31/12/2012, http://www.dof.gob.mx/nota_detalle.php?codigo=5328037&fecha=26/12/2013

67 In August 2014, Mexico's Ministry of the Treasury and Public Credit announced it was suspending the tariff rollback on finished footwear importations, amending the previous decree. Read the decree at: http://www.dof.gob.mx/nota_detalle.php?codigo=5358209&fecha=29/08/2014.

68 This mechanism had already been eliminated by means of the corresponding Decree (Decreto por el que se otorgan facilidades administrativas en Materia Aduanera y de Comercio Exterior), published in Mexico's Official Federal Gazette on 31 March 2008, given its complexity and the barrier it represented to micro-, small- and medium-businesses against entry into international trade. Read the decree at: http://www.dof.gob.mx/nota_detalle.php?codigo=5032270&fecha=31/03/2008.

69 Thus it was that on 29 August 2014, a Decree establishing measures to counteract footwear undervaluation practices (the Decreto por el que se establecen medidas para la productividad, competitividad y combate de prácticas de subvaluación del sector calzado) was published in Mexico's Official Federal Gazette, motivating the 5 September 2015 publication of a Ruling establishing the mechanism to guarantee the payment of obligations for products subject to estimated prices (the Resolución que modifica a la diversa que establece el mecanismo para garantizar el pago de contribuciones en mercancías sujetas a precios estimados por la Secretaría de Hacienda y Crédito Público), which presented that ruling's Appendix 3, establishing estimated prices for the footwear sector.

70 On 26 December 2014, the Decree establishing measures to combat undervaluation in the textile and tailoring sectors (Decreto por el que se establecen medidas para la productividad, competitividad y combate de prácticas de subvaluación de los sectores textil y confección) was published. In light of this, the Ruling establishing the mechanism to guarantee the payment of contributions related to merchandise subject to estimated prices (Resolución que modifica y da a conocer el Anexo 4 de la diversa que establece el mecanismo para garantizar el pago de contribuciones en mercancías sujetas a precios estimados por la Secretaría de Hacienda y Crédito Público) was published on 29 December of the same year, in order to establish estimated prices for the abovementioned sectors.

The following table shows Mexico's ten largest footwear suppliers in 2014 and highlights cases where the effectively paid tariff at customs was higher than the MFN tariff. In particular during 2014, footwear imports rose to \$825 million USD and paid between 6% and 8% more than the (already quite high) import tariff as a result of estimated prices.

Table 11. Major Footwear Providers in Mexico (2014)

Position	Country	Average MFN tariff	Effectively paid tariff	2014 imports (in million USD)	2014 market share
1	China	16.6	24.1	399	39%
2	Vietnam	17.9	25.9	285	28%
3	Indonesia	18.3	25.6	106	11%
4	Italy	17.4	0.4	57	6%
5	Spain	17.3	0.3	54	5%
6	USA	16.0	0.8	35	3%
7	Brazil	18.1	24.8	15	1%
8	India	18.3	25.4	11	1%
9	Cambodia	19.5	27.1	9	1%
10	Portugal	17.3	3.5	7	1%
Subtotal Top 10		17.7	15.8	978	97%
Total		17.4	20.9	1,010	100%

Additionally, Appendix 21 of Mexico's General Rules of Foreign Trade⁷¹ establishes special customs houses for the import of the following products:

- Radioactive and nuclear products
- Chemical precursors
- Tobacco
- Footwear
- Alcoholic beverages

This means that, in addition to estimated prices, footwear products can only enter the country through specified customs houses, in this case eleven (for 2017): The Mexico City International Airport, Ciudad Hidalgo, Lázaro Cárdenas, Manzanillo, Mexico, Guadalajara, Nuevo Laredo, Progreso, Tijuana, Tuxpan and Veracruz.

The combined measures applicable to the footwear sector (i.e., estimated prices and special customs houses) can impede, restrict or increase the cost of imports, thus affecting the process of free entry and competition in those markets.

71 Available in Spanish at: <http://www.aduanas-mexico.com.mx/claa/ctar/leyes/anexo21.html>

IV.2 Tariffs and countervailing duties in the steel sector

The steel sector, in addition to holding the number-one position when it comes to tariff headings subject to countervailing duties, has benefitted from unilateral 15% MFN tariffs since October 2015, applicable to 97 tariff headings. This measure takes advantage of the margin that exists between MFN tariffs and bound tariffs before the WTO, and caused the average 2016 MFN tariff to rise slightly to 5.6%, instead of decreasing, as had been called for with unilateral tariff rollbacks in 2008 and 2012 (see this document's Graph 1).

According to the decree published in Mexico's Official Federal Gazette (*Diario Oficial de la Federación*) on 7 October 2015, the sector has been affected by an international context of falling steel demand, an excess in global production capacities and an overall outlook of low economic growth.

Therefore, Mexico's Federal Government decided to temporarily increase import tariffs on this sector's tariff headings, related to flat-rolled products, cold- and hot-rolled coils and steel bars and rods, etc., for a six-month period. Additionally, this measure sought to afford domestic industry sufficient space to integrate its defenses against possible unfair foreign trade practices. It should be noted that some of these headings—11 of the 97—were added to sector promotion programs for industries such as electrical, electronics, auto-manufacturing and auto parts, which use steel products as inputs, as a means of permitting their import under reduced tariffs.

As the end of the tariffs' six-month life approached, on 4 April 2016, Mexico's Executive Branch once again published the decree renewing the 15% tariff hike for another six-month period; at the end of that period published yet another decree on 7 October 2016, and another once again on 6 April 2017. One of the justifications that supported this measure was that on the international level, the number of countries imposing corrective trade measures to the sector—above all, anti-dumping measures—has increased.

A comparison was made between 1Q 2015 imports (previous to the tariff hike) and those of 1Q 2016 (now subject to a 15% tariff) with regard to the 97 tariff headings included in the decree.⁷² In the aggregate, total imports went from \$1.654 billion USD in the first period to \$1.264 billion USD in the second, a 23.5% decline.

Mexico has implemented these and other measures (tariffs, anti-dumping duties and supervisory mechanisms such as "automatic notices")⁷³ simultaneously. While not all of them apply jointly to a given product⁷⁴, these measures have intensified sector protection. Although each of the measures' objectives is different, they all appear to pursue the same end: limiting foreign competition, which can in turn give rise to major inefficiencies because these products are basic inputs in a number of production chains.

⁷² This comparison was undertaken with monthly statistics reported by Mexico's Ministry of the Economy via its Online Tariff Information System (SIAVI).

⁷³ An automatic notice is an authorization issued by the Ministry of the Economy and managed by Mexico's tax authorities for imports or exports. Its goal is to generate an operations registry that in turn provides better information with regard to classification, description and origin previous to those commodities' shipment. As of 2016, there are 114 tariff headings subject to automatic import notices, of which 113 correspond to iron and steel products. More information at: <http://www.siiex.gob.mx/portalSiiex/Transparencia/Avisos%20Automaticos/avisos-infgeneral.htm>

⁷⁴ Automatic notices were introduced in December 2013. Products that as of July 2013 were subject to countervailing duties are subject both to those duties and are obliged to comply with notices.

As has already been noted in the present document, as of February 2017, of 50 countervailing duties in effect, 26 have to do with the steel sector.⁷⁵ Twelve have been imposed on iron and steel casting (TIGIE chapter 72); 14 to articles of iron and steel (chapter 73); 15 of which are aimed at Chinese imports.

Table 8 portrays changes of certain countervailing duties in this sector. Given that the statistical information available corresponds to 2014, and in order to allow for a minimum of one year for comparative purposes, only those duties imposed up to 2013 have been included.

Certain countervailing duties include the United States, marked with an asterisk (*), to avoid triangulation. As such, US share in Mexico's total imports corresponding to those products is used solely as a reference.

The table demonstrates that while in certain cases the countervailing duty de-incentivized or effectively reduced imports from the affected nation, this has not been the case in other instances. The case of steel nails stands out: imports from China have risen 57%, meaning the duty's effect has been merely to impose additional costs on imports—which translate into consumer costs—with no disincentive to imports as such, and generating extraordinary rents to domestic producers. In either case, the countervailing duties exert an effect similar to that of tariffs because they limit, restrict or make supply more expensive.⁷⁶

75 Information gathered from Mercancías sujetas a cuotas compensatorias published on the Mexican Ministry of the Economy's International Trade Practices Unit (Unidad de Prácticas Comerciales Internacionales; acronym in Spanish: UPCI) portal. Available at: http://www.gob.mx/cms/uploads/attachment/file/188689/Cuotas_vigentes_01-02-17.pdf

76 Worthy of mention is that this analysis was performed at the tariff heading level to facilitate gathering data on imports' value and origin. In cases where a product subject to a countervailing duty includes only a part of the product described in a given tariff heading, it may be the case that the presented calculation is overestimated.

Table 8. Changes in countervailing duties in the steel sector

Product	Country	Fee	Start Year	Market Share					Growth Imports Totals	
				Year -1	Start year	Year +1	2014	Variation	Beginning vs. +1	Beginning vs. +1
Concrete reinforcing bars	Brazil	5.8%	1993	48%	45%	12%	0%	▼	-17%	-85%
Flat-rolled steel sheet	Russia	29%	1994	0%	0%	0%	0%	▬	-66%	152%
	USA*	-		55%	12%	80%	27%	▼		
Cold-rolled coil	Kazakhstan	22%	1997	3%	0%	1%	0%	▼	23%	230%
	Russia	15%		0%	0%	0%	0%	▬		
	USA*	-		39%	34%	33%	43%	▲		
Hot-rolled coil	Russia	21%	1998	0%	0%	0%	0%	▬	-3%	798%
	Ukraine	25%		11%	13%	0%	0%	▼		
	USA*	-		27%	35%	46%	34%	▲		
Seamless steel pipe	Japan	100%	1999	5%	8%	4%	1%	▼	-11%	169%
Iron cable	Ukraine	41%	1999	28%	12%	12%	0%	▼	21%	-70%
Zinc-coated mesh	China	0.45 USD/kg	2001	21%	24%	15%	10%	▼	-24%	97%
Steel chain	China	0.50 USD/kg	2002	29%	25%	5%	21%	▼	-23%	66%
Ferrosilicon manganese	Ukraine	17%	2002	55%	25%	0%	0%	▼	-22%	177%
Ferromanganese	China	21%	2002	91%	96%	78%	0%	▼	-12%	42%
Mill plate	Russia	37%	2003	4%	0%	0%	0%	▼	173%	760%
	Rumania	68%		15%	5%	0%	0%	▼		
	Ukraine	60%		12%	0%	1%	0%	▼		
	USA*	-		47%	85%	72%	80%	▲		
Butt welding fittings	China	1.05 USD/kg	2003	6%	9%	3%	8%	▲	70%	391%
Steel nails	China	0.54 USD/kg	2003	11%	13%	5%	57%	▲	-4%	-3%
Seamed steel pipe	USA.	25%	2003	94%	72%	67%	3%	▼	-5%	581%
Seamed steel pipe	UK and Northern Ireland	6%	2003	86%	0%	0%	0%	▼	-61%	731%
Seamless steel pipe	China	1,252 USD/metric ton	2009	19%	20%	21%	4%	▼	0%	18%
Steel nuts	China	64%	2009	46%	44%	43%	41%	▼	41%	122%
Seamless steel pipe	China	1,568 USD/metric ton	2012	30%	25%	25%	10%	▼	1%	-10%
Stranded steel wire	China	2.58 USD/kg	2013	28%	27%	21%	-	▼	-	-3%
Loose steel sheet	China	34%	2013	15%	8%	1%	-	▼	-	6%
Coated mesh or cloth	China	2.08 USD/kg	2013	20%	11%	6%	-	▼	-	11%

IV.3 Anti-dumping procedure

The Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) regulates application of anti-dumping measures by WTO members. According to the agreement, members may not impose anti-dumping measures unless it is determined, as the outcome of an investigation, that (i) certain imports are in fact being dumped; (ii) that there is serious injury to domestic producers (which can be injury caused, threat of injury or delays in the creation of a new branch of domestic production); and (iii) that there is a causal link between the dumped imports and the alleged injury.⁷⁷

Mexico's Foreign Trade Act (*Ley de Comercio Exterior*; acronym in Spanish: LCE), in turn, refers to dumping as the unfair practice of importing commodities at discriminatory prices, causing harm to a branch of domestic production. Determination of such discriminatory pricing, harm, and the causal relationship between them, as well as the creation of countervailing duties, is to be carried out via administrative investigation procedures conducted by Mexico's Ministry of the Economy through its International Trade Practices Unit (*Unidad de Prácticas Comerciales Internacionales*).⁷⁸

The following definitions, as stated in the LCE, are fundamental to this matter:

- *price discrimination*: "the import of commodities into Mexican territory at prices below their normal value;"
- *normal value*: "the comparable price of an identical or similar product destined for the domestic market in the country of origin;"
- *branch of national production*: "the total of all domestic producers of identical or similar commodities."

The amount of the countervailing duties shall not exceed the margin of dumping; i.e., the difference between a given product's normal value and export price; and could be less than that margin if such lesser duty would be adequate to remove the injury to the domestic industry.

In accordance with the LCE's Article 41, to determine the presence of injury the Ministry of the Economy is to consider, among other aspects, (i) if dumped imports have significantly increased; (ii) the effect on like products' prices in the domestic market; and (iii) the effect on domestic production.

⁷⁷ Article 5 of the Anti-Dumping Agreement establishes the requirements for starting an investigation, which can be initiated upon request from at least 50% of the domestic production branch or by official order. Government authorities are to examine the accuracy and pertinence of evidence presented in the dumping investigation request related to dumping, harm and the causal relationship between both. The Agreement defines basic concepts including dumping, normal value, export price, similar product and branch of domestic production, as it establishes guidelines for price comparisons and the determination of dumping margins and harm, to kick off and conduct the investigation as well as for the application of provisional or definitive measures.

⁷⁸ Mexico's Ministry of the Economy can initiate an investigation into dumping via official order or at the request of the affected parties. It enjoys a minimum of 45 and a maximum of 90 days to hand down a preliminary ruling and determine, as may be the case, a provisional countervailing duty; as well as a maximum of 210 days following the preliminary ruling to issue its final ruling. All timeframes are counted in business days.

To determine the causal link between price discrimination and damage to industry, the following may be taken into consideration: (i) the volume and value of imports that are not dumped; (ii) contraction in demand or variations in consumption structure; (iii) competition between domestic and foreign producers; and (iv) the evolution of technology, productivity and export-activities outcomes.⁷⁹

With regard to the lifespan of duties, the LCE's Article 70 establishes these are to be eliminated within a five-year period from the time of their entry into effect unless it may be determined, by means of a previously initiated validity examination, that eliminating a countervailing duty would give rise to the continuation or repetition of the unfair practice (i.e., the dumping, the harm and the causal relationship). Mexico's Ministry of the Economy can also begin a yearly review process, by official order or at an interested party's request, to analyze prices and countervailing duties.

Countervailing duties' effects are similar to those of import tariffs, in the sense that they limit, restrict or increase the cost of access to goods or inputs, thus affecting consumer welfare and businesses' competitive positions (see Box 3 below). Therefore, from a perspective of competition, the imposition of countervailing duties must occur in exceptional circumstances. In some cases dumping can even be a legitimate strategy for businesses to gain market-share by reducing prices. In such cases, in fact, the practice would create competitive pressures in domestic markets and would directly benefit consumers via greater supply and lower prices.

On the other hand, validity examinations only allow a determination of whether the practice—dumping—or the injury would continue or be repeated with the duty's elimination. This implies that analyses of the ways in which the market would have behaved in the absence of that duty, or of possible changes to market conditions after five years, are not undertaken. Such an analysis would strengthen the decision to keep a duty at its original level and would lend more certainty to the causal relationship between the dumping and the harm. This could be done through review mechanisms. However, at least from 2014 to February 2017, only two countervailing duty review procedures have been initiated by stakeholder request for duties imposed on RG coaxial cable from China as well as on ethylene monobutyl ether from the United States. No procedures have been initiated by means of official orders.

As of October 2016, nine duties had been in place for more than five years; sixteen more than ten years; five more than fifteen years; and still another five more than twenty years. At the time, all maintained the duty levels that original rulings determined. In the last two years, with 24 validity examinations concluded, a mere three ruled in favor of eliminating the duty in question; in 21 cases, duties have been renewed.⁸⁰

⁷⁹ Mexico's Foreign Trade Act, Article 69.

⁸⁰ Data gathered from the database COFECE's General Office for Competition Promotion (Dirección General de Promoción a la Competencia) created from sessions before Mexico's Foreign Trade Commission (Comisión de Comercio Exterior; acronym in Spanish: COCEX), from May 2014 to October 2016.

In order to arrive at a more robust defense process against unfair trade practices, it would be advisable to contemplate the following:

- Introduce a public-interest test through which industrial users of imports as well as associations of consumers were considered among the investigation's stakeholders;⁸¹
- Establish and make transparent both methodologies and technical criteria for applying the LCE's substantive stipulations -such as margin of dumping, harm and causality- as a means of conveying conditions of certainty and predictability;
- Establish a mandatory "lesser duty" rule, i.e., that the countervailing duty is to be established exclusively at the percentage needed to correct harm and not at the equivalent of the dumping margin;
- By means of official order, initiate countervailing duty review procedures more actively, permitting a wider analysis than that stipulated in the validity examinations;
- Within frameworks of highly integrated trade agreements, and based on reciprocity, to not apply the anti-dumping system to the trade partner in question;⁸² and
- Review and consider that the countervailing duty does not confer high market shares in favor of the party that requests it..⁸³

The above is particularly relevant if we note that among the WTO's 164 member states (as of February 2017), between 1995 and 2014,⁸⁴ Mexico occupied eleventh place among nations in the number of investigations that were initiated to establish countervailing duties.

81 These types of tests are applied in the EU, Australia and New Zealand with the purpose of guaranteeing that countervailing duties apply only if it is demonstrated that they are not detrimental to the overall public interest; specifically, that the harm they cause to the overall economy is not greater than the improvement they confer on domestic industries affected by imports.

82 The Chile-Canada and Chile-EU free trade agreements, for example, reciprocally exempt its signatories from the application of anti-dumping-duty laws.

83 If a business enjoys a high market share in the relevant market, a competitor's lower-cost sales will expand consumer welfare. In this case, countervailing duties could inadvertently strengthen market dominance and its abuse against the competition.

84 At the end of 1995, The WTO included 116 member states, whereas these were 160 by 2014.

Box 3. Case study

The Ex-post evaluation of a merger in Mexico's chemicals industry,⁸⁵ carried out by COFECE following rulings from the now-disbanded Federal Competition Commission (Comisión Federal de Competencia; acronym in Spanish: CFC) on Mexichem's acquisition of Polycyd and Plásticos Rex, both property of Cydsa, is useful to lend dimension to the possible effect of a countervailing duty on consumer welfare.^{86,87}

Mexichem and Cydsa notified of their intention to merge in September 2008. The CFC's analysis determined that Mexichem and Polycyd were the only two producers of PVC resin in the Mexican market and thus their merger would have implied the creation of a monopoly. The above was the case because there were major tax burdens placed on PVC imports and a countervailing duty specifically for imports from the United States.⁸⁸ Therefore imports were limited and insufficient for exercising any competitive pressure on Mexichem and Cydsa.

Additionally, Mexichem's acquisition of Plásticos Rex created a high degree of concentration in the markets of PVC pipes and joints. Therefore, this merger would have led to vertical integration between the PVC resin and PVC pipe industries for Mexichem. Because PVC resin has no substitute as an input for PVC pipes, this merger would have given rise to incentives for Mexichem to undertake anti-competitive practices against its competitors in the PVC pipes markets, via an ability to increase prices and restrict their free access to the PVC resin market. For this reason, the Board of Commissioners of the now-disbanded CFC ruled to deny both the Mexichem-Polycyd and the Mexichem-Plásticos Rex mergers on 26 May 2009.

In 2010, once the countervailing duties on PVC resin imports were officially eliminated and having the time to observe how markets reacted in light of the elimination of these duties, the parties once again requested the CFC's authorization to merge. The commission re-reviewed the operation and identified the following changes in the analyzed market:

- The elimination of the countervailing duty had created a growing trend in PVC resin imports from the US, making these a new source of competition in the Mexican market.
- The new market configuration included the presence of major competitors. Nevertheless, the CFC also recognized that the full integration toward a more extensive market would be gradual and would consolidate only if trade barriers continued to be absent.

In light of the above, the CFC decided to authorize the merger subject to the condition that Mexichem not acquire one of Plásticos Rex PVC pipe plants. This measure sought to avoid undue concentration in the PVC pipe market.

85 To review the methodology the COFECE followed to carry out ex-post evaluations, see the following link: https://www.cofece.mx/cofece/images/Informes/Metodologia_ev_expost_COFECE.pdf

86 The files to which these operations refer are CNT-091-2008; CNT-093-2008; and CNT-088-2009. They are publicly available at: <http://www.cofece.mx/index.php/resoluciones-y-opiniones>

87 Both Mexichem and Polycyd produced poly-vinyl chloride resin (PVC), whilst Plásticos Rex produced PVC pipes.

88 The countervailing duty was levied through the publication of the corresponding ruling (the Resolución definitiva sobre la importación del policloruro de vinilo (PVC), mercancía comprendida en la fracción arancelaria 3904.10.01 de la tarifa de la Ley del Impuesto General de Importación, proveniente de los Estados Unidos de América), in Mexico's Official Federal Gazette on 5 June 1991. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=4723265&fecha=05/06/1991

In 2016, COFECE undertook an impact evaluation to estimate the effect these rulings had on markets.

The first ruling, which rejected the Mexichem-Cydsa merger, prevented the creation of a monopoly. That monopoly would have raised the price of PVC resin by 36.26% and reduced the traded amount by 21.38%. As such, the CFC ruling prevented a nearly \$7.3 million USD loss to consumer welfare.

The second ruling analyzed, which authorized the Mexichem-Cydsa merger under conditions, allowed for a consumer welfare increase of some \$10.1 million USD. The simulated scenario establishes that this condition—alongside the elimination of the countervailing duty—afforded a price-reduction of nearly 30% and an increase in quantity of 83.46%.

IV.4 Quota allocation mechanisms

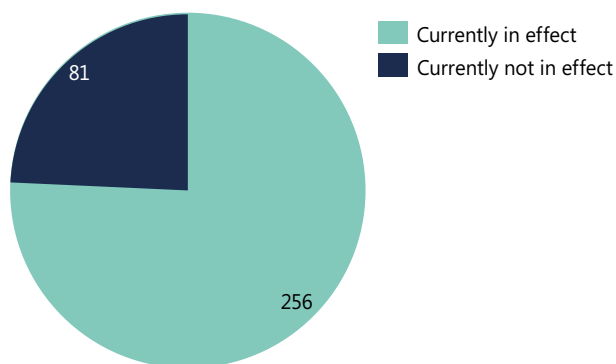
Quotas, their uses and associated risks

According to the LCE, Mexico's Executive Branch is empowered to establish measures regulating the import or export of products through agreements published in Mexico's Official Federal Gazette. One such measure is called an import or export quota.

As stated in the LCE's Article 23, "quota" is understood as "the amount of merchandise that can be imported or exported, whether expressed as a maximum or as part of a tariff- quota." To such ends, the Executive Branch's authorized agency (in this case the Ministry of the Economy) may: i) establish the amount of merchandise that can be imported or exported, or indeed ii) determine a lower import duty amount on a certain quantity of merchandise, while the rest remains subject to a higher tariff.

Currently Mexico maintains 337 quotas. A total of 256 are authorized by an Agreement published in the Official Federal Gazette in which the amount and allocation mechanisms are stated. On the other hand, 81 quotas are not subject to an Agreement published in the Gazette and therefore are not currently in effect (see Graph 7, below).

Graph 7. Quotas with and without agreements published in Mexico's Official Federal Gazette (2015)



Source: Mexico's Ministry of the Economy: "Información general."
<http://www.siiicex.gob.mx/portalSiiicex/Transparencia/infgral.htm>

Allocation mechanisms

The LCE's Article 24 provides that quotas are to be allocated by means of public bidding; nevertheless, the Ministry of the Economy may employ other allocation mechanisms, provided they promote competitiveness of production chains and guarantee adequate access to new entrants. Quota-allocation mechanisms may also be determined in international treaties or conventions to which Mexico is a signatory.

Mexico currently employs three different quota allocation mechanisms, not excluding a combination of the mechanisms outlined below:

a) Public Bidding

This mechanism consists of a published call for bids and bidding guidelines specifying the requirements and protocols for awarding the quota in question, partly or in full. The advantage of this mechanism lies in the fact that it creates competition for the privilege and favors businesses that most value it, typically by means of the price variable. In principle, this should be the allocation mechanism used when demand is superior to supply.

At times, however, there is incomplete information related to a quota's potential demand. In such a situation, it is advisable to apply another assignment mechanism (preferably the "first-come, first-served"-style mechanism known as "*primero en tiempo, primero en derecho*" or "PTPD") to acquire relevant demand information.⁸⁹ Later, once such information is acquired, the public-bidding mechanism is to be privileged.

b) Direct allocation

Under the direct allocation model, the quota is distributed among select businesses that meet specific criteria, such as those related to their share in domestic production, exports, imports or consumption, or based on installed capacity, the type of end-product manufactured or the population segment served.

Direct allocation seeks to reward parties who, because of their profiles, may have greater interest in importing or exporting commodities subject to the quota. Nevertheless, using production or sales criteria benefits larger, established businesses and limits new-competitor entry. Therefore, in such cases, transparency with regard to applicable criteria is critical, as is assuring a pro-competition allocation that does not give rise to exclusive benefits.

⁸⁹ On 14 May 2013 Mexico's Federal Commission for Regulatory Improvement (Comisión Federal de Mejora Regulatoria; acronym in Spanish: COFEMER) referred a chicken-meat import quota agreement (Acuerdo por el que se da a conocer el cupo para importar, con el arancel-cupo establecido, carne de pollo) to COFECE. The object of this agreement was to open the chicken-meat market to foreign products, given that the Ministry of the Economy had detected an unjustified increase in chicken prices that resulted from avian influenza public-health contingencies. The quota was equal to 300,000 metric tons, representing 8.8% of total 2012 consumption. The pre-project proposed a mixed allocation mechanism: in a first phase, 50% of the entire quota would be assigned on the first-come, first-served basis and during the thirty calendar days following the pre-project's publication, the quota's registered demand would be evaluated and the mechanism for allocating the remaining 50% of the quota would be determined. The Ministry of the Economy considered that the first-come, first served mechanism was ideal for the first half of the quota because it did not have information on demand.

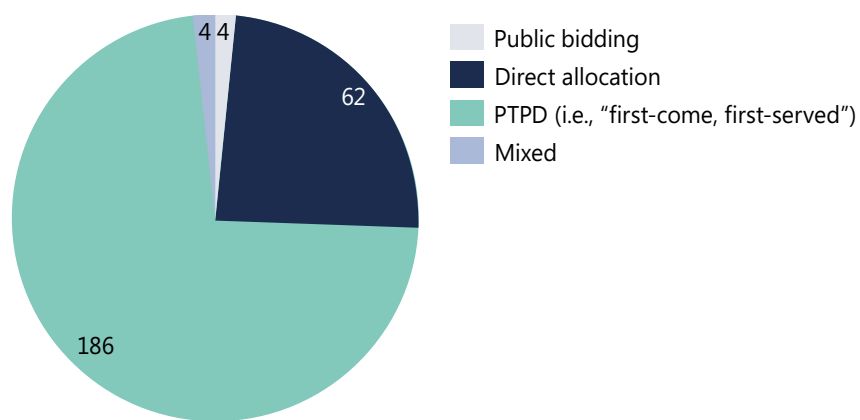
For example, COFECE made a public pronouncement on the benefits of modifying an agreement governing barley and malt imports published on the 21st of October 2008 (known as the *Acuerdo por el que se dan a conocer los cupos para importar cebada y malta, publicado el 21 de octubre de 2008*). The purpose of the aforementioned modification was to increase the duty-free quota and modify the allocation protocol, replacing direct allocation with public bidding. Additionally, the pre-project responded to a need to guarantee greater supply of barley and malt, since the standing import quota had been allocated to four beer-brewing businesses and left smaller breweries as well as other businesses that used those products as inputs without sufficient supply.

In the particular case of barley, the new allocation mechanism the Ministry of the Economy proposed consisted of a two-phase process. In the first, 50% of the total quota amount for both commodities would be auctioned off via public bidding between the private and corporate parties that use barley and malt as inputs in their production processes. In the second phase, the remaining 50% was to be subject to bidding on the part of private and corporate parties legally constituted in Mexican territory.⁹⁰

c) First-come, first served (in Spanish: *Primero en tiempo, primero en derecho*; acronym: PTPD)

In this model, allocations are made in the order in which applicants tender their requests to the Ministry of the Economy. The process continues until the merchandise quantity that is subject to the quota runs out. In general this type of assignment is used when the amount to which the quota refers is especially high, i.e., when quota supply exceeds demand. It also seeks to make the quota allocation process agile and simple. Most quotas assigned in 2015 used the PTPD model. (See Graph 8, below).

Graph 8. Allocation mechanisms used for quotas (2015)



Source: Mexico's Ministry of the Economy, "Cupos — Información general."

⁹⁰ In another example, in December 2014 the Ministry of the Economy referred an Agreement for a quota for baby toy imports (the *Acuerdo por el que se da a conocer el cupo y mecanismo de asignación para importar juguetes y productos para bebé*) to COFEMER, which in turn sent it to COFECE for a competition analysis. The Ministry's proposed allocation mechanism was direct allocation, using toy and baby product producers' sales as the allocation criterion. The quota design favored large-scale producers over both small-scale manufacturers and retailers. An additional concern was that the quota allocation formula allowed a single beneficiary to obtain 48.5% of the total available.

Once allocated, the Ministry of the Economy or authorized governmental agencies must establish strategies to expand quota use or otherwise evaluate their permanence and promote undertaking evaluations of the costs and benefits that derive from applying these measures and their impacts on production chains.⁹¹

Generally speaking, COFECE considers—provided demand exceeds supply— that public bidding as an allocation mechanism should be privileged. It additionally recommends that when public bidding is not the most efficient mechanism (as when amounts or volumes are too high), transparent assignment criteria and protocols be established that do not grant advantages that favor incumbents.

Independent of the above, it is important to stress that import quotas are a method for managing the inefficiencies that arise due to the presence of tariffs. Therefore, when quota use is recurrent— whether for supplying issues or as a method to counteract increased prices—reduced tariffs are preferable. In that way, economic agents will be better positioned to make economic decisions and objectives can be reached in much more efficient ways.

⁹¹ This analysis may consider, among other issues, impacts on the following factors: prices, employment, production chain competitiveness, government revenue, productive sector profits, the measure's cost to consumers, available supply variety and quality and market competition levels.

IV.5 Regulatory transparency

Technical obstacles and public-health and phytosanitary measures for the import of goods of animal- and vegetable-origin.

Mexico's federal regulations governing animal and vegetable health that establish restrictions on the imports of agricultural foodstuffs cannot exceed effective protections against public-health or phytosanitary risks. Otherwise the supply of these goods would be artificially restricted to consumers' detriment. It is therefore important that such measures be duly supported by scientific considerations. Ideally, the government agencies responsible for drafting, approving and implementing these regulations (mainly Mexico's Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food, acronym in Spanish: SAGARPA; through the National Service for the Health, Safety and Quality of Agricultural Food Products, acronym in Spanish: SENASICA) are to avail international benchmarks and, where necessary, make such adjustments as Mexico's needs require.⁹²

In practice, a number of zoosanitary and phytosanitary measures established through "animal or vegetable health guidelines" are not subject to regulatory improvement processes, or any other transparency processes, which can favor arbitrary distinctions or unjustified protection levels.⁹³ This circumstance can give rise to both supply restrictions and less competitive pressure in domestic markets as well as uncertainty on the part of economic agents when it comes to the requirements applicable to imported products.

COFECCE recommended making all requirements for importing animal- or vegetable-origin products, as well as all administrative actions in general that limit or restrict imports,⁹⁴ transparent in advance, such that these are available for public consultation at any time.⁹⁵

92 Mexico is subject to various guidelines and directives when it comes to international trade in products of animal and vegetable origin. On the international level, there are two relevant instruments in the WTO context. On the one hand there is the Agreement on the application of sanitary and phytosanitary measures, which establishes principles of Harmonization, Assessment of Risk and Determination of the Appropriate Level of Protection, Equivalence, Transparency and Emergency Measures. It additionally stipulates that "to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement [...]". In turn, the Agreement on technical barriers to trade has as its aim to ensure that technical regulations, standards and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade.

93 In accordance with applicable animal and vegetable health legislation, the requirements for importing and transporting products of animal or vegetable origin products are to be determined in "animal and vegetable health regulations" such as agreements, official Mexican norms, other Mexican norms, circulars, rules, guidelines or manuals on the subject. This notably extensive range of regulatory mechanisms gives rise to broad discretion levels and makes compliance with the law more difficult.

94 In accordance with Mexico's customs laws, registry with its Revenues Administration System's "specific importers' list" is necessary for importing agricultural or livestock products. In addition to registry in that list, compliance with public-health measures as instrumented by the so-called "Zoosanitary and Phytosanitary Requirement Sheets" is required. Zoosanitary and phytosanitary modules were established to acquire the Requirement Sheets. These modules are an online system alongside a catalogue of documents containing the requirements for importing animal and vegetable origin products. The online module informs parties seeking to import such merchandise regarding requirements to be met. The modules issue zoosanitary and phytosanitary requirements for the import of animal and vegetable origin merchandise at the time of the online consultation. Nevertheless, these requirements are not available for public consultation via other media, thus each interested party must visit a module in order to acquire them, after identifying characteristics of the merchandise to be imported.

95 Recommended by COFECCE in its Report on competition conditions in the agrifood sector (Reporte sobre las condiciones de competencia en el sector agroalimentario, p. 509, R.6.4.) Available at: <https://www.cofece.mx/cofeca/images/>

It is worth noting that recently (22 December 2016), COFEMER published an Agreement related to time-spans to rule on regulation projects and the manual for regulation impact analysis (the “*Acuerdo por el que se modifica el Anexo Único del diverso por el que se fijan plazos para que la Comisión Federal de Mejora Regulatoria resuelva sobre anteproyectos y se da a conocer el Manual de la Manifestación de Impacto Regulatorio, publicado el 26 de julio de 2010*”) in Mexico’s *Official Federal Gazette*. This Agreement establishes an obligation to carry out the regulatory improvement processes established by Mexico’s Federal Administrative Procedure Act (*Ley Federal de Procedimiento Administrativo*) with regard to foreign trade and consumer rights “in the early phases of regulations-drafting”. Regulatory actions include technical regulations, non-tariff measures related to imports and exports and sanitary or phytosanitary measures as well as applicable compliance-evaluation protocols.

Foreign trade regulations and the regulatory improvement process

Mexico’s Ministry of the Treasury and Public Credit, through its Revenues Administration System (acronym in Spanish: SAT), issues General Rules of Foreign Trade that include—among other elements—protocols, notices, declarations, payments, contributions, certifications, merchandise controls and shipments applicable to imports and exports.

Article 69-H of Mexico’s Federal Administrative Procedure Act obliges the federal government’s agencies and decentralized organizations to submit to a regulatory improvement process when they elaborate pre-projects related to legislation, legislative decrees and general administrative acts which are defined—according to Article 4 of the same norm—as follows:

Article 4º. - Actions [...], such as regulations, decrees, agreements, official Mexican norms, circulars and templates as well as guidelines, criteria, methodologies, tutorials, instructions, rules, manuals or stipulations that seek to establish specific obligations when conditions of competition are non-existent, or any other analogous to the previous acts, as decentralized agencies and organizations may issue [...].

To date, the fact that certain general administrative acts issued by Mexico’s Ministry of the Treasury and Public Credit are not subject to the regulatory improvement process—among them, its General Rules—has served as a justification. To that end, it is argued that Mexico’s Federal Administrative Protocols Act Article 1 excludes tax-related matters from compliance. Nevertheless, that the abovementioned article’s fourth paragraph makes explicit that “*fiscal matters are excluded only in cases related to contributions and the accessories that are directly derived therefrom*” should be taken into consideration.

Mexico’s General Rules of Foreign Trade (Reglas Generales de Comercio Exterior; acronym in Spanish: RGCE) include a number of stipulations that could potentially affect free market entry and competition; additionally, they are not necessarily related to “contributions and their accessories.” Box 4 (below) offers a handful of examples:

Box 4. Representative RGCE Stipulations that could be subject to regulatory improvement

1. Contributions for the maintenance, repair or expansion of a customs house.

Requirements and protocols by which customs agents, through a non-profit organization, can manage customs-house modifications.

2. Customs agents' miscellaneous authorizations.

Requirements and protocols by which customs agents can request authorization to: act in additional customs houses, be designated a customs agent supervisor, change assigned customs, modify customs agents' associations, give notice of a customs agent's death.

3. Provision of electronic pre-validation services.

Definition of authorized parties' obligations for the provision of electronic pre-validation services.

4. International cargo agent information exchange.

Procedures and data that international cargo agents must transmit to associations or professional organizations to which they may belong.

5. Authorization to provide loading, unloading and maneuvers services.

Requirements and protocols for requesting authorizations to provide such services in addition to a definition of related obligations.

6. Protocols to realize merchandise dispatch to destinations other than those authorized.

Protocols to which those who undertake merchandise imports to destinations other than those authorized, including those who dispatch liquefied petroleum gas, must submit.

7. Customs declaration rectification protocols.

Protocols and requirements with which importers and exporters must comply to request one-time authorization to undertake customs declaration rectifications.

8. Protocols and requirements to obtain, renovate and cancel inscriptions in the Business Certification Scheme Registry as well as inscriptions in miscellaneous modalities.

Requirements of which those interested in acquiring such a registration must provide proof, in accordance with the modality in which they seek inscription.

In consideration of the above, it is preferable that all administrative acts of a general nature issued by the Ministry of the Treasury and Public Credit with regard to foreign trade be made subject to the regulatory improvement process. As such, COFEMER, by means of a regulatory impact statement may, as necessary, give timely notice of regulatory deficiencies and suggest pertinent corrective measures.

V.6 Sector-Specific Promotional Programs

Backgrounds

As part of the NAFTA framework, particularly Article 303, Mexico agreed to eliminate temporary import schemes that allowed the nation's exporting manufacturers to import third-country inputs and machinery exempt from corresponding import duties, that were later exported (in the same condition or as part of a production process) to the United States and Canada. This stipulation entered into effect on 1 January 2001. With it, Mexico's exporting manufacturers no longer benefitted from temporary import programs.⁹⁶

Within that context, Mexico's Executive Branch created "sector promotion programs" (*Programas de Promoción Sectorial*; acronym in Spanish: PROSEC), through which import tariff payments on certain consumables within specific industrial sectors would be reduced or in some cases exempted.

Therefore the decree in effect to date, establishing a number of PROSEC programs,⁹⁷ was published in Mexico's Official Federal Gazette in August 2002. Among other matters covered, the decree recognizes certain industries' dependence on external supply, and therefore the need to access inputs and machinery in competitive tariff conditions.

PROSECs cover 24 sectors or industries⁹⁸ that allow previously enrolled producers⁹⁹ to import industrial inputs and machinery with tariff-related benefits. Additionally the decree establishes the specific goods which may be manufactured in Mexico using the inputs and machinery imported under the benefits of such programs.¹⁰⁰

96 While having to pay a tariff that would in some cases be that which Mexico publishes in its TIGIE. In others it could be less, but no amount would ever be condoned that exceeded the lesser amount between the import tariff in Mexico and that payable in the United States or Canada on merchandise to be exported.

97 The Decree establishing miscellaneous sector promotion programs (the Decreto por el que se establecen diversos Programas de Promoción Sectorial) was published in Mexico's Official Federal Gazette on 2 August 2002. It nevertheless had several predecessors, such as a 9 May 2000 decree that included only ten industries, and a 14 November 1998 decree on behalf of two industries.

98 For the following industries: electrical; electronic; furniture; toys, recreational and sporting goods; footwear; mining and metallurgy; capital goods; photographic; agricultural machinery; miscellaneous industries; chemical; rubber and plastics manufactures; iron and steel; pharmaceutical products, medicines and medical equipment; transport; paper and cardboard; lumber; leather and hides; automotive and auto parts; textiles and tailoring; chocolates and candy (etc.); coffee; foodstuffs and fertilizers.

99 To be eligible for program benefits, producers must tender an application to the Ministry of the Economy that will issue an authorization after an opinion from the Ministry of the Treasury and Public Credit. Programs remain in effect one year with automatic renewal upon the submission of a report on activities carried out under the program's auspices.

100 The decree's Article 5 establishes tariff headings for importation under each program. Article 4, in turn, establishes the goods that are to be manufactured using such imported consumables.

The programs encompass a total of 996 tariff headings, fifteen of which are now exempt from MFN tariffs. For the 981 headings remaining, MFN tariffs oscillate between 5 and 20%; under the aegis of a PROSEC program, importers pay between 0 and 10%, as portrayed in Table 9.

On one hand, the fact that PROSECs are used so actively¹⁰¹ demonstrates that Mexico's free trade agreement network is insufficient for guaranteeing competitive conditions for the nation's domestic manufacturers.

On the other, the decree has contributed to the complexity of the Mexican customs system, alongside other trade-policy instruments like previous permits, automatic notices and technical regulations.

Fifteen years after its implementation and subsequent to the negotiation and implementation of free trade agreements and unilateral opening processes, it may therefore be time to rethink the PROSECs' validity, specifically by eliminating them and at simultaneously extending tariff benefits to the entirety of Mexican industry and in a non-discriminatory fashion. This could be achieved by rescinding the decree and consolidating its benefits within TIGIE tariffs. This is relevant to competition in that it does not give rise to exclusive advantages favoring particular economic agents while at the same time it expands others' ability to compete.

¹⁰¹ According to data provided by Mexico's Ministry of the Economy, in 2014, PROSEC-shielded imports reached \$20.623 billion USD, representing 5% of total imports entering Mexico that year. In accordance with PROSEC's beneficiaries registry, there are 4016 businesses enrolled in standing programs alongside 579 that have been so authorized. The list is available at: <http://www.siicex.gob.mx/portalSiicex/Transparencia/prosec/prosec-infespecifica.htm>

Table 9. Headings with tariff-related benefits, by industry¹⁰²

Industry	0%	2.5%	3%	5%	7%	10%
Electrical	133	3	-	132	-	-
Electronics	548	-	-	-	-	-
Furniture	184	-	-	8	-	3
Toys, recreational equipment and sporting goods	168	-	-	-	-	-
Footwear	14	-	1	23	-	-
Mining and metallurgy	6	-	-	39	-	-
Capital goods	31	-	-	51	1	-
Photographic	27	-	-	3	-	-
Agricultural machinery	51	-	-	-	-	-
Miscellaneous industries	59	1	1	39	-	-
Chemical	69	-	2	57	8	-
Rubber and plastic manufactures	19	-	-	26	3	-
Iron and steel	28	-	-	37	-	-
Pharmaceutical, medicines and medical equipment	16	-	-	21	7	-
Transportation	95	-	-	9	-	-
Paper and cardboard	8	-	-	10	-	-
Lumber	5	-	-	16	-	3
Leather and hides	13	-	5	-	-	-
Automotive and auto parts	497	-	109	22	-	1
Textiles and tailoring	39	-	1	36	2	4
Chocolates and candy, etc.	1	-	-	-	-	-
Coffee	12	-	-	3	-	-
Foodstuffs	21	-	-	-	-	-
Fertilizers	-	-	-	-	-	-

¹⁰² Information gathered from Matriz fracción arancelaria – sector industrial, con base al artículo 5 del Decreto PROSEC, published by the Mexican Ministry of the Economy's Integrated Foreign Trade Information System (Sistema Integral de Información de Comercio Exterior; acronym in Spanish: SIICEX). The sum-total of tariff headings is greater than 996 given that some headings are subject to more than one tariff-reduction program.

IV.7 The Foreign Trade Commission

Background

Mexico's Foreign Trade Commission (Comisión de Comercio Exterior; acronym in Spanish: COCEX) is a technical advisory organ comprised of Mexico's Ministries of (i) the Economy; (ii) Treasury and Public Credit; (iii) Agriculture, Livestock, Rural Development, Fisheries and Food; (iv) the Environment and Natural Resources; (v) Public Health; and (vi) Foreign Relations, as well as (vii) the nation's central Bank (Banco de México) and (viii) COFECE. It is charged with issuing opinions on matters of foreign trade that are the jurisdiction of the nation's executive branch, such as: (1) creating, expanding, reducing or eliminating tariffs; (2) regulating, restricting or prohibiting merchandise export, import, circulation or transit and establishing measures to these effects; and (3) conducting international trade negotiations.

The Ministry of the Economy presides over COCEX sessions, and by means of its Technical Secretariat, is charged with gathering its members, assembling the files with which proposals are presented, drafting meeting minutes and announcing agreements that are reached. COCEX meets regularly and recommendations to be issued are arrived at via majority vote.

Benefits

One advantage COCEX offers as a collegiate body is its ability to consider the impact a given trade measure will exert in different public policy areas. For COFECE, for example, considerations of possible effects on free market access and competition from imposing certain trade measures are of paramount importance.

Opportunity areas

In order for COCEX to serve as a more effective counterweight when it comes to decision-making, the following would be advisable:

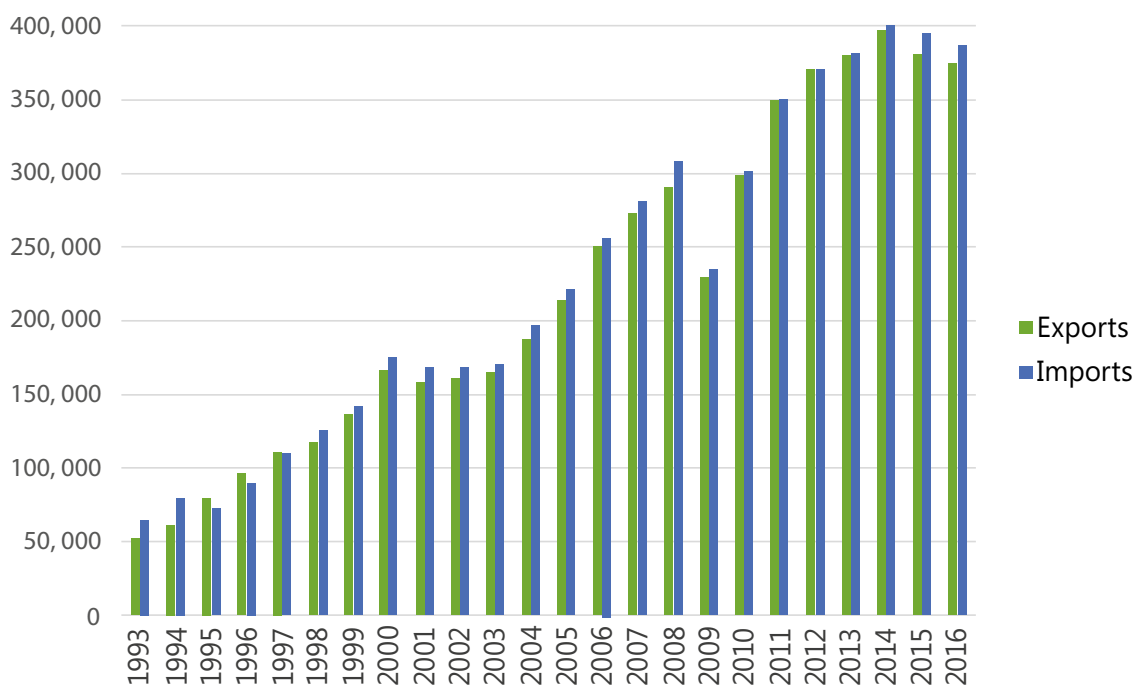
- That its makeup be more balanced, in light of the fact that currently six of its members are federal government institutions and a mere two are autonomous organizations.
- That it be receptive to positions as expressed by representatives of parties affected by a given measure before issuing respective opinions. It should be remembered that the LCE's Article 6, paragraph 3, allows for COCEX to hold public hearings with interested parties.
- That transparency be enhanced, for example, by making session transcriptions available to the public alongside individual votes and the reasoning behind them.
- That the information presented by case proponents contain sufficient data for COCEX members to evaluate the proposed measure's potential costs and benefits.
- That there be appropriate follow-up to recommended measures, i.e., that in subsequent sessions, the proponent of a measure inform members with regard to aspects relevant to its use, implementation and impact.

- **V. FINAL
CONSIDERATIONS**

V. Final considerations

Mexico's insertion into the international economy has in general rendered positive results. Trade has grown nearly ten-fold from 1993 to 2016 (see Graph 9). The nation has become a relatively open economy, consolidating its position as a platform for exports to the United States and offering access to a wider array of products and industrial inputs. At the same time, Mexican products have gained significant ground in international markets.

Graph 9. Mexico's trade balance, 1993-2016 (in millions USD)¹⁰³



Nevertheless, a series of obstacles and barriers persist in Mexico that, in addition to affecting free market access and competition, injure consumers and give rise to distortions in production chains. It is pertinent to remember that sectors enjoying high levels of effective, unjustified protection persist.

One important conclusion is that the Mexico's free trade agreement network does not sufficiently guarantee supply requirements under competitive conditions. Proof of as much resides in recent trends toward a proportional reduction in imports from trade-partner nations. As such, importers pay high tariffs for (or even cease importing due to prohibitive tariffs) products from nations that, while not Mexico's trading partners, are a source of efficient supply. This circumstance can give rise to over-pricing or reduced supply in domestic markets.

¹⁰³ Calculated by COFECE using Mexico's Foreign Trade Statistics published by the Ministry of the Economy. Available at: <http://www.gob.mx/se/acciones-y-programas/comercio-exterior-informacion-estadistica-y-arancelaria?state=published>

Although tariffs and countervailing duties are legitimate trade-policy instruments, both have a direct impact on consumer welfare since they restrict supply, reduce competitive pressure on domestic prices and diminish competition in markets.

In this sense, it would be advisable not to maintain high protection levels when it comes to products the nation's trade partners neither produce nor supply under competitive conditions. Put another way, it is important for Mexico to make use of and exploit the most competitive global sources, especially with regard to consumer goods that represent a significant proportion of Mexican household spending or relevant inputs for production processes. This can be achieved through unilateral tariff reduction or an expansion of the free trade agreement network, something that takes on special relevance in light of the current situation that makes market diversification a necessity.

An agenda for strengthening trade policy should take on other issues beyond tariff reduction. The present report, for instance, has pointed to the advisability of anti-dumping systems in which remedial measures are imposed as an exception to the rule, under predictable conditions and in the least restrictive manner possible. It should additionally include a revision of instruments for the protection of specific sectors such as footwear, textiles and steel; achieve efficient quota allocation; expand regulatory transparency levels; consolidate and extend PROSEC benefits to all domestic industry and grant a greater weight to competition considerations in COCEX decision-making process.

Because of the positive impact an open economy asserts in consumer welfare, it is fundamental to adhere to a pro-free-trade agenda that lends ample opportunity to Mexican consumers and businesses, while strengthening the domestic competitive environment. Fortifying and expanding the links between trade policy and competition can steer public policy in that direction.

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