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LESSONS FROM THE FIRST TWO DECADES OF TRADE POLICY REVIEWS IN THE AMERICAS

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ABSTRACT

The Trade Policy Reviews conducted in the Western Hemisphere over 1989-2009 contain a wealth of information that puts in clear evidence the considerable improvements achieved in most American countries during the first two decades of operation of the Trade Policy Review Mechanism. Those Reviews show that trade liberalization came hand-in-hand with internal reforms, and was generally of an autonomous nature and an intrinsic component of improved economic management. Trade liberalization slowed down during the second decade under review, with tariffs having come down mostly during the earlier years. The use of non-tariff barriers also fell over time although at a slow pace in some of the smallest Members, which found it difficult to implement the more complex trade policy instrument applied by larger countries. Export and other government assistance schemes proliferated throughout the continent but were often characterized by a lack of unity in the criteria used to assign and apply them. The review period also witnessed enormous changes in the services sectors, where reforms usually proved more complex than in the goods area. The multilateral and other international trade agreements contributed to the stability of trade policies and the general rejection of protectionism, although backtracking did occur in a number of cases. Because the commitments made during the Uruguay Round negotiation now fall short of the more liberal trade regimes that came to be over the review period, most Members in the Americas could presently raise trade and investment barriers without violating multilateral rules. Thus, the pressing need to conclude the Doha Development Agenda in order to lock in the considerable trade policy liberalization achieved during past years, and to strengthen the multilateral trading system.

Keywords: Commercial Policy, GATT WTO, Liberalization, Integration, History.

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TABLE OF CONTENTS

SUMMARY OBSERVATIONS

1. During its first twenty years, the Trade Policy Review Mechanism generated a wealth of information on the development of the trade policies and practices of the 34 WTO Members in the Americas. Common themes emerge from the experiences documented in the close to 90 Secretariat reports prepared for the Trade Policy Reviews of those Members during the 1989-2009 period.

2. One central theme is the considerable improvement in economic management in Members in the Americas, of which trade liberalization was an intrinsic component. During the first half of the review period, liberalization was given additional impetus by the negotiation and entry into force of the WTO Agreements, when many of the easiest and richest reform-pickings were harvested. During the second decade under review, liberalization slowed down considerably, although it continued apace on a selective basis through preferential trade agreements.

3. Trade liberalization came hand-in-hand with internal reforms and was generally of an autonomous nature. The reforms included ambitious privatization programmes that led to the State reducing considerably its direct participation in production activities; however, in recent years this process slowed down or was partially undone. A greater reliance on market mechanisms drove Members to establish or strengthen their competition policy laws. This process sometimes faced strong opposition from vested interests, which made it difficult to implement competition policy in an effective manner.

4. The multilateral and other international trade agreements contributed to the stability that generally characterized trade policies during the review period. This stability translated into a general rejection of protectionism as a response to the various economic difficulties experienced during the review period, including the global financial crisis that started in 2007. Given that enforcing trade agreements proved slow and costly, the rejection of protectionism also reflected a growing awareness in most Members in the Americas of the need to be seen as trustworthy partners in an increasingly interdependent global economy. This was not without exceptions, however, and backtracking did occur in a number of cases.

5. Trade facilitation was at the core of the liberalization efforts, particularly during the second part of the review period, with most Members in the Americas taking significant steps to rationalize and modernize their trade procedures. Tariffs came down mostly during the first decade under review, and then tended to steady at levels that typically offered some protection to domestic producers without imposing excessive costs on consumers. However, there were a few episodes of tariff increases, and throughout the period high tariffs continued to apply to some products considered sensitive, such as textiles, clothing and various agricultural products.

6. Non-tariff measures went on playing a central role in the import regimes of all Members in the Americas. Outright import prohibitions, quantitative restrictions and non-automatic import licensing were used to restrict trade for economic reasons. Although the use of these measures fell over time, the decrease was slow in some of the smallest Members, which often found alternative, WTO-consistent measures to restrict imports too onerous to apply.

7. It was usually difficult, if not impossible, to assess whether other non-tariff measures were also used for protectionist reasons. Thus, although the largest Members in the Americas made active use of contingency antidumping measures, they justified them as necessary to protect their domestic producers against unfair foreign competition. Nevertheless, antidumping measures remained controversial, not the least because the procedures used to apply them were repeatedly found to violate WTO rules. In contrast, antidumping and other contingency measures were hardly ever applied by the smallest Members, mainly for lack of institutional capacity.

8. The largest Members in the Americas applied technical regulations and sanitary and phytosanitary measures more frequently and rigorously, which had the effect of holding back imports even if this was not their stated objective. Although this raised recurring concerns, only in a handful of cases was there evidence that those measures were not justified. On the other hand, many of the smallest Members lacked the capacity to set operational systems to adopt and implement technical regulations and sanitary and phytosanitary measures. This created an important lacuna both in terms of protecting domestic consumers and propping up local producers and exporters.

9. Significant changes were made as well to the systems of intellectual property protection in practically all Members in the Americas; in several of them changes fell short of multilateral requirements, while in others they went beyond. Members appeared to have often chosen divergent solutions to similar intellectual property matters without public analyses of their effects on innovation, creativity or on consumers.

10. In addition to tariffs and other border measures, domestic producers were assisted through a plethora of government assistance schemes. In particular, all Members in the Americas made export assistance a pillar of their trade policies. Government assistance took many different forms, including free trade zones, direct subsidies, tax concessions, trade-distorting investment measures and discriminatory government procurement practices. Some assistance schemes were made contingent on exportation. The numerous assistance schemes that appeared over time were characterized by a lack of unity in the criteria used to assign and apply them. More often than not, this reflected a lack of proper assessment of the economy-wide effects of assistance schemes. Furthermore, when they were made, negative assessments of such schemes did not always suffice to prevent interest groups from preserving their privileges during extensive periods.

11. The review period also witnessed enormous changes in the services sectors of Members in the Americas. In many instances changes were triggered by the privatization of state-owned enterprises and the opening of the investment regime to foreign capital, and continued to be driven by technological change and the rapid evolution of global markets. Throughout the continent, the services sector was a key magnet of investment and a major engine of growth. This was aided by the numerous reforms carried out by most Members to modernize and complete their regulatory frameworks. However, these reforms usually proved more complex than in the goods area, and sometimes resulted in costly errors due to ill thought-out regulations and institutional weaknesses.

12. Financial services proved particularly difficult to regulate, leading to systemic banking failures that were at the root of several major economic crises; however, lessons were generally learned and the financial systems of most Members proved resilient to the breakdown of the U.S. financial system in 2007. The electricity and telecommunications sectors faced the difficult challenge of meeting rapidly growing demand. The significant steps taken to deregulate the two sectors helped attract investment, particularly in telecommunications, but were often accompanied by insufficient market competition. In comparison, the pace of change was slow in domestic transportation and professional services, which remained largely insulated from international competition.

13. Liberalization over the review period affecting trade in both goods and services meant that the commitments made during the Uruguay Round negotiation had fallen well short of the more liberal trade regimes in force by 2009. As a result, most Members in the Americas now have the space to raise trade and investment barriers without violating multilateral rules. This represents a Sword of Damocles dangling over trade in the continent, and globally. The examples of policy backtracking recorded during the review period demonstrate that this is not only a hypothetical threat. Moreover, the experiences since 1995 suggest that certain multilateral rules and procedures could be improved. Thus, the pressing need to conclude the Doha Development Agenda in order to lock in for the future the considerable trade policy liberalization achieved during past years, and to strengthen the multilateral trading system.

A. INTRODUCTION

14. The Trade Policy Review Mechanism (TPRM) is the main transparency instrument of the World Trade Organization. The TPRM was established at the Montreal Mid-Term Review of the Uruguay Round in 1989. Subsequently, the Marrakesh Agreement placed the TPRM on a permanent footing as one of WTO's basic functions, and broadened its mandate from goods to intellectual property and trade in services.

15. Annex 3 of the Marrakesh Agreement defines the objectives of the TPRM as contributing to the smoother functioning of the multilateral trading system by achieving greater transparency in, and understanding of, the trade policies and practices of Members. These objectives emphasize the role of the TPRM both as a device to describe trade-related measures, and as an analytical tool to evaluate the effects of those measures. In this manner, the TPRM complements the long-standing obligations that WTO Members have to notify and publish information, and which have been one of the pillars of the multilateral trading system since the establishment of the GATT in 1947.

16. Between the first Trade Policy Review meeting in December 1989 and end 2009, the WTO conducted 305 Trade Policy Reviews, at 224 meetings. The Reviews conducted over these two decades covered 136 of 153 WTO Members, representing some 97% of the share of world trade. At 87 different meetings, those Reviews assessed the trade policies and practices of all 34 WTO Members in the Americas except Cuba, which has never subjected itself to a Review.[2] Most Members in the Americas were reviewed more than once according to the cycles of two, four or six years defined in Annex 3 of the Marrakesh Agreement.

17. The TPRM provided WTO's full membership with a front-row seat to trade policy developments in individual Members. In particular, the reports prepared by the WTO Secretariat for the Trade Policy Reviews of individual Members contained a wealth of information that, when assembled together, provides a comprehensive picture of developments across Members in the Americas. Moreover, the repeated review of individual Members following pre-determined cycles means that the Secretariat reports make it also possible to build up a narrative of trade policy developments over time.

18. Part B of this paper summarizes the main findings and lessons that can be drawn from the cross-country and multi-time information and observations contained in the Secretariat reports prepared for the WTO Members in the Americas over 1989-2009. This part is organized in eight sections corresponding each to one of the following general policy areas: trade and the macroeconomy, trade and the legal framework, tariffs and other price based measures affecting imports, other measures affecting imports, assistance to production and exports, other measures affecting trade, sectoral policies in non service activities, and sectoral policies in service activities.

19. Part C of the paper is divided in three sections covering trade policy developments in the United States, Canada, and Latin America and the Caribbean. These three sections provide support for the findings and lessons in the first part of the paper. They also highlight the great diversity of challenges and policy solutions implemented across countries and over time and based on the information contained in the close to 90 reports prepared by the WTO Secretariat for the Trade Policy

[2] The WTO Members in the Americas were (number of trade policy reviews conducted over 1989-2009 between parentheses): Argentina (3), Antigua and Barbuda (2), Barbados (2), Belize (1), Bolivia (3), Brazil (5), Canada (8), Chile (4), Colombia (3), Costa Rica (3), Cuba (0), Dominica (2), Dominican Republic (3), Ecuador (1), El Salvador (2), Guatemala (2), Grenada (2), Guyana (2), Haiti (1), Honduras (1), Jamaica (2) , Mexico (4), Nicaragua (2), Panama (1), Paraguay (2), Peru (3), St. Kitts and Nevis (2), St. Lucia (2), St. Vincent and Grenadines (2), Suriname (1), Trinidad and Tobago (2), United States (9), Uruguay (3), and Venezuela (2).

Reviews covered in this paper. Each of the three sections in Part C is divided in sub-sections, each in turn organized along the same general lines as part B.

20. In the rest of the paper, the terms "Members" and "countries" are used to refer exclusively to the 34 WTO Members in the Americas, while the term "developing Members" concerns these same Members except Canada and the United States. The period under review covers from 1989 to 2009.

B. MAIN FINDINGS AND LESSONS

1. Trade and the macroeconomy

21. **Trade played an important and increasing role in the economies of most Members.** The value of exports and imports of goods and services increased at a faster pace than GDP in practically all Members. Expanding exports generated the foreign exchange earnings that facilitated the increase of the volume and range of imported products. This, in turn, helped boost production and export capacity. Members with large natural resource bases saw their exports of primary products expand rapidly, with China emerging as a key destination; China's importance as a supplier of manufactured products also rose.

22. **Trade liberalization has been part and parcel of improved macroeconomic management, and an awareness of mutual interdependencies.** Most Members successfully dealt with former internal and external economic imbalances, which in turn decreased the pressure on government to introduced trade measures to curb imports. Most members showed great restraint in erecting trade barriers during the various economic slowdowns experienced during the review period, in particular the global crisis that started in 2007. This probably reflected in good part the improved macroeconomic management that became entrenched in most Members.

23. **Investment liberalization was a key complement of trade opening.** Members sought to formulate trade and investment policies in concert, complementing the opening of trade with the liberalization of the investment regime. Reflecting this, foreign capital inflows played a key role in maintaining external balances and supporting structural changes in most Members. Nevertheless, in practically all Members restrictions to the participation of foreign investment persisted in areas considered as sensitive.

2. Legal and institutional framework

24. **Trade liberalization came hand-in-hand with internal reforms, and was given additional impetus by international initiatives**. Trade liberalization was part of autonomous efforts to promote structural reforms, with multilateral and preferential liberalization initiatives adding impetus and an external anchor to those efforts. The conclusion of the Uruguay Round drove many operational improvements during the first half of the review period, although in several cases the earlier emphasis on autonomous liberalization meant that the Uruguay Round largely consolidated the basic trade regimes already in place. In practically all Members the commitments made during the Uruguay Round contributed to the stability of trade policies and practices.

25. **The largest Members participated actively in the multilateral trading system, which was generally effective in disciplining their trade policies.** While all Members took the multilateral trading system as an overall reference framework for their trade relations, only the largest countries had the resources to participate actively in the system's whole range of activities. The WTO dispute settlement mechanism was also instrumental in disciplining the trade policies of the largest Members, with successful challenges of WTO-inconsistent trade measures generally leading to their revision, although with some exceptions and considerable delays.

26. **Trade policy formulation and administration in the smallest Members was subject to significant institutional limitations.** The smallest countries in the Caribbean and Central America were subject to particularly significant human, technical, and financial constraints. This contributed in some cases to a slow pace of implementation of trade-related international commitments, to a poor record of notifications to the WTO and, more generally, to a limited participation in the multilateral trading system. On the other hand, the smallest Members face only a few legal challenges to their

trade policies, and were able to maintain measures that, on the face of it, were out of line with multilateral rules.

27. **Most Members coalesced into regional trading blocks within which they formulated and implemented their trade policies.** Most Members took part in one of four regional blocks: the Andean Community (CAN), the Central American Common Market (CACM), the Caribbean Community (CARICOM), and the Southern Common Market (MERCOSUR). Each of these blocks sought to form a customs union and, eventually, a common market. By and large, these efforts fell well short of those objectives. Nevertheless, the four blocks became the main focus of their members' efforts and resources in the trade area. They also contributed to the stability of national trade policies while providing a useful lever to the limited public administration of the smaller Members.

28. **In parallel, developing Members gave priority to concluding preferential agreements with developed trading partners.** In the context of its participation in the North American Free Trade Agreement (NAFTA), in force since 1994, Mexico achieved a degree of physical and economic integration with its northern neighbours unmatched elsewhere in the continent. This in spite of NAFTA providing for far looser trade arrangements than other trading blocks in the Americas. In search of similar complementarities and market access security, other developing Members subsequently gave priority to also concluding preferential trade agreements with the European Union and the United States, their main two trading partners for many of them.

29. **There was a surge in the number of other preferential trade agreements but their actual benefits remained uncertain.** Many Members, notably Chile and Mexico, put together extensive networks of bilateral preferential trade agreements. This reflected in part the view that the multilateral system afforded fewer opportunities for advancing liberalization at the required pace and depth. In general, the growing number of preferential agreements did not seem to have been at the expense of unilateral or multilateral liberalization. However, preferential agreements did place a considerable burden on national administrations which, particularly in the smallest Members, compounded the implementation of WTO Agreements. Moreover, the negotiation and implementation of preferential agreements were often characterized by limited transparency, with insufficient information made public about their potential or actual economic benefits.

30. **Unilateral trade preferences offered by developed Members proved less attractive than reciprocal preferential agreements.** Canada and the United States offered unilateral preferences in favour of developing Members under various programmes. As the United States was the world's largest importer, U.S. preferences proved particularly valuable but were also perceived as somewhat unpredictable because of the conditionalities attached to them. Thus, developing Members sought to replace them with mutually binding preferential agreements, through which they secured legally binding access to the U.S. market in exchange for opening their own markets to U.S. products.

31. **International trade commitments and an awareness of mutual interdependencies helped resist protectionist pressures.** The legally binding nature of multilateral and preferential agreements no doubt buttressed Members ability to resist calls for adopting protectionist measures during the various economic crises that affected them, notably the global financial crisis that started in 2007. However, the few instances of backtracking that did take place demonstrated that international commitments could be evaded, particularly in the short run, on account of the lengthy and costly proceedings usually required to enforce trade agreements. Thus, the general rejection of protectionist measures was also explained by a mounting awareness in most Members of the need to be trustworthy partners in an increasingly interdependent global economy.

32. **The formulation and implementation of trade policies became considerably more transparent.** Canada and the United States historically formulated and implemented trade policies in a transparent manner, insofar as information about trade policies was, by and large, readily available.

Most other Members made remarkable progress in this same direction, considerably improving public access to trade-related information. The development of the Internet played a particularly useful role in this respect. Also of help to access information was the fact that the national language of almost all Members corresponded to one of the three WTO official languages. Transparency was also enhanced through the regular participation of countries in Trade Policy Reviews, with the notable exception of Cuba which has never subjected itself to a Review.

33. **However, active transparency was in the main underused.** Most Members made little or no use of the concept of active transparency, in the sense that they did not maintain mechanisms to analyse data with a view to informing public debates on trade-related policies. In particular, the economy-wide effects of policy changes were seldom subject to quantitative assessments, followed by public examination. Moreover, even when such examination took place, political considerations meant that at times the interest of particular groups prevailed over broader objectives. Hence, the lack of active transparency mechanisms, and low trade-literacy levels among the general public, explained in part most Members having maintained at least some trade policies that undermined the national economic interest.

3. Tariffs and other price-based measures affecting imports

34. **Tariffs came down and then steadied at levels that in general provided moderate protection.** The simple average tariff rates came considerably down before or during the earlier years of the review period as a result of autonomous tariff reductions, except in Canada and the United States where tariff reductions were mostly linked to Uruguay Round commitments. However, tariffs were mostly steady in recent years, with average applied MFN tariffs typically remaining between 6% and 12%. This range seemed to correspond to a "comfort zone" that offered protection to domestic producers while avoiding imposing excessive costs on consumers. Members have not move from this zone except as a result of preferential trade negotiations. On the other hand, some Members did temporarily increase the overall level of tariff protection, while others rose import duties on specific products.

35. **The highest and least transparent forms of tariff protection often apply to agricultural products.** This feature was intensified by the tariff peaks resulting from the process of tariffication agreed during the Uruguay Round. The related tariff-quotas regimes maintained by some Members added complexity and reduced transparency, and in some cases amounted to de facto quantitative restrictions. In the few cases when Members use non-*ad valorem* tariffs, these were often applied to agricultural products. The price band mechanisms applied by several developing Members to certain agricultural products, whereby tariffs vary inversely with world commodity prices, may well have helped stabilize domestic prices but also reduced predictability to importers.

36. **Comprehensive tariff bindings helped discipline tariff increases but high bound rates lessened their effectiveness.** Most Members accepted to increase their levels of tariff bindings as a result of the conclusion of the Uruguay Round. The resulting high degree of tariff bindings provided an important element of security for traders, particularly in Canada and the United States where tariffs were bound at low levels. Developing Members, however, bound the vast majority of tariffs at rates substantially higher than applied levels; a number of them used this gap in practice to tighten market access without violating multilateral rules.

37. **Other charges and internal taxes occasionally constituted additional import barriers.** Apart from tariffs, a number of Members applied other charges exclusively on imports. Moreover, in some Members imports were not granted national treatment for the application of internal taxes. Those practices provided further protection to the domestic producers of the goods affected, although it was not always clear that this was their intended objective.

38. **Antidumping (AD) measures remained a key trade policy instrument to protect domestic producers against "unfair" import competition in the largest Members.** During most of the review period the largest trading countries made active use of AD measures, with few other Members adopting these measures in later years. In recent years, a growing number of AD measures were applied to products from China, reflecting both the growing volume of imports from this country, and Members' concerns about Chinese products competing unfairly against locally-made goods.

39. **AD measures appear to have replaced other trade barriers proscribed after the Uruguay Round.** The use of AD measures was often linked to the business cycle, with the number of AD investigations initiated generally increasing during economic slowdowns when calls for protection rose. Recourse to AD measures also generated uncertainty for exporters in foreign countries, with the initiation of an AD investigation in itself chilling trade because of the considerable legal costs incurred by traders in defending cases. Moreover, some of the procedures used in practice to adopt AD measures remained controversial, and Members' AD measures were regularly challenged under WTO dispute settlement procedures.

40. **Other types of contingency measures were used by only a handful of Members, with safeguards proving difficult to apply.** Only a few countries made use of countervailing or safeguard measures to protect domestic producers facing difficulties to compete with imported goods. Most Members found it difficult to apply safeguard measures in a WTO-consistent manner, with various WTO Panels finding against aspects of their application in several cases.

41. **Contingency measures were not applied by most of the smallest Members for lack of institutional capacity.** Several Members, particularly the smallest ones, never made recourse to contingency measures. In fact a number of them had no contingency legislation in force, or had it but had not established the institutional framework necessary for its application. They were thus unable to protect their domestic producers through the use of contingency measures, some making recourse instead to other trade barriers like high tariffs and import licensing.

4. Other measures affecting imports

42. **Practically all Members rationalized and modernized their trade procedures, taking numerous steps to facilitate trade.** This apparently offset the increased costs associated with new security-related procedures adopted in the aftermath of the 11 September 2001 attacks, particularly in the United States. However, some Members, especially in the Caribbean, had problems implementing the WTO Agreement on Customs Valuation, the valuation of used products proving particularly difficult.

43. **Import licensing remained a potential or actual trade barrier in many Members.** Some of them continued to subject the majority of imports to licensing requirements, although after 1995 most eliminated the systematic use of these requirements in a restrictive manner. However, a number of Members, particularly in the Caribbean, applied import licensing to protect certain domestic agricultural activities, substantially delaying or even forgoing the tariffication process of quantitative restrictions agreed during the Uruguay Round.

44. **Some Members also maintained import prohibitions for economic reasons.** Second-hand automobiles and other used goods were among the goods more often targeted by this type of prohibitions. In several cases such prohibitions were the vestiges of import substitution policies, having been initially introduced as explicit components of these policies. Such import prohibitions were subsequently justified as necessary to protect consumers or the environment. The fact that this could have been achieved in a much less trade restrictive manner through the use of technical

regulations suggests that in some cases import prohibitions remained in place because tariffs at bound rates did not suffice to protect domestic producers against competing imports.

45. **Many Members made quantum leap improvements in the application of technical regulations and sanitary and phytosanitary (SPS) measures, although concerns persisted.** The WTO Agreements were instrumental in inducing Members to improve their systems to develop and administer technical regulations and SPS measures. In the largest Members, numerous new technical regulations and SPS measures, covering hundreds of products, came into force since 1995. At the same time, there was little evidence of Members systematically using technical regulations or SPS measures as unnecessary barriers to trade, although in practice certain regulations and measures severely limited import sources for health and safety-related reasons. As a result, certain technical regulations and SPS measures proved controversial, with a few leading to the establishment of WTO Panels.

46. **However, many smaller Members were largely unable to set operational systems to adopt and implement technical regulations and SPS measures.** This was particularly true of countries in the Caribbean and Central America. In general, technical regulations and SPS measures constitute an area in which human resources constraints proved especially limiting for small countries, many of which found it difficult to set up and implement the systems envisaged by the WTO agreements. Moreover, most developing Members found it challenging to enforce their technical regulations and SPS measures, to the extent that they exist. These shortcomings undermined the ability of several Members to protect their consumers, or prop their producers and exporters by helping them to improve quality standards.

5. Assistance to production and exports

47. **The use of assistance schemes was widespread even though their economic rationale was seldom properly ascertained.** Even some of the smallest Member maintained a wide variety of programmes to assist exporters and other domestic producers. More often than not those programmes were formulated under pressure from special interest groups or responded to short-term difficulties, which resulted in a lack of unity in the criteria used to assign and apply support instruments. The fiscal cost of some such programmes was also high, and their cost effectiveness questioned in the few cases where studies were carried out. Even when studies demonstrated the overall negative impact of targeted assistance, certain exporters and producers managed to obtain or preserved their privileges thanks to the limited economic and trade literacy among the general public, as already mentioned.

48. **Assistance schemes took numerous forms, including trade-distorting investment measures.** Members provided assistance through a wide range of fiscal and other incentives in support of regional development, R&D or micro, small and medium-size enterprises. Especially in the larger Members, official credit programmes were made available, sometimes resulting in subsidies to specific sectors particularly agriculture. Some Members also used trade-distorting investment measures, including making official assistance schemes conditional on the beneficiaries meeting minimum local content or value added requirements.

49. **All Members made export assistance a pillar of their trade policies.** Measures used to support exports included various types of drawback systems, some of which also provided export subsidies. Canada and the United States granted export subsidies to certain agricultural products. Several Members also assisted exporters by supplying official export finance, guarantees and/or insurance services, some found to be WTO-inconsistent. However, most of these types of export assistance were the preserve of the larger Members, with others seldom if ever able to afford them in view of their institutional and/or fiscal constraints.

50. **Several Members assisted exporters through the application of special trade regimes in free-trade zones (FTZ), with very mixed results.** Those regimes were deemed necessary to offset the anti-export bias inherent in many trade regimes, as well as poor infrastructure and other economic inefficiencies. This was particularly the case in Caribbean and Central American countries, whose FTZ regimes provided tariff and other tax breaks that in some cases resulted in subsidies prohibited under multilateral rules. Using the transition periods successively granted by WTO Members, some of those countries adopted subsidy-free export regimes during the review period while others were still to take concrete steps to do so. The process of dismantling tax breaks proved protracted as FTZ firms strove to preserve their privileges in order to remain economically viable in the face of increasing competition in global markets.

51. **Members radically curtailed their use of export restrictions, although with important exceptions.** Most Members abolished the regular use of quantitative export controls although a few made occasional use of them. Some Members also used export taxes, although generally levied these taxes on only a few products. The exception was Argentina where export taxes were levied on a wide range of agricultural and other primary products. As intended, these taxes and other restrictions curbed the flow of Argentinean products into world markets and, thus, kept domestic prices below world levels. This, in turn, had the effect of assisting manufacturers and exporters of processed products.

6. Other measures affecting trade

52. **Members initially implemented ambitious privatization programmes, but these slowed down considerably in recent years.** Many Members reduced considerably the involvement of state trading enterprises and government-owned companies in production activities through the privatization of state-owned enterprises. However, reflecting a policy decision that government control is appropriate to accomplish strategic objectives, in some countries privatization never touched some of the most important sectors of the economy. Moreover, in recent years the privatization process slowed down, came to a standstill or was even reversed.

53. **Members gave mounting importance to competition policy but its implementation remained a challenge.** Privatization and a greater reliance on market mechanisms made competition laws increasingly important, and placed greater demands on the agencies responsible for their administration. Despite the progress made, the effective implementation of competition policy and raising the levels of competition remained among the most difficult challenges for government policy in most developing Members, where market concentration tends to be high.

54. **Members improved considerably their government procurement systems although several contained restrictions aimed at favouring domestic producers.** Most Members implemented significant reforms to modernize their procurement processes, and to increase the transparency and efficiency of their public procurement regimes. However, several of them also maintained trade restrictive measures as part of those regimes in an attempt to support local producers. Domestic preferences were also granted by Canada and the United States, the two only Members signatories to the WTO Plurilateral Agreement on Government Procurement. Although domestic preferences assisted the targeted local activities, they also raised the cost of government procurement.

55. **Members modified their systems of intellectual property protection (IPR) to various degrees, in some cases falling short of multilateral requirements.** The conclusion of the Uruguay Round and the entry into force of the TRIPS Agreement required changing the system of intellectual property protection in most Members. However, in various of the smallest Members the necessary legislative modifications were extremely slow or simply not made and, hence, the terms and scope of

IPR protection remained less favourable than those in the TRIPS Agreement. Most developing Members also found it difficult to enforce their IPR regulations.

56. **On the contrary, the IPR legislation of some Members was TRIPS-plus but the justification for this was often not clear.** For example, using the flexibilities provided by the TRIPS Agreement some Members decided not to limit parallel import of products protected by copyrights while banning parallel imports in the case of patents; in contrast, others Members banned the first but allowed the second. There was little record of the assessments undertaken by Members to reach divergent solutions on these and other IPR issues. In this respect, the IPR area was one of the least transparent in terms of the balance reached between the interests of consumers and producers.

7. Sectoral policies: non-service sectors

57. **Practically all Members maintained a range of border and internal measures to support the agricultural sector, although some were highly competitive in world markets.** In the smallest Members in the Caribbean these measures resulted in high cost agricultural sectors largely isolated from international markets; the same is true of a handful of agricultural activities in larger Members. On the other hand, several Members were competitive, export-oriented agricultural producers; as a result, domestic support in these Members could have distorted world markets even if such support remained below WTO commitments, and below the support granted by producers in other continents.

58. **Trade liberalization led to major structural changes in the agricultural sector of several Members.** This was the result in particular of liberalization under preferential agreements, which encouraged the expansion of export-oriented activities while placing import-competing activities under strong pressure from imports. In addition, significant changes in the agricultural sectors of various Members were also linked to the rulings by WTO Panel on bananas and sugar.

59. **Import-substitution industrialization was largely abandoned, although strong echoes of it persisted in several Members.** In particular, the tariff structure of most Members continued to favour the manufacturing sector through tariff escalation. Especially in the largest Members, the manufacturing sector was also supported through the use of contingency measures and sectoral assistance programmes. Despite of this, many Members, particularly in the Caribbean, saw the contribution of manufacturing to GDP contract. Trade liberalization on a preferential basis also proved a major challenge to manufacturers in many Members, as did the dismantling of quotas under the WTO Agreement on Textile and Clothing.

60. **The automotive industry was a particular target of assistance in the largest Members, with some success.** Parts producers and assemblers benefited from both border and internal measures. In part thanks to this assistance the largest Members developed or held on to sizable and generally competitive automotive industries, although at a cost to consumers and taxpayers. On the other hand, the significant assistance also granted to the auto industry by some other Members met with little or no success.

61. **The electricity sector faced problems in several Members, sometimes hindering economic activity.** The electricity sector's difficulties often arose from the poor sequencing of the privatization of state-owned incumbents and the establishment of an effective regulatory framework. This resulted in high tariffs or necessitated widespread subsidies, generated uncertainty for private operators and, thus, led to insufficient investment in power-generating capacity.

8. Sectoral policies: service activities

62. **The services sector underwent major regulatory and structural changes, which rippled throughout the rest of the economy.** Services were the largest and fastest growing sector in

practically all Members. Most Members made significant efforts to liberalize foreign investment and strengthen the regulatory framework in key service activities, with foreign participation and market competition increasing in many of them. Additional stimuli were provided by competitive pressures arising from liberalization under preferential agreements. The progress made throughout the services sector was essential to support economic growth in all Members. By the same token, when inefficiencies arose in the supply of services, economic development suffered.

63. **GATS commitments varied widely in number and quality across Members, while their effect on investment flows was unclear.** In most Members GATS commitments bound policies in place at the time of the negotiations and not the more liberal regimes in force during most of the review period. Moreover, in many of the smaller Members most service activities were not covered by GATS commitments at all. As a result, a wide gap existed between GATS commitments and the actual legal framework governing service activities. However, there was little empirical evidence on whether or to what extent such gap actually discouraged investment flows.

64. **Financial services proved particularly difficult to regulate, and were at the root of major economic crises in several Members.** Macroeconomic instability and supervisory failings led to costly crises in the banking systems of a number of Members. In the wake of these crises, several Members reformed the legal framework governing financial sectors, which allowed banks to weathered well the global financial crisis that started in 2007. A prominent exception was of course the United States, where the sub-prime mortgage turmoil led to a serious crisis in the financial system. This notwithstanding the U.S. financial system being among the less restrictive and, arguably, the most innovative and sophisticated in the continent. In a few other Members high interest rates represented a hindrance to other economic sectors, and helped to explain many instances of targeted assistance through the use of subsidized official credit.

65. **The telecommunications sector was exceptionally dynamic, but also faced regulatory problems.** The sector was one of the fastest growing in practically all Members, and among the largest magnets for foreign investment. The latter was greatly encouraged by the privatization of previously state-controlled companies. However, in several Members this process often suffered from sequencing problems, with incomplete or poorly-though out regulatory arrangements creating private incumbents able to abuse their market power. This, in turn, led to high prices and interconnection problems.

66. **Relative to most other service activities, transportation services remained more insulated from international competition.** Almost all Members banned the provision by foreign suppliers of domestic services in both maritime and air transport. Despite significant investment in port and airport infrastructure, many Members made insufficient progress towards improving port productivity and reducing tariffs. This possibly reflected the still widespread public ownership of seaports and airports, and the State's limited capacity to provide the management expertise and large-scale investments necessary to make greater progress.

67. **Trade in professional services was limited by wide differences in Members' regulatory frameworks.** The legal frameworks governing the exercise of professions services varied enormously across Members, with large differences in the specificity of laws, type of professions regulated, and the restrictions applied to foreign suppliers. Moreover, in many Members the relevant legal and institutional frameworks were fragmented across professions and geographically, and information on the conditions under which foreigners may supply services difficult to obtain. In many Members, these features complicated considerably market entry for foreign professionals.

C. TRADE POLICY DEVELOPMENTS, 1989-2009

1. United States

(a) Economic environment

68. Since its first Trade Policy Review in 1989, the United States has remained the world's largest single economy in terms of GDP and the world's largest import market for both goods and services. As such, the trade policies of the United States were under close and regular scrutiny by its trading partners, WTO Members having conducted nine Trade Policy Reviews of the United States between 1989 and 2009. U.S. trade policies had a significant impact on the economies of many WTO Members in the Americas, with the United States constituting the largest single trading partner of most of them.

69. The U.S. share in global trade in goods and services fell from about 14% in 1989 to 11% in 2008 (the latest year available), reflecting the greater dynamism of global trade flows as a whole during this period.[3] On the other hand, the importance of international trade to the United States steadily increased, the ratio of U.S. exports and imports of goods and services to GDP having increased from 20% in 1989 to about 30% in 2008; the ratio fell to some 25% in 2009 in the context of the global economic slowdown.[4] Expanding U.S. imports provided ample export opportunities for U.S. trading partners, with the United States having remained the world's "importer of last resort" during much of the review period. The United States was also the world's largest exporter of goods until 2002, occupying the second place during 2003-2006, and moving to the third position thereafter.

70. Although the United States recorded a continuous and significant surplus in trade in services, the persistent gap between merchandise imports and exports resulted in recurrent trade and current account deficits. Current account deficits peaked at the equivalent of some 6% of GDP in 2006, and were financed by large inflows of foreign capital. These deficits, together with problems of sectoral adjustment, at times created the perception in the United States that its efforts to keep its market open were not matched by corresponding efforts on the part of major trading partners. The resulting pressures for protection were often directed against high-saving countries with which the U.S. bilateral deficits were the greatest, notably against Japan during the early part of the review period and China during recent years. This led to sporadic pressure in the United States for the authorities to implement unilateral measures to both curb imports and move to further open foreign markets to U.S. exporters.

(b) Legal and institutional framework

71. For the most part, the United States maintained one of the most liberal trading and investment regimes in the world over 1989-2009. Moreover, policies, practices and measures relating to trade and investment were, by and large, characterized by a high degree of transparency. In this regard, not only did the United States usually make information readily available on the objectives and nature of its policy measures, but various independent bodies frequently evaluated the economic effects of such measures.

72. Reflecting both its large size and strong commitment to the multilateral system, the United States was instrumental in shaping the GATT/WTO. In particular, the United States played a major role in bringing the Uruguay Round to a successful conclusion. This resulted in the overhaul of various U.S. trade policies and practices that had previously been the object of complaints and

[3] Estimates based on World Bank (2010).
[4] Ratios based on IMF (2010).

disputes with trading partners. The U.S. application of the WTO Agreements also helped stabilized many elements that previously appeared unpredictable and unilateralist in U.S. policy.

73. The United States also participated in the post-Uruguay Round negotiations on telecommunications and financial services, as well as in the negotiations leading to the Information Technology Agreement (ITA) tariff reductions. In the DDA negotiations, the United States has made contributions or proposals in the majority of trade topics under discussion.

74. The United States maintained a very active role in the GATT dispute settlement procedures both as complainant and as a party complained against. In the great majority of the 27 cases brought against the United States under the GATT and dealt with in Panels, the United States accepted the adoption of the Panel report even when the finding was against it. The United States actively pursued efforts to bring about improvements in the GATT dispute settlement procedures, and subsequently became the most intensive user of the WTO dispute settlement mechanism. Between 1995 and 2009, the United States was involved in 278 dispute settlement cases: 108 as a respondent, 93 as a complainant, and 77 as a third party. The United States implemented most WTO rulings calling for changes to U.S. legislation although a few had not been fully implemented by end 2009.

75. At the start of the review period the United States was an avowed supporter of the MFN principle and was opposed to discriminatory trade policies. Thus, as at 1989 the United States had preferential trade agreements with only two countries, Canada and Israel, adding in 1994 an agreement with Mexico. In the early 2000s, as the negotiations for the Free Trade Area of the Americas stalled, the United States started working more actively on bilateral preferential agreements, seeking to create a climate for "competitive liberalization". As a result, the United States increased to 17 the number of partners with which it had preferential trade agreements in force in 2009.[5] However, the pace of negotiation of preferential trade agreements by the United States had decreased drastically by the end of the review period.

76. The first and most important preferential trade agreement concluded by the United States during the review period was the North American Free Trade Agreement (NAFTA) with Canada and Mexico. This Agreement comprehensibly liberalized trade with Mexico while consolidating the free trade conditions established by the previous preferential agreement with Canada. Some 28% of all U.S. merchandise trade took place with the two other NAFTA members in 2009; excluding the NAFTA, all the other preferential partners accounted for only around 6% of total U.S. trade.

77. U.S. unilateral preferences in favour of developing countries were considerably enlarged during the review period. Specifically, the United States expanded the Caribbean Basin Economic Recovery Act through the Caribbean Basin Trade Partnership Act in 2000, enacted the African Growth and Opportunity Act that same year, and adopted the Andean Trade Preference Act (ATPA) in 2001. Given that these three schemes offered preferential access to only a selected number of countries, the United States requested and obtained special waivers from WTO to maintain them. Throughout the review period, the United States also offered unilateral preferences under its GSP.

78. The United States made its unilateral preferences conditional to beneficiary countries maintaining certain policies in areas such as protection of labour rights, fight against drug traffic and protection of intellectual property. The United States regularly conducted reviews to verify compliance with its criteria in those areas, and withdrew trade preferences to countries it deemed did not meet them. For example, concerning the GSP scheme, five countries were under suspension at the

[5] At end 2009, the United States had preferential trade agreements in force with Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru and Singapore; at that time, there were also three preferential trade agreements under Congressional consideration, with Colombia, Korea and Panama.

start of the review period, while nine were under review in 2009. Bolivia was suspends as an ATPA beneficiary in 2008. Moreover, under the GSP, "competitive need limitations" required the termination of a country's eligibility with respect to a specific product if U.S. imports from that country exceeded a certain threshold.

79. By their own nature, U.S. unilateral preferences lacked the security provided by legally binding trade agreements. This helped to explain the large number of developing countries that signed preferential agreements with the United States during the review period despite already enjoying preferential access to the U.S. market and having to open their own markets to U.S. products.

80. During the first part of the review period, "fast-track" authority brought greater predictability to trade negotiations involving the United States. Under that authority, the U.S. Congress, when considering legislation for a new trade agreement, could approve or reject the legislation but had to do so without amendment and within a fixed period. Without such authority the resumption of the Uruguay Round negotiations would have probably faced serious difficulties. Fast-track authority was succeeded by the Trade Promotion Authority (TPA) in 2002. TPA expired in July 2007 and had not been renewed by the end of the review period.

81. The United States has long maintained a policy of granting national treatment to foreign direct investment. Aside from those described below in the services sectors, restrictions on foreign direct investment were maintained in energy, mining and fisheries. A few restrictions to national treatment applied in areas such as official support programmes. Also in a limited number of cases, foreign direct investment was subject to reporting requirements or review to take account of national security concerns. After 11 September 2001, security-related issues were given heightened consideration in the review of foreign acquisition; in this context, revisions were made in 2007 to the process by which the national security implications of certain foreign direct investments were reviewed.

(c) Measures directly affecting imports

82. Except in certain areas considered as sensitive, U.S. tariffs have remained low. The simple average applied MFN tariff was 4.8.% in 2009, down from 7.0% in 1989. U.S. commitments under the Uruguay Round implied a trade-weighted tariff reduction of some 35%, with some exceptions. Otherwise, tariffs have remained largely stable, with variations mainly due to temporary tariff cuts and changes in the ad valorem equivalent of non-*ad valorem* tariffs. High tariffs, frequently specific or compound, protected certain product groups.[6]

83. Applied tariffs on agricultural products have continued to be higher than on non-agricultural products, with the simple averages standing at 8.9% and 4.0%, respectively, in 2009. After the establishment of WTO, high out-of-quota tariffs became one of the main forms of import protection for certain agricultural products. For agricultural products subject to non-ad valorem tariffs, protection increased when import prices decline and vice versa.

84. The United States bound all except two tariff lines, generally at low rates. Even before the conclusion of the Uruguay Round the United States had accepted a high degree of tariff bindings, thus enhancing the predictability of its import regime.

85. During the early part of the review period, the United States maintained quantitative restrictions on certain agricultural products, which were converted to tariffs and tariff quotas at the

[6] Tobacco, peanuts, sugar, dairy and certain other agricultural and food products, footwear, textiles, clothing and steel were among the products that enjoyed high levels of protection throughout the review period.

end of the Uruguay Round. The United States also imposed quantitative restrictions on imports of textiles and clothing under bilateral agreements concluded within the framework of the Multifibre Arrangement. As a result of the Uruguay Round, the United States agreed to eliminate these latter restrictions over a ten year period. During this transition period, the United States maintained country specific import quotas under the WTO Agreement on Textiles and Clothing. As provided in this Agreement, such restrictions were abolished at end 2004.

86. Before the conclusion of the Uruguay Round, U.S. trade policies moved on occasions towards "managed" trade through the negotiation of voluntary export restraints (VERs), which the United States saw as less detrimental than import restrictions. Under VERs, U.S. trading partners agreed to restrain their exports to the U.S. market of passenger cars, specialty steel, machine tools, and a handful of agricultural products. There were also industry-to-industry agreements with Japan providing for auto component and semiconductors to be sourced from the United states. VERs were phased out as part of the implementation of the Uruguay Round Agreement.

87. During part of the review period Canada and the United States maintained an agreement for the first to imposed export duties on some softwood lumber destined to the second. This followed a finding by the United States that Canadian stumpage programmes and practices constituted subsidies.

88. The United States terminated in 1989 the last safeguard measures it adopted under the GATT. After the conclusion of the Uruguay Round, the United States applied safeguard measures on broom corn brooms in 1996, wheat gluten in 1998, lamb meat in 1999, steel-related products in 2000, and ten steel products and 2002. Although the number of measures remained limited, the safeguard impose in 2002 was broad in scope. All cases in which safeguard measures were applied by the United States after 1995 were subsequently challenged in the WTO. Four cases led to Panel reports, all finding inconsistencies in the application of the measures.

89. A number of U.S. safeguard measures have targeted exclusively certain imports from China. Under the safeguard mechanism for textiles and clothing contained in the Report of the Working Party on the Accession of China, the United States applied transitional safeguards on certain textiles and clothing products from China in 2003, 2004. and 2005. Moreover, at the end of 2005, in the context of the same mechanism, the United States reached a bilateral understanding with China concerning the application of safeguard measures on certain textile and clothing products for 2006-08.

90. U.S. industries have been active petitioners of anti-dumping (AD) and countervailing duty actions (CV). As a result, contingency measures were amongst the most important and controversial trade policy instruments used by the United States during the review period.

91. A characteristic of U.S. contingency measures was that AD investigations were often accompanied by CV investigations. In 2009, around 90% of the AD orders were paired with a CV duty. At end 2009, the United States maintained some 260 AD and 42 CV measures in force. Between the establishment of the WTO in 1995 and 2009, the number of new final AD duties applied fluctuated between five in 2006 and 2007 and 33 in 1995 and 2001. The annual number of new CV measures applied varied between one in 1998 and 10 in 2001 and 2002. The number of AD and CV investigations initiated tended to increase during economic slowdowns, like in 2001 and from 2007, and decrease during periods of rapid growth.

92. The frequent recourse by the United States to AD and CV measures generated uncertainty for exporters, particularly given the high proportion of initiations typically resulting in the impositions of preliminary measures. For example, between 2006 and 2008 (the most recent year for which data were available), of the 50 AD investigations initiated all but two led to the application of provisional measures. Moreover, the initiation of investigations also generated considerable legal costs to traders defending cases.

93. Some of the AD and CV duties applied since 1995 have been substantial, with AD duties and CV exceeding 300% at times. In these cases AD and CV measures could well have resulted in higher U.S. domestic prices. Although in principle temporary, contingency measures stayed in force for substantial periods, the average length of AD and CV measures in force at end 2009 having been 11 and 9 years, respectively.

94. Between 1995 and 2009, imports from 43 countries and territories were affected by AD or CV measures. Exports from developing countries, particularly China, were particularly affected: at end 2009, imports from China were subject to 32% of all AD orders, followed by the EU with 15%, and Japan with 8%. At end 2009, China also accounted for the largest number of CV duties (30% of the total), followed by India (17%) and Korea (10%). U.S. contingency measures were applied most often to iron and steel products, which accounted for about 50% of all CV and of 45% of all AD measures in force in 2009, compared with 15% and 75%, respectively, in 1995.

95. U.S. contingency measures were regularly challenged under both GATT and WTO dispute settlement procedures. Although the Uruguay Round Agreements brought about significant changes in the U.S. methods of calculation for AD and CV measures, since 1995 the United States was a respondent in 40 and 28 cases concerning AD and CV measures, respectively (including consultations). These complaints reflected in particular continuous concern over methods used to apply them.

96. Technical regulations, standards, and sanitary and phytosanitary (SPS) measures constituted also important elements of the U.S. import regime. The United States modified its procedures to comply with the new TBT and SPS Agreements adopted after the Uruguay Round, and continued to adopt new regulations in these areas seeking to facilitate trade. Nevertheless, import approval times were still lengthy, often taking several years. It was only in 2005 that the United States notified for the first time technical regulations and conformity assessment procedures proposed by sub-federal agencies.

97. Some technical regulations and SPS measures proved controversial, notably the embargoes on imports of shrimp and tuna from countries found not to be in compliance with U.S. environmental provisions. The tuna embargo was challenged under both GATT and WTO dispute settlement procedures. Other U.S. technical regulations and SPS measures challenged under dispute settlement procedures concerned gasoline, textiles and apparel products, cattle, swine, grain, meat, poultry and poultry products. Concerns were also raised about several other specific U.S. technical regulations and SPS measures without being followed by formal dispute settlement.

98. In the aftermath of the 11 September 2001 attacks, security concerns became an essential component of U.S. trade policy. Such concerns brought significant changes to U.S. import regulations, including new requirements concerning the electronic transmission of information pertaining to U.S.-bound cargo and the scanning of U.S.-bound containers before departure for the United States, registration of most food manufacturing and handling facilities, and prior notice to FDA of all food shipments destined for the United States.

99. At different times during the review period the United States also imposed trade embargoes or denied MFN treatment to various trading partners; a WTO Member, Cuba, was denied MFN treatment throughout the period. Denial of MFN treatment likely imposed significant costs on the countries affected, as the United States retains substantial differences between MFN and non-MFN tariffs. On the other hand, during the review period the United States extended unconditional MFN treatment to several additional trading partners, in particular republics of the former Soviet Union and Eastern European countries.

(d) Measures directly affecting exports

100. A recurrent theme in U.S. trade policy was the perceived need to promote exports, in particular during periods of economic slowdowns or when the current account deficit has widened. In addition to export subsidies aimed at certain agricultural products, the United States sought to promote exports through official export finance, insurance, guarantees, duty drawback and foreign trade zones schemes. The annual value of financed exports provided through the U.S. official export credit agency (Ex-Im Bank) varied, but increased considerably in 2008 and 2009 as a result of the global financial crisis.

101. In 2006, the United States repealed the "grandfathering" provisions that allowed U.S. firms to exclude certain "foreign trade" income from their taxable income for certain transactions, after the WTO found them to be prohibited subsidies.

102. The United States also carried out extensive decontrols of export restrictions during the early 1990s, following the dismissal of the Soviet Union. The ban on exports of Alaskan oil was lifted in 1995. On the other hand, the United States maintained throughout the review period a number of export restrictions and controls for national security or foreign policy purposes, or to address shortages of scarce materials. However, measures were taken to facilitate exports, for example by streamlining the administration of export licences and export controls.

103. The United States also sought to promote its exports through the application of Section 301 family of laws, and its counterparts in telecommunications, government procurement and intellectual property. These laws are aimed at monitoring foreign measures that may affect U.S. exports or impair U.S. rights under trade agreements. Before the conclusion of the Uruguay Round, concerns were frequent about the unilateralism implicit in this type of monitoring. Following the establishment of the WTO, the application of these statutes to WTO Members must conform with WTO dispute settlement provisions. Investigations under section 301 have decreased after 1995, and no sanctions were applied as a result of investigations initiated after that year.

(e) Other measures affecting trade

104. Intellectual property was an area of great commercial interest for the United States, which was a major producer of goods and services that embodied knowledge. The United States thus pursued a policy of promoting increased IPR protection, and consistently sought to advance this protection through a variety of mechanisms, including preferential trade agreements, intellectual property agreements, and memoranda of understanding.

105. The conclusion of the Uruguay Round required changes to the U.S. system of intellectual property protection in areas such as patent protection, geographic indications and copyrights. The system was also amended to comply with a GATT Panel report of 1989 concerning patents. Various other regulatory changes took place since 1995 in areas such as patents, trade marks, copyright, and enforcement. However, the United States did not implement the DSB ruling with respect to Section 211 of the U.S. Omnibus Appropriations Act of 1998, in particular the U.S. treatment of trademarks of Cuban origin.

106. In contrast with its efforts to open public procurement markets abroad, the United States maintained trade restrictive measures as part of its domestic government procurement regime. The United States was a signatory of the GATT Government Procurement Code, and also adhered to the plurilateral Government Procurement Agreement (GPA). The latter eased some of the restrictions and enhanced transparency, but foreign participation remained restricted in procurement not covered by the GPA or other international agreements. At the federal level restrictions included "Buy American" requirements under which agencies may in principle purchase only supplies and construction

materials defined as "domestic end-products". In addition, a number of preferences were in place to foster the ability of small business to compete for federal contracts and various set-aside schemes. These measures were complemented in some States by Buy-In-State or Buy American regulations, as well as preferences and set-asides.

(f) Sectoral policies

107. For the most part, the United States did not maintain special domestic support policies for specific sectors, although important exceptions included domestic support measures in agriculture, as well as incentives for the domestic production of energy. Assistance to domestic producers took the form of tax exemptions, financial outlays, and credit programmes. General support to firms and workers was granted through the Trade Adjustment Assistance programmes. In the context of specific cyclical problems during the second half of the review period, sizeable financial transfers were provided as well to air transport and financial services. As the United States was among the world's largest producers, exporters, and importers, domestic support, although not targeted at exports, probably had at times significant trade effects.

108. The agricultural sector typically was the largest beneficiary of government assistance in the United States, although assistance remained considerably below that provided in most other developed countries. During the early part of the review period, the United States justified, in part, some of its assistance programmes on the perceived need to compete with agricultural exporters in other countries benefiting from government programmes and to put pressure on those countries to reduce levels of support. Also during the early part of the review period, support to U.S. agriculture tended to increase and export subsidy programmes greatly expanded.

109. The conclusion of the Uruguay Round brought considerable changes to U.S. measures to support agricultural production, and reduced the overall level of support. Nevertheless, as for some other WTO Members, tariffication of quantitative restrictions resulted in some prohibitive duty levels. The levels of support have varied with world prices, tending to fall when prices increase, and vice versa. Overall, the levels of support to the U.S. agricultural sector declined to levels well below WTO commitments. However, payments under the counter-cyclical income support mechanism introduced in 2002 introduced distortions to market signals and may have affected trade. U.S. domestic support to agriculture has been questioned under multilateral rules; although a WTO Panel found in 2004 that support measures for upland cotton were inconsistent with multilateral rules, the measures remained unchanged by end 2009.

110. The United States played a key role in the services negotiations in the Uruguay Round; indeed, to a great extent, the efforts of U.S. negotiators and the interest of U.S. industries behind them determined the course of the negotiations in this area. The United States also played a vital role in the success of the subsequent negotiations on basic telecommunications and financial services. Many U.S. service activities underwent gradual modernization since then, including the removal of domestic restrictions to international trade; as a result, recent practice was considerably more liberal than U.S. commitments in the WTO.

111. The telecommunications sector benefited from several regulatory changes introduced since 1995 aimed, among other things, to facilitate entry into the video services market, redefine the extent to which incumbent firms are required to make elements of their network available to other carriers, new international pricing regulations to allow for more competitive domestic and international services, and the further privatization of satellite services. Although the United States retained restrictions on direct foreign ownership of radio licences, in practice, foreign firms from WTO Members may supply domestic and international services. However, in the audiovisual subsector, radio and television broadcast licences may not be owned by foreigners.

112. In financial services, the United States granted, in general terms, open market access and national treatment to foreign banks. In insurance, firms were primarily regulated at the State level; this may have limited in practice competition from suppliers based in other U.S. States and from abroad, but steps were taken during the review period to facilitate multi-state operations. Legislation adopted in 1999 put an end to restrictions on affiliations between banks and securities firms. Several incidents of securities laws violations came to light during the second part of the review period, which led to further measures to strengthen the regulatory framework. The sub-prime mortgage turmoil in 2007 set off a serious crisis in the U.S. financial sector, and at the end of the review period major regulatory changes were under consideration to strengthen supervision.

113. Relative to most other service activities in the United States, transportation proved generally impervious to reform and remained more insulated from international competition. As in many other WTO Members, cabotage policies restricted the provision by foreign providers of domestic services in both maritime and air transport to domestic carriers. In addition, while the provision of international services was generally open to foreign competition, support measures such as subsidies and cargo preference requirements were used to encourage the use of U.S. carriers, especially in maritime transport. On the other hand, legislation adopted in 1998 enhanced competition in U.S. international shipping, and accelerating the shift away from rate-setting conferences; legislation adopted in 2002 facilitated the granting of waivers to domestic cargo restrictions.

114. The United States did make progress in the liberalization of air transport services through the signing of bilateral Open Skies Agreements in recent years. The approval of alliances among domestic and foreign airlines, on a case-by-case basis, also gave some flexibility to international air transport services. These agreements and measures, however, did not fully liberalize the markets they covered; in particular, foreign ownership and control of U.S. carriers remained restricted and the provision of domestic air services was permitted only to U.S. carriers.

115. In the case of professional services, the U.S. federal system reserved the governance of professions to individual states; each state had its own licensing regulations and licensing board to administer the regulations. The absence of a uniform regulatory regime at the national level and divergent market access conditions at the state level added to the complexity of market entry for both foreign and U.S. professionals. Moreover, foreign market access in some States was affected by local presence, domicile, nationality, or legal form of entry requirements. On the other hand, several steps were taken to accomplish greater uniformity across states.

2. Canada

(a) Economic environment

116. International trade has played an important and growing role in Canada's economic development. Thus, the ratio of Canada's trade (exports plus imports) of goods and services to GDP increased from about 50% in 1989 to some 68% in 2008, falling to some 59% in 2009 as a result of the global financial crisis.[7] However, Canada's international trade tended to expand less rapidly than world trade. As a result, Canada's share in world trade of goods and services fell from about 4% in 1989 to about 3% in 2008, which in turn made Canada move from the fourth to the fifth place among the world's largest traders.[8] As part of the group of the four largest traders Canada had been subject to a Trade Policy Review each two years but, as its ranking changed, Canada came under the four-year cycle after its seventh Review in 2003.

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[7] Estimates based on International Monetary Fund (2010).

[8] Estimates based on World Bank (2010).

117. A special characteristic of Canada's trade, for a developed country, was that raw materials, food and fuel have loomed much larger in its exports than in its imports, which reflected Canada's generous endowment of natural resources. Indeed, the growth of resource-based activities during the review period was a key factor explaining Canada's high and rising living standards. The vulnerability to commodity price variations that this may have entailed was offset through fiscal discipline and the use counter-cyclical macroeconomic policies. The economy also proved resilient to wide variations in Canada's exchange rate.

118. Another feature of Canada's trade is that the lion's share of exports and imports is with only one partner, the United States. The U.S. share in Canada's trade increased from about 67% in 1989 to some 77% in 1999; it then tended to fall, reaching 65% in 2008 and 62% in 2009. The strong links between the Canadian and U.S. economies meant that the business cycles in both countries were closely correlated. Hence, more than other WTO Members, Canada's aggregate output benefited from the growth of the world's largest economy, but was also exposed to its slumps. Nevertheless, in recent years Canada did diversify away from the United States both its imports and exports, reflecting primarily the growing importance of China as a supplier and export market.

(b) Legal and institutional framework

119. Canada's trade and investment policies are formulated jointly by the Federal Government and sub-federal entities, namely the provinces and territories. As a result, provincial sensitivities and regional policy considerations were generally important elements in the process of policy formulation and implementation. This also meant that close consultations between federal and provincial authorities were habitually necessary on many trade-related issues. Trade-related policies were also typically subject to detailed scrutiny by a broad range of government agencies.

120. The growing role of trade in Canada's economy came hand-in-hand with internal and external reforms that touched practically all sectors of the economy. In the domestic sphere, the most important development was the entry in force in 1995 of the Agreement on Internal Trade (AIT), which gradually reduced inter-provincial barriers to trade and investment. Domestic reforms were given additional impetus by Canada's participation in the multilateral trading system as well as in preferential initiatives.

121. Canada has traditionally participated actively in the multilateral trading system, which it placed as a central pillar of its trade policy. The implementation of the WTO Agreements after the conclusion of the Uruguay Round involved tariff reductions and amendments to numerous federal statutes covering virtually all trade-related areas. Canada also made numerous proposals in the context of the current round of WTO negotiations.

122. Between 1989 and 1995, Canada participated in 16 disputes settlement cases under GATT rules (not including Canada as a third party): four as a respondent and 12 as a complainant. Under the WTO dispute settlement mechanism, Canada was involved as a complainant in 33 cases, as respondent in 15 cases, and as a third party in 71 cases. Over 1989-2009, a number of Canadian measures and support programmes were challenged under multilateral rules in several areas.[9]

123. Canada has historically given paramount importance to managing its trade relationship with the United States. In line with this, Canada has long maintained preferential trade agreements with the United States: first the Canada-U.S. Auto Pact of 1965, then the Canada-United States Free Trade Agreement effective 1 January 1989, and finally the NAFTA in force since 1 January 1994. These

[9] Such as patent protection, the import regime for grains, milk and dairy products pricing, film distribution, taxation and import prohibition of periodicals, export support for aircraft and the automotive trade regime.

agreements magnified the natural geographic role of the United States as Canada's main trading partner.

124. At the start of the review period Canada had no preferential trade agreements as such with countries other than the United States.[10] As a counterbalance to the preferential links with its only neighbour, in addition to seeking to strengthen the multilateral trading system, Canada has sought to forge preferential links with other partners. Thus, by end 2009, Canada had in force preferential trade agreements with nine additional trading partners and was negotiating others. However, excluding NAFTA countries, trade with other preferential partners covered only 2.6% of Canada's trade in 2009.

125. Canada also provided unilateral tariff preferences to developing countries under the Caribbean-Canada Trade Agreement (CARIBCAN), the Least Developed Country Tariff, and the Generalized Preferential Tariff (GPT – Canada's GSP). The product and geographic coverage of the GPT was extended during the review period, including to central and eastern European countries. In 2003, Canada accorded duty-free and quota-free treatment to virtually all imports from least developed countries except Myanmar.

126. Canada retained a general policy of national treatment for foreign direct investment, following the significant liberalization of foreign investment occurred in 1985. Liberalization under the NAFTA, including higher investment review thresholds, was multilateralized under the GATS. However, sector-specific restrictions to foreign investment remained in place in fishing, mining and energy. Moreover, foreign acquisitions above a given threshold were subject to review to ensure that it results in a "net benefit" to Canada.

(c) Measures directly affecting imports

127. Canada's trade and investment regime remained amongst the world's most transparent and liberal throughout the review period, notwithstanding persistent barriers in a few areas. The activities that were subject to policy interventions included certain agricultural activities, textiles and clothing, steel, telecommunications, audiovisual, air and maritime transport, and insurance.

128. For goods, tariffs were Canada's main trade instrument. Canada's overall simple average MFN tariff declined only slightly between 1990 and 1994, from 8.7% to 8.6% but, following the establishment of WTO, it fell to 6.5% in 2006.[11] The average applied tariff for agricultural products (WTO definition) was substantially higher than for non-agricultural products (22.4% vs. 3.8% in 2006). Throughout the review period, the highest tariffs applied to certain agricultural products and manufactures such as textiles and clothing, footwear, and boats and ships. Under the Uruguay Round Agreements, Canada agreed to reduce tariffs on industrial products by an average of 40% over five to ten years.

129. Recognizing that as a result of the development of regional agreements the tariff structure had become complex, during the review period Canada took a number of autonomous steps to rationalize and simplify its tariff schedule. Considerable progress was made in this respect with the adoption of a new Customs Tariff in 1998, which incorporated some Uruguay Round tariff reductions, unified the schedule, and substantially decreased the number of tariff lines. The 1998 tariff also converted all rates of under 2% to zero, a conversion process that became automatic thereafter.

130. On the other hand, the transparency of Canada's tariff regime was somewhat reduced by the granting under remission orders and other drawback schemes of tariff reductions on specific goods

[10] Canada granted British Preferential Tariffs or tariff preferences to imports of a few items from Australia and New Zealand.

[11] The latest average MFN tariff reported in the context of a Trade Policy Review was for 2006.

used for certain purposes. However, performance-based duty drawback and remission schemes were phased out under WTO and NAFTA provisions.

131. An important element of predictability resulted from the large extent of tariff bindings accepted by Canada, which both before and after the conclusion of the Uruguay Round covered about 98% of all tariff lines.

132. Canada has the oldest antidumping (AD) regime in the world and was an active user of AD measures throughout the review period. However, the number of definitive AD measures in place decreased significantly, from 90 at end 1995 to 36 at end 2009. A large share of AD measures applied to steel and other metal products. A large number of AD cases were applied to U.S. imports during the 1990s; since the early 2000s, a growing number of AD measures have applied to China, which became the most frequent target of those measures in 2006. These changes reflect in large part the changing pattern of Canada's bilateral trade.

133. In relation to countervailing (CV), the number of measures in force was 8 in 1989, 6 in 1995 and 9 in 2009 (30 June). While in the early years under review most CV measures applied to agricultural products, since about 2000 most CV measures have concerned steel products.

134. A characteristic of Canadian AD and CV legislation is a provision for public interest. Moreover, Canada sought the elimination of AD and CV duty measures within preferential trade agreements; in the event, these efforts resulted in provisions to phase-out AD measures only in the Canada-Chile free trade agreement.

135. At the start of the review period, Canada had no safeguards in force but in 1993 notified a GATT Article XIX safeguard action on boneless beef imports from all countries except the United States. Under WTO rules, Canada initiated three global safeguard investigations during the review period, one in 2002 and two in 2005, when it also initiated a China-specific investigation. Even when these investigations found evidence of serious injury to domestic producers, Canada showed restrain and decided not to impose any safeguard measure.

136. At the start of the review period Canada applied import licensing to items such as dairy products, eggs, poultry, textiles, clothing and steel but the Uruguay Round and the NAFTA resulted in the gradual liberalization of the general import licensing regime. Canada maintained throughout the review period an import ban on used motor vehicles, except those imported from the United States (liberalized in 1993) and Mexico (liberalization process to start in 2009). Canada used other quantitative restrictions mostly for security, safety, environmental, health, and sanitary reasons. Sanitary and phytosanitary (SPS) measures severely limited the sources from which certain imports were allowed.

137. Before the conclusion of the Uruguay Round, Canada also applied quantitative restrictions on textiles and clothing under the MFA to protect its domestic producers against foreign competition. These restrictions were phased-out over ten years after the date of implementation of the Uruguay Round provisions, while quantitative restrictions on agricultural products were eliminated from that date.

(d) Export and other measures affecting trade

138. Certain exports, largely industrial products, to some countries were restricted, usually for national security reasons. Other reasons for restricting exports at particular times during the review period included ensuring adequate domestic supply and supporting domestic processing of resources (e.g., herring, logs, uranium, and other ores and minerals). Export taxes were also applied to some softwood lumber products sold to the United States.

139. On the other hand, a range of schemes were maintained to support exports, including through loans, guarantees, insurance and investment in export companies. Canada's official export financing programmes were the subject of a WTO dispute Panel in 1997, which found some aspects of those programmes inconsistent with multilateral rules. Exported goods also benefit from tax and duty relief schemes.

140. Canada was a signatory of the GATT Government Procurement Code, and also signed the WTO Agreement on Government Procurement (GPA). Canada has granted national treatment for procurement covered by the GPA and other international agreements; however, as at end 2009, it had yet to table an offer at the sub-federal level under the GPA. This excluded procurement representing a significant proportion of Canada's total procurement market, and created frictions with other signatories of the GPA. Procurement not covered by international agreements was based on reciprocity, and must be supportive of Canada's national objectives.

141. During the review period Canada went a long way towards setting up a transparent domestic procurement regime. In particular, the AIT extended procurement disciplines to municipalities, amongst other entities; however, provinces kept their own procurement agencies, and some grant regional or local preferences for procurement not falling within the scope of the AIT. In general, the criteria used by provinces to allocate procurement contracts remained less transparent than those applied at the federal level.

142. Canada's competition law was gradually overhauled and strengthened during the review period, notably through the adoption of significant amendments to the relevant statutes. Competition legislation extends to virtually all economic sectors in Canada, although its application could still be limited where it was displaced through sectoral regulations. The competition authority maintained a significant program of advocacy even in regulated or partially regulated sectors such as energy and telecommunications.

143. A number of government-owned enterprises continued to have special or exclusive privileges even in the post-Uruguay Round era. Most of these companies operated in the agricultural sector affecting, for example, alcoholic beverages and wheat trade. Two GATT Panels ruled, in 1988 and 1991, that certain practices by liquor boards involved discriminatory pricing practices against imported alcoholic beverages. In contrast, A WTO Panel established in 2003 to examine, among others, the Canadian Wheat Board concluded that the Board's "export regime" was not inconsistent with GATT provisions on state-trading enterprises.

144. With respect to intellectual property, Canada made numerous changes to its relevant legislation during the review period. These changes included, for example, the reform of patent protection for pharmaceuticals to comply with Uruguay Round commitments, amendments to the statutes covering patented medicines to implement the decision on TRIPS and public health, as well as trademarks legislation to provide for the phased elimination of the use of European wine and spirit names on Canadian labels. To bring its legislation into conformity with a WTO Appellate Body decision, Canadian patent law was amended in 2001.

(e) Sectoral policies: non-service activities

145. Canada's federal and provincial governments traditionally extended assistance to only a few selected activities, notably the agricultural sector. Assistance to other sectors included financial transfers such as grants and direct investment schemes. A WTO Panel found that one such scheme provided subsidies to the regional aircraft industry that were inconsistent with multilateral rules. The motor vehicle industry, the largest manufacturing activity in Canada, benefited from a special policy regime during the earlier years under review; in 2000, a WTO Panel found that various aspects of that regime were inconsistent with multilateral rules.

146. Certain Canadian assistance programmes maintained during the review period were motivated by the perceived need to protect "strategic" businesses, echoing Canada's earlier import substitution policies. At the provincial level, the criteria for granting assistance, such as minimum levels of provincial content, frequently remained vague. Various tax incentives were also in offer at both the federal and provincial levels, some of which involved incentives for the processing of minerals originating in mines located within the respective province. Official approval for investment in the oil and gas sector was, in some cases, linked to meeting local content requirements.

147. Canada has historically been a highly competitive producer of many agricultural commodities, and among the world's largest exporters of agricultural products. Nonetheless, the sector was a large recipient of government assistance. Although overall support remained below the average for OECD countries throughout the review period, supply-managed products covering dairy products, chicken, turkey, eggs, and broiler hatching eggs benefited from considerable assistance. In some provinces, agricultural producer boards regulated the marketing of certain agricultural products, including by setting prices. Overall, during the whole review period important segments of Canadian agriculture remained largely shielded from international competition.

148. Under Canada's Uruguay Round commitments, over 100 import quotas in agriculture were replaced by tariff rate quotas. However, the production of certain agricultural products continued to be protected by out-of-quota tariffs that ranged to over 300%. These high tariffs amounted to de facto quantitative restrictions, with in-quota access having been in some instances extremely small, or reserved only for imports covered by certain preferential arrangements.

149. Canada's agriculture underwent less change than other sectors over the last two decades. Some reforms were carried out, though, either autonomously or to comply with international commitments. Thus, for example, certain transport subsidies for grains were eliminated, while export subsidies were progressively reduced. In addition, certain Canadian practices and measures were modified as a result of WTO Panels questioning measures such as state-trading activities affecting wheat, Canada's export subsidies for dairy products, and its administration of tariff quotas on milk.

(f) Sectoral policies: service activities

150. Canada made considerable autonomous efforts to deregulate, privatize and reform major services activities in order to improve economic efficiency. Additional stimuli were provided by competitive pressures from deregulated industries in its main trading partner, the United States. During the early part of the review period, reforms were accompanied by new international commitments, first under the NAFTA, then under the GATS. Canada actively participated in the WTO-sponsored negotiations in Basic Telecommunications and Financial Services. However, compared with earlier reforms, subsequent regulatory changes to Canada's telecommunication, broadcasting, financial or transportation services were measured.

151. Canada enjoyed a well developed and diversified financial sector that weathered satisfactorily the recent global financial crisis. The banking sector remained open to foreign competition, although certain ownership restrictions continued to apply on both domestic and foreign banks. Restrictions on sectoral diversification of financial services were removed during the review period. Unlike the banking sector, which was mostly federally regulated, insurance companies must be licensed in each province where they do business, which complicated somewhat market access for foreign suppliers.

152. In maritime transport, reforms during the review period aimed to increase competition both among carriers and among ports, to shift the financial burden of port management from taxpayers to users, and to down-size and commercialize infrastructures in order to increase efficiency and lower costs in the ports system. Conference operations were also subject to greater competition. On the

other hand, cabotage stayed reserved for Canadian-flag ships, although access to foreign ships was allowed when suitable Canadian-registered ships were not available.

153. In the air transport sector, competition increased during the latter part of the review period with the entry of new service suppliers and the growth of low-cost airlines. However, foreign-owned airlines continued to be excluded from providing cabotage services, and foreign ownership of Canadian airlines was limited to 25% of voting shares, supplemented by a de-facto control examination. Infrastructural monopolies in air navigation and the port system were commercialized in the late 1990s. Competition law was amended in 2000 to put in place a special regime for domestic airlines. Regulatory changes were also undertaken to liberalize charter services.

154. Virtually all professions were closely regulated at the provincial level, with various initiatives implemented to facilitate the mobility of professions among provinces and territories. While citizenship and residency requirements persisted in some cases, certain barriers were removed in recent years. In particular, steps were taken under the AIT for the mutual recognition and reconciliation of occupational standards across provinces. Nevertheless, Canada's decentralized regulatory system hindered at times both inter-provincial labour mobility and international trade in professional services.

155. The telecommunications sector underwent considerable changes during the review period. The deregulation of retail long-distance services in 1992 increased competition in voice carrier services. Another step was taken with the adoption of new legislation in 1993 permitting the deregulation of certain services, and the liberalization of service rates. The legislation also placed under federal jurisdiction telecommunications common carriers that owned and operated their own facilities. More recently, changes took place regarding access to foreign satellite services. However, facilities-based common carriers providing telecommunications services must still be Canadian-owned and controlled.

156. Canada sought to protect its cultural industries, and took measures to reinforce this protection. Amendments in 1992 to the investment legislation increased the coverage of companies subject to notification and review to determine whether a business in the cultural sector is Canadian-controlled. The Government reviewed all investments, acquisitions and the establishment of new businesses by foreigners in activities related to Canada's cultural heritage or national identity. Broadcasting legislation limited foreign content in a number of areas to ensure Canadians had minimum levels of access to Canadian cultural content. In 1997, a WTO Panel report found that Canadian measures restricting the importation into Canada of certain periodicals were applied in violation of GATT rules.

3. Latin America and the Caribbean

(a) Economic environment

157. The Latin American and Caribbean (LAC) region included 32 WTO Members.[12] The region encompassed a wide variety of economies both in terms of size and structure. Measured by value added the two largest economies were Brazil and Mexico, with each having accounted on average 31% and 29%, respectively, of the region’s GDP during 1989-2008 (latest year available); in contrast, the twenty smallest LAC economies together accounted for only some 4% of total GDP in the region during the same period.[13]

158. The LAC smallest economies were located in Central America and, especially, the Caribbean region. The latter in particular were dependent on a relatively narrow range of economic activities

[12] Namely, all the WTO Members in the Americas except Canada and the United States.
[13] Estimates based on GDP in constant U.S. dollars. Data from ECLAC (2009) and ECLAC (2010).

and subjected to diseconomies of scale, both in the production of goods and the provision of government and other services. These factors potentially made the smallest LAC economies vulnerable to exogenous shocks, and some of them, notably Haiti, were indeed among the LAC economies most prone to variations in their rates of GDP growth.[14] However, larger economies like Argentina and Venezuela also experienced large variations in growth, while some of the smallest LAC economies were among the least variable.

159. There were also large differences in real GDP growth across LAC countries between 1989 and 2008, with GDP in five countries expanding at an annual average real rate of more than 5%, and in four others at rates of less than 2%.[15] GDP per capita ranged widely as well, with six LAC countries recording per capita incomes of US$10,000 or higher in 2009, and four remaining under US$2,000.[16] Haiti remained the only least-developed country in the LAC region during the whole review period. Haiti was also the only LAC country where per capita income contracted in real terms during the review period.

160. Over 1989-2008, the value of merchandise trade of LAC countries was equivalent to around 32% of their GDP, although with strong variations across countries.[17] The trade to GDP ratio increased considerably in most LAC countries, although it contracted in Cuba and Venezuela as well as in a number of small LAC economies where the ratio had previously reached particularly high levels (above 100%).

161. The share of LAC countries in world merchandise exports increased slightly between 1989 and 2009, from 4.3% to 5.5%, while the share in world imports rose from 3.5% to 5.4%. The higher export share reflected in part the growing exports of primary products. The increase in the import share was explained in part by trade liberalization, which favoured in particular the importation of intermediate and capital goods[18], imports thus helped modernize the production and export bases of LAC countries.

162. During 1989-2009, the LAC region’s largest trader was Mexico, which accounted for some 39% of the region’s merchandise trade (imports and exports), followed by Brazil with 19%. Trade in commercial services was less skewed, with Mexico and Brazil each accounting for some 21% of the LAC's total. This reflected the importance that service activities such as tourism and financial services had in several of the region's smallest economies.

163. The LAC region emerged as a leading exporter of a number of primary agricultural and mineral products, as well as of manufactures such as clothing, electrical and electronic equipment, and motor vehicles and their parts. The structure of merchandise exports changed during the review period due to the growing importance of manufacture exports. However, there were strong

[14] Economic variations measured by the coefficient of variation (standard deviation divided by the mean) of real GDP growth.

[15] The first group comprised Chile, Costa Rica, Dominican Republic, Panama and Trinidad and Tobago, while the second group included Barbados, Cuba, Haiti and Jamaica.

[16] In decreasing order of GDP per capita, the first group included Bahamas, Trinidad and Tobago, Antigua and Barbuda, Barbados, Venezuela and Saint Kitts and Nevis, while the second group included Honduras, Bolivia, Nicaragua and Haiti.

[17] Estimates based on ECLAC (2009) and ECLAC (2010).

[18] Based on 1989-2008 data for the following countries: Argentina, Barbados, Belize, Bolivia, Brazil Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

differences across countries, with the share of manufactures in total exports growing in a few countries while that of primary products remained about constant or rose in several others.[19]

164. On the other hand, the composition of LAC imports was relatively constant, with manufactures like machinery and transport equipment remaining the largest import group. For several LAC countries imports of fuels and other primary products were also important, their value fluctuating widely with commodity prices.

165. The direction of LAC trade also experienced noticeable changes over the review period. The largest export markets for LAC countries as a whole remained the United States, the European Union and LAC countries themselves, but the importance of China rose remarkably. Thus, while China absorbed just under 2% of LAC exports in 2000, this share increased to 11% in 2009. LAC's imports by origin showed a similar pattern: although the United States, the European Union and LAC countries remained the main sources, China's share rose from 3% in 2000 to just over 11% in 2009.

166. Following a series of external debt problems during the 1980s, many LAC countries required attaining trade surpluses in order to meet their repayment commitments. As a result, the region's trade balance was in surplus during the early years of the review period, turned negative during the rest of the 1990s, and was positive again during most of the 2000s. The recent trade surpluses in the LAC region as a whole were, however, largely explained by the large surpluses achieved by Argentina, Brazil and Venezuela alone. In other countries, deficits in the trade balance were offset by high current transfers, mostly in the form of remittances from national workers living abroad.[20] The current account of the balance of payments in the LAC region was in surplus during most of the 2000s, but was in deficit in the earlier and later years under review.

167. Foreign capital flowed copiously into the LAC region. In particular, Foreign Direct Investment (FDI) expanded substantially, from about US$8.6 billion in 1989 to US$67 billion in 2004, then growing to reach US$130 billion in 2008, before falling to US$77 billion in 2009 due to the global economic slowdown. Brazil and Mexico were the largest magnets for FDI, accounting together for 55% of FDI in the LAC region over 1989-2009. Investment in services was the most important in value terms, much of it linked to privatization in telecommunications and financial services. In contrast, in some LAC countries investment trends proved disappointing.[21]

168. Macroeconomic imbalances characterized much of the earlier part of the review period, which in particular translated into price and exchange rate instability. For example, annual inflation in Argentina peaked at an annual rate of nearly 5,000% in 1989, in Peru at some 7,650% in 1991 and in Brazil at nearly 2,500% in 1993. Moreover, during the earlier years under review, a number of LAC countries actively managed their exchange rates or maintained their currencies pegged to the U.S. dollar. This and high inflation led at times to sizable currency overvaluation, which in turn resulted in increased imports and a loss of export dynamism. In some instances these trends formed the backdrop against which LAC countries introduced measures to restrict imports and support exports.

169. Currency overvaluations were followed in some cases by sharp depreciations leading to major economic crises. One example was the financial crisis in Mexico in late 1994. Compared with previous crises, however, recovery from this recession was rapid thanks in good part to the increased openness of the Mexican economy and the scope of structural reforms since the mid-1980s. A later example was the crisis experienced by Argentina over 1999-2002, which saw Argentina's GDP

[19] The share of manufactures in total exports grew noticeably in countries like Brazil, Dominican Republic, Costa Rica and Mexico, while the share of primary products remained constant or rose in countries like Argentina, Belize, Bolivia, Chile, Nicaragua, Panama, Paraguay, Peru and Venezuela.

[20] Examples included Ecuador, El Salvador, Haiti, Honduras and Guyana.

[21] Notably in Cuba, Haiti and Suriname. Data from UNCTAD (2010).

contract by some 20%. Unlike Mexico, Argentina overcame this recession through the adoption of a heterodox mix of economic policies including trade-related measures, notably a major increase in the use of export taxes.

170. In search of monetary stability, Panama adopted the US dollar as legal tender in 1904, while Ecuador and El Salvador did likewise in 2000 and 2001. By doing so, the three countries sought to stabilize expectations and reduce financial costs. However, these dollarized economies, and those with fixed exchange rates, have had little or no scope to exercise an independent monetary policy, limiting the macroeconomic instruments they can use to influence the level of domestic demand and adjust to external shocks. For example, after the global financial crisis in 2007, Ecuador increased tariffs beyond the rates bounded in the WTO, subsequently requesting authorization from WTO Members.

171. Some LAC countries maintained foreign exchange controls, which in all likelihood had significant trade effects. This was notably the case in Cuba and Venezuela. In contrast, other LAC countries removed or relaxed considerably their foreign exchange controls during the review period.

172. Several LAC countries recorded large fiscal deficits at different times, followed by fiscal adjustment policies. To maintain fiscal discipline, fiscal targets were increasingly used, which helped many LAC countries to achieve primary surpluses. However, in several countries the overall balance remained negative due to the weight of interest payments on the public debt. The fiscal positions of a few LAC countries, particularly in the Caribbean remained fragile during most of the review period.

173. In general, macroeconomic imbalances were addressed at the same time as progress was made in the direction of trade liberalization, greater fiscal discipline, privatization, the opening of key activities to foreign investment, and general deregulation. This process of reform was supported in several cases by IMF and World Bank programmes and by debt rescheduling. Sound macroeconomic policies, marked by relatively stable exchange rates and modest inflation rates, underpinned the overall economic stability achieved by most LAC countries during recent years. As a result, many LAC economies proved largely resilient to the global financial crisis that started in 2007.

(b) Institutional and legal framework

174. Over the two decades under review most LAC countries were able to formulate and implement trade policy within mostly stable legal frameworks. Seven LAC countries adopted new constitutions during the review period[22]; others had adopted new constitutions during the early 1980s. Many amended their constitutions over 1989-2009. Several of the new and amended Constitutions sought in part to consolidate the reforms introduced by LAC countries since the 1970s, including to facilitate more market-oriented solutions in the economic area.

175. Many LAC countries maintained civil-law legal systems under which international agreements had the status of domestic laws; in some such countries the hierarchical ranking of international agreement is second only to the Constitution. In these LAC countries, individuals or companies may invoke multilateral rules before national courts. This gave international trade agreements growing importance reflecting their expanding number and comprehensiveness. In a handful of LAC countries certain preferential trade agreements prevailed over those of the WTO.

176. To implement, or facilitate the implementation of commitments in the GATT, WTO and regional fora, LAC countries made numerous modifications to their trade-related laws. Ecuador and Mexico adopted basic trade laws, thus giving added transparency to their trade regimes. In other LAC countries, foreign trade was governed by a large number of laws, decrees and resolutions. In some

[22] Bolivia, Colombia, Dominican Republic, Ecuador, Paraguay, Peru and Venezuela.

countries trade-related laws were amended frequently thus increasing the complexity of the legal framework. In other cases, the slow legislative process meant that trade-related legislation fell out of date, and that certain reforms were not underpinned by the necessary legislative amendments. These problems in turn undermined transparency and efficiency in decision-making. To address this, some LAC countries engaged in programmes to simplify and update their trade-related laws and regulations.

177. All through the review period, the formulation and administration of trade policy in a few LAC countries were subject to significant human, technical, and financial limitations. This was particularly the case in the smallest countries in the Caribbean and Central America, where institutional limitations contributed to a slow pace of implementation of trade-related international commitments.

178. Most LAC countries sought to strengthen the formal and informal consultations with the private sector in order to formulate trade and trade-related policies. Close contacts with business were a key factor in the re-orientation of trade policy in some countries, particularly during the earlier years under review. However, in most of them consultations with consumer groups remained limited throughout the period.

179. Most LAC countries made remarkable improvements since 1989 in terms of disseminating key information about their trade regimes. The LAC region also counts with a number of world-class economic research institutes, and some of them carried out studies on trade-related policies on a case by case basis. However, no independent statutory body was established in the region with a mandate to publicly and systematically review the economy-wide costs and benefits of trade policies.

180. The rapid development of the internet during the review period played an important role in enhancing the availability of trade-related information in LAC countries. Government agencies in many of them created and maintained comprehensive websites, and made relevant laws and regulations available online. Moreover, the fact that one of the three WTO working languages was also the official language in most LAC countries facilitated considerably the access by the WTO Secretariat and foreign observers to trade-related information.

(c) Foreign investment regime

181. LAC countries saw the promotion of foreign investment as an essential part of economic liberalization, and many of them opened up foreign investment during the review period. Where they existed, performance requirements and prior approval requirements were frequently lessened or abolished, registration simplified, and some limits on foreign ownership relaxed. In Brazil, constitutional amendments eliminated in 1995 the concept of "Brazilian company of national capital", which previously had appeared as an important investment constraint; in Colombia, a constitutional amendment eliminated in 1999 the Government's power to expropriate private property for "equity reasons" without compensation. In Venezuela, the Constitution of 1999 prescribed that foreign investment must be granted the same conditions as domestic investment, but also called for the use of trade policy to protect Venezuelan enterprises.

182. During the review period, some LAC countries consolidated a variety of specific statutes previously governing foreign investment into a single foreign investment law.[23] Typically, investment laws guaranteed to foreign investors national treatment, free exchange convertibility, unrestricted rights to repatriate capital and freedom to import goods and services. However, most investment laws

[23] LAC countries with general foreign investment laws include Argentina, Bolivia, Colombia, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Peru, Suriname, Uruguay and Venezuela.

also allowed the imposition of restrictions on foreign participation through legislation governing particular areas. This potentially opened the door for governments to limit foreign investment in any sector.

183. Restrictions to the participation of foreign investment in LAC economies resulted as well from activities being reserved either for the State or for nationals, or from requirements of majority national ownership. As a result, foreign participation was restricted to various degrees in certain areas of, among others, fishing, hydrocarbons, electricity, domestic transport, telecommunications, communications media, insurance, air and maritime transport, and retail services.[24]

184. In a few LAC countries, the regulatory framework governing foreign investment offered investors the possibility to sign contracts with the State that gave them greater fiscal and legal certainty.[25] LAC countries also provided guarantees to foreign investors through bilateral investment treaties, preferential trade agreements and GATS commitments. Most LAC countries were also members of the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID). Argentina, Ecuador and Venezuela were among the countries more often involved in disputes at the ICSID.[26]

(d) Participation in the multilateral trading system

185. Two LAC countries, Brazil and Cuba, were founding members (contracting parties) of the GATT, and 27 others acceded to the GATT before the end of the Uruguay Round negotiations in 1994. 18 LAC countries were original Members of the WTO, while the rest acceded after the WTO came into being in 1995.

186. The emphasis on autonomous trade liberalization before the conclusion of the Uruguay Round allowed most LAC countries to offer significant cuts in their bound tariff rates, as well as the elimination of numerous non-tariff barriers to trade. They also made specific commitments in various service areas, although with strong national variations in the number and quality of commitments. As developing countries, LAC countries benefited from transition periods to implement a number of commitments under various WTO Agreements. They all introduced new laws to implement or facilitate the implementation of WTO commitments, although in certain Caribbean countries this process fell short of what was needed to implement those commitments.

187. Some 15 LAC countries accepted the Fourth Protocol on Basic Telecommunications and 12 accepted the Fifth Protocol on Financial Services. LAC countries like Brazil, Bolivia and Jamaica participated in the post-Uruguay Round negotiations but did not ratify one or both protocols. In contrast, Barbados and Ecuador did not take part in the negotiations but subsequently made commitments on basic telecommunications. No LAC country is a party to any of the WTO plurilateral agreements but eight take part in the Information Technology Agreement.

188. Many LAC countries have been active participants in the DDA negotiations, in relation to which they submitted numerous proposals. Their negotiating interest ranged widely but for most the priority areas included trade facilitation, agriculture, market access for non-agricultural products, preferential margins to export markets, and special and differential treatment for developing countries.

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[24] Specifically, foreign investment restrictions applied to fishing in Argentina, Chile, Panama and Uruguay; hydrocarbons in Costa Rica and Mexico; electricity in Costa Rica and Mexico; domestic transport in Argentina, Barbados, Costa Rica and Mexico; telecommunications in Brazil, Costa Rica, Mexico, Panama and Uruguay; communications media in Argentina, Brazil, Chile, Panama and Uruguay; insurance in Costa Rica, Guatemala and Uruguay; air and maritime transport in Brazil, Chile, Costa Rica, Mexico and Uruguay; and retail services in Barbados and El Salvador.

[25] This was the case in Chile, Ecuador, Nicaragua, Peru and Venezuela.

[26] Argentina faced 49 cases, Ecuador 14 cases, and Venezuela 13 cases as at end 2009.

In some areas, however, the negotiating interest of different LAC countries diverged, with some taking offensive and others defensive positions on the same issue.

189. Between 1989 and 1994, under GATT procedures, LAC countries took part in 12 dispute settlement cases, either as complainants defendants or third parties. Between 1995 and 2009, under the WTO dispute settlement mechanism, LAC countries were involved in 216 separate cases; in 98 cases LAC countries took part as complainants, in 81 as defendants and in 116 as third parties.[27] The most active participants were, by decreasing number of disputes, Brazil, Mexico, Argentina, Chile and Colombia; together these five countries took part in 201 different disputes (including as third parties). The trade policies and practices of the smallest LAC countries were seldom challenged at the WTO; for example, within CARICOM only Trinidad and Tobago was ever involved as a respondent in the WTO dispute settlement mechanism.

190. The WTO notification record of LAC countries varied widely, with some countries having made hundreds of notifications during the review period while others made only a handful. The latter reflected in part their different institutional capacities, and illustrated the significant challenges faced by some LAC countries in participating in the WTO. This was the case for most small LAC countries but represented a particular problem for those with non-resident representation before the WTO.

191. Transparency in most LAC countries was considerably enhanced through their regular participation in Trade Policy Reviews. The two largest LAC traders, Brazil and Mexico, were reviewed in a four-year review cycle, while all others LAC countries came under the six-year cycle. Over 1989-2009, Brazil underwent five Reviews while Chile and Mexico were reviewed four times. In contrast, Cuba never subjected itself to a Trade Policy Review, which explains in part the relatively little information available on its trade regime. Although reviewed twice during the review period, Venezuela also fell significant behind its multilateral review obligations in recent years.

(e) Participation in regional trade agreements

192. A feature of the period under review was the coalescence of most LAC countries in four separate trading blocks: the Andean Community (CAN), the Central American Common Market (CACM), the Caribbean Community (CARICOM) and the Southern Common Market (MERCOSUR).[28] Cooperation agreements between the CAN and MERCOSUR made the parties to each group associate members of the other.

193. Each of the four groups sought to form a customs union by eliminating all tariffs and other trade barriers among the group's members, and by applying a common external tariff to third countries. At different points during the review period, each of these groups also aimed at creating common markets with free circulation of goods, services, capital and labour. A number of LAC countries also maintained trade relations within the Latin American Integration Association (ALADI); although this arrangement formally provided the legal framework for other trade agreements, as the importance of regional blocks rose, the role of ALADI preferences decreased.[29]

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[27] The number of cases was not identical to the sum of the cases involving LAC countries because some disputes involved the participation of more than one LAC country.

[28] As at end 2009, CARICOM included the following WTO Members: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The CACM comprised Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. The CAN included Bolivia, Colombia, Ecuador and Peru. MERCOSUR included Argentina, Brazil, Paraguay and Uruguay. Venezuela was in the process of acceding to MERCOSUR, after having left the CAN.

[29] The following were ALADI members: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

194. The review period saw considerable efforts in the CAN, CARICOM, CACM and MERCOSUR to progressively reduce tariffs and non-tariff restrictions on intra-regional trade. However, in each group individual countries were allowed to maintain a list of exceptions to duty-free trade, which together with non-tariff barriers continued to restrict to various degrees the free movement of goods within the four blocks. Considerable progress was also made towards establishing a common external tariff, although exceptions were too allowed in this respect.

195. Of the four LAC trading groups, CARICOM appeared to have made greater progress towards establishing a common market, particularly with the creation of the Single Market and Economy that started in 2006. Within CARICOM, six members formed the Eastern Caribbean Currency Union, and gave the Eastern Caribbean Central Bank responsibility for monetary and foreign exchange policy. In this respect, cooperation within CARICOM proved relatively effective in giving greater weight to the position of its smallest members, and providing a useful lever to their small-sized public administrations.

196. Nevertheless, the establishment of regional common markets remained a more or less distant prospect in all four regional blocks. This reflected divergences among members about the nature of the integration processes, and the right balance between regional and national economic interests. The latter was particularly noticeable within MERCOSUR, where the strong asymmetries among its members placed strong pressure on the manufacturing sectors of the smallest economies. In practice, in the four regional groups the value of merchandise trade within the group remained considerable lower than the value of trade of individual members with third countries. For example, only some 10% of Brazil's merchandise trade took place with other MERCOSUR members in 2009.

197. While the multilateral trading system served as an overall reference framework for the trade relations of LAC countries, those participating in the four regional blocks increasingly focused their trade-related efforts on the deepening of their integration schemes. CARICOM and MERCOSUR became the cornerstone of their respective members' trade arrangements with third countries. MERCOSUR members, in particular, are precluded from individually negotiating preferential trade agreements with third parties. In contrast, CAN and CACM members were able to conclude individually preferential trade agreement, which undermined the internal coherence of these two blocks. This was particularly the case in the CAN, whose *supra*-national institutional framework was weakened by the negotiation and signing by Colombia and Peru of separate preferential trade agreements with the United States, and by Venezuela's related departure from the group.

198. Chile, Cuba, Dominican Republic, Mexico and Panama were not part of customs unions. Hence, in principle, only these five countries retained individual autonomy to formulate and apply trade policies, although framed by multilateral and other international agreements. Chile and Mexico took advantage of this freedom to put together extensive networks of preferential trade agreements over the last two decades. This strategy reflected in part the view that the multilateral system afforded fewer opportunities for advancing liberalization at the required pace and depth. Hence, while Chile had in force no preferential trade agreement in 1995, it had in place agreements with some 45 partners by 2009. Mexico maintained in force no preferential trade agreements in 1989, had agreements with three parties in 1995 and had increased this number to 41 by 2009.[30]

199. By far the most important preferential trade agreement concluded by a LAC country in terms of the value of trade was the NAFTA among Mexico, Canada and the United States. This reflects not only the size of the economies involved, but also the strong economic complementarities between Mexico and its northern neighbours, which proved greater than the complementarities among the members of the CAN, CARICOM, CACM or MERCOSUR.

[30] Excluding limited-scope agreements under ALADI.

200. The above explains the priority that a number of LAC countries gave to concluding preferential trade agreements with developed countries, in particular the European Union and the United States, the principal destinations for many LAC exports. In some LAC countries the terms of those preferential agreements proved controversial, although generally there was little quantification of their costs and benefits during either the negotiation or implementation stages. As at end 2009, 15 LAC countries had concluded preferential trade agreements with the European Union and nine with the United States. In some instances, preferential trade agreements between LAC and developed countries replaced previous arrangements under which LAC countries were offered unilateral preferences under waivers granted by WTO Members.

(f) Customs procedures, import licensing and quantitative restrictions

201. Many LAC countries relied on a complex system of non-tariff barriers and export incentive schemes to regulate trade prior to the review period. Trade and exchange rate measures were often part of stop-go policies of alternately stabilizing prices and correcting the external balance. Frequently, trade policies were linked both to industrial development policy and balance-of-payments considerations. Such measures reduced general economic welfare and encouraged unproductive, rent-seeking activities. Economic policies changed direction during the 1970s and 1980s. A main element in this process was comprehensive trade liberalization through the removal of non-tariff barriers and the reorganization of internal regulations.

202. During 1989-2009, LAC countries progressively rationalized and modernized their trade regimes. In many LAC countries, the main customs procedures were reviewed and consolidated, and inspection procedures streamlined. Also single window for importers were created and most national customs offices reformed, in some cases radically. As a result, in most LAC countries the average time and cost involved in importing and exporting were reduced although they usually remained above the OECD averages. Consultations were requested in 2003 and 2006 concerning certain customs measures applied by Mexico and Colombia, respectively; both cases led to mutually agreed solutions.

203. Import licences were in the past among the most restrictive elements in the import regimes of several LAC countries, and remained of concern at different times during the review period. At the start of this period, for example, Brazil retained a large discretionary power to restrict imports under a restrictive licensing regime. In 1999, Suriname eliminated the opaque and highly discretionary licensing system that had applied to all imports and exports, and was used to ration foreign exchange and shield domestic producers from external competition. It was not until 2004 that Colombia eliminated the domestic production absorption policy, which applied non-automatic import licenses to control the importation of some agricultural products.

204. By the end of the review period, quantitative restrictions were still applied by the Dominican Republic to sugar imports, which were only permitted if there was a shortfall in domestic production. In countries such as Guyana and El Salvador import licensing, prior authorization or import visas were applied to important products of national industries, such as, rice and sugar. In Argentina and Brazil automatic licences covered the vast majority of imports during much of the review period.

205. Belize subjected certain imports to licensing requirements amounting to prohibitions; the authorities believed that this was required because tariffs alone could not protect the targeted products against foreign competition. At the end of the review period, some other CARICOM members still imposed non-automatic licences to protect a number of agricultural activities from non-CARICOM imports. This reflects the protracted nature in the CARICOM region of the process of tariffication of the quantitative restrictions previously permitted under multilateral rules.

206. Many LAC countries applied outright import prohibitions mostly for health, environmental or security reasons. However, some LAC countries maintained import prohibitions for economic reasons, having initially introduced them as a component of import substitution policies. This would seem to have been the case of the bans on the importation of used automobiles maintained by Argentina, Brazil, Chile and Mexico. Brazil also had in place a virtual ban, through the non-issuance of import licences, on retreaded tyres, except for those from MERCOSUR; this measure was challenged under the WTO dispute settlement mechanism. Brazil imposed as well import prohibitions on virtually all used consumer goods. Other LAC countries also banned the importation of a number of used consumer goods such as clothing.

207. Between 1989 and 1994, Argentina, Colombia, Peru and Brazil invoked the provisions of Article XVIII:B, and imposed import restrictions for balance of payments purposes. After the establishment of the WTO, only Brazil and Ecuador invoked such provisions in the LAC region. In the first case, Brazil imposed quantitative limitations on imports of passenger cars in 1995 but withdrew them that same year following consultations with other WTO Members. Ecuador notified in 2009 that it had applied quantitative restrictions for balance-of-payments purposes, which were still in place by the end of the review period.

(g) Tariffs and other charges affecting imports

208. In LAC countries tariffs served both protective and revenue purposes. However, in most, the contribution of tariffs to total tax revenue fell significantly. For example, in Nicaragua such contribution fell from 24% to 5% between 1990 and 2008. On the other hand, tariffs still make a significant contribution to government revenue in many Caribbean countries, with tariffs and other taxes levied on imports accounting in some countries for more than half of total tax revenue.

209. In most LAC countries, tariff reductions brought down considerably the simple average tariff rates during the review period. For example, in Peru the average applied MFN tariff rate decreased from 66% in 1989 to 16.3% in 1993, and then to 8.2% in 2007. Tariff reductions in Haiti had brought down the simple average tariff to 2.8% by 2008, making it the lowest in the LAC region by a wide margin.

210. Although the general downward trend was unambiguous, during various periods several LAC countries did increase the overall level of tariff protection. For instance, in 1997 Brazil and other MERCOSUR members temporarily raised tariffs by three percentage points. In Mexico, the simple average MFN tariff increased also by some three percentage points between 1997 and 2001, while Barbados increased import duties by close to six percentage points between 2005 and 2007. At various times, other LAC countries rose import duties temporarily on specific products. In Brazil, for example, tariffs on motor vehicles were increased from 20% to 70% in 1995, but were subsequently reduced to 35%, the maximum allowed by Brazil's WTO commitments.

211. In most LAC countries, tariffs on agricultural goods were historically higher than on non-agricultural products; in Barbados, Costa Rica and Mexico, among others, the average tariffs on agricultural products were between two and three times higher than on other products. In line with this, the highest rates in the tariff schedule were often applied to agricultural products, a feature intensified by the new tariff peaks resulting from the process of tariffication in agriculture agreed during the Uruguay Round negotiations.

212. On the other hand, in MERCOSUR members, average tariffs on agricultural products were typically slightly lower than on other products, with the highest tariff rates applied instead to manufactures. This reflect not only MERCOSUR members' comparative advantage in the production of agricultural products but also their long-standing policy of protecting manufacturing activities.

213. In most LAC countries tariff dispersion was somewhat reduced but in countries like the Dominican Republic tariffs reductions on inputs and capital goods had the effect of increasing tariff dispersion and, possibly, effective protection. Although at lower levels, tariff escalation persisted in most LAC countries, with this escalation tending to increase the effective rates of tariff protection. However, tariff escalation was negligible in Bolivia and Chile. Bolivia simplified its tariff structure and adopted a quasi-uniform tariff rate in 1990 which, however, subsequently tended to lose this characteristic. Chile had a virtually uniform tariff throughout the review period, with the single rate falling from 15% in 1991 to 6% in 2009.

214. In all LAC countries tariffs took mostly the form of ad valorem duties, a feature that gave greater transparency to the cost of protection to consumers and user industries in LAC countries. Exceptions to the use of ad valorem duties included Argentina, Mexico, Venezuela and various Caribbean countries, which also applied specific and/or compound duties to a number of tariff lines.

215. In countries like Mexico, Panama and Venezuela where tariff-quota schemes were used, these tended to add complexity and reduce the transparency of the import regime. The same was true in the several LAC countries that use price band mechanisms. These included Chile and some members of the CACM and CAN. These two regional blocks adopted a price band mechanism as part of their common external tariffs in order to stabilize the domestic price of certain agricultural products. The specifics varied but in general all price mechanisms operated by increasing (reducing) the tariff from a base rate whenever the product's price fell below (exceeded) a reference price. During much of the review period, concerns arose about the predictability of this form of protection, and the possibility that applied rates could increase beyond bound levels. In the case of Chile, two WTO Panels found that the price band system was inconsistent with multilateral rules.

216. Tariff predictability improved considerably in the LAC region following the increased level of tariff bindings resulting from the Uruguay Round negotiations. For example, in Brazil and Colombia bindings covered only around 6% and less than 1% of all tariff lines, respectively, before the end of the Uruguay Round; in contrast, both countries bound their entire tariff schedules once the implementation period for Uruguay Round commitments ended. Likewise, with exceptions like Haiti and Suriname, other LAC countries also accepted to bind practically their entire tariff schedules.

217. On the other hand, in all LAC countries the vast majority of bindings were set substantially higher than applied rates. In most countries, the average bound rate was at least five time higher than the average applied tariff, with differences of 40 percentage points or more between average bound and applied tariffs. These wide gaps reduced the predictability of the trade regimes of all LAC countries, and in a number of instances allowed some countries to raise tariffs to tighten market access without violating multilateral rules.

218. In a few LAC countries certain applied tariffs exceeded bound levels, although generally by a narrow margin and/or affecting a small number of tariff lines. One exception was Suriname where applied tariffs exceeded bound rates, sometimes by as much as 30 percentage points, for a considerable number of items.

219. Several LAC countries employed temporary tariff-concession schemes to reduce the burden of tariffs on imported capital goods and other inputs not produced domestically. Tariff concessions were also granted through special customs regimes that allowed the temporary importation of certain products without payment of customs duties. Adverse experiences with the operation of concessional entry schemes led Peru suppress 39 regimes of this kind in 1990. On the other hand, Mexico expanded its sectoral promotion programmes, under which beneficiary companies may import inputs at reduced tariffs in order to produce particular goods.

220. Apart from tariffs, a number of LAC countries applied other charges exclusively on imports. Some of those charges were substantial; for example, Colombia imposed an import surcharge of 16%

during the earlier part of the review period. Haiti levied inspection fees of 4%, while other Caribbean countries imposed customs service charges ranging up to 10%. Additional import charges were also applied, at much lower rates, in countries like Argentina, Mexico and Uruguay. The Dominican Republic maintained a surcharge of up to 13% and a transitional import tax of 2%; both surcharges were abolished after a WTO panel found them to be inconsistent with multilateral rules. Costa Rica eliminated import surcharges in 1992.

221. In general, LAC countries granted imports national treatment for the application of internal taxes. However, in 1999 a WTO Panel report concluded that Chile acted inconsistently with WTO rules by according a preferential tax treatment to pisco vis-à-vis certain other alcoholic beverages. Argentina modified its value added tax regime after a WTO Panel found in 2002 that, among other things, it resulted in a heavier fiscal burden for imports than for domestic products. In other LAC countries differences also existed in the application of certain internal taxes at different times.[31] Some countries eliminated such differences but certain CARICOM members continued to levy only on imports an environmental tax on non-returnable beverage containers.

222. A number of LAC countries applied the Brussels Definition of value at the start of the review period but introduced new regimes to implement the provisions of the WTO Agreement on Customs Valuation (CVA). Accordingly, while minimum customs values and reference prices were frequently used during the early part of the review period, most LAC countries later adopted the WTO definition of transaction value. However, in practice, some LAC countries continued to use occasionally minimum and reference prices, particularly for the valuation of used products. This was the case in a number of Caribbean countries, where under-invoicing remained of concern for the authorities. Haiti was still basing its valuation method on the Brussels Definition as late as 2003.

223. In order to increase tax revenue and discourage fraud and corruption, a number of LAC countries relied at various times on private inspection companies to ensure price, quality, and quantity controls on imports and exports.[32] However, most of them had eliminated pre-shipment inspection by the end of the review period.

(h) Contingency measures

224. A few LAC countries operated some of the world's most active trade defence systems during the review period. In earlier years, LAC countries had made limited use of contingency procedures, reflecting the high overall level of protection previously available through the use of both tariffs and other non-tariff measures. For example, in Argentina anti-dumping (AD) activity reached an early peak in 1981, the number of AD measures decreasing after the re-introduction of quantitative import measures. In general, greater disciplines in the application of non-tariff measures came hand-in-hand with an increased use of AD measures in order to protect local producers against foreign competition.

225. In the LAC region, AD measures were used in particular by Argentina, Brazil and Mexico. These three countries alone accounted for 78% of the 228 definitive AD measures in force in the LAC region at end 2009. In Argentina, the number of definitive AD measures in forced increased from two in 1992 to 73 in 2009. In Brazil, the number of such measures rose from four in 1992 to 66 in 2009, while in Mexico they increased from 20 in 1993 to 70 in 2007. The increase in the number of AD measures was not smooth but varied over time. For example, in the case of Argentina the initiation of AD investigations increased considerably during the 1999-2001 economic recession, but fell after the devaluation of its currency in 2001.

[31] Including Belize, Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Guyana, Haiti, Panama and Paraguay.

[32] Including Bolivia, Ecuador, Haiti, Paraguay and Peru.

226. In contrast, LAC countries made little use of countervailing (CV) measures during the review period, with Brazil and Mexico each maintaining in force one CV measure at end 2009.

227. During 1995-2009, AD measures adopted by LAC countries targeted mostly products from China, other LAC countries especially Brazil, and the United States. Most AD fell on steel products, chemicals and electrical machinery, while the few CV measures adopted affected agricultural products.

228. A number of LAC countries, particularly in the Caribbean, took neither AD nor CV measures during the review period. Some of them had no contingency legislation, or had it but did not establish the institutional framework necessary for its application. Chile agreed to the reciprocal non-application of AD measures under some of its preferential trade agreements.

229. There is no record of LAC countries having maintained safeguard measures between 1989 and 2004 under Article XIX of the GATT. The first safeguard measure adopted by a LAC country under WTO provisions was introduced by Brazil in 1996 to protect the toy industry. Between 1995 and 2009, Chile adopted seven safeguard measures, Argentina four, and other LAC countries five others. Several LAC countries exempted, under certain conditions, preferential trading partners from the application of safeguards.

230. During 1995-2009, some LAC countries also adopted transitional safeguard measures under the provisions of the WTO Agreement on Textiles and Clothing.[33] Over the same period, Barbados, Costa Rica and Nicaragua activated the special safeguard provisions of the WTO Agreement on Agriculture.

231. Since 1995, as defendants, LAC countries were involved in 38 disputes (including consultations) within the WTO regarding the application of their AD, CV or safeguard regulations, with 20 concerning AD measures. The cases involved mostly measures adopted by Argentina and Chile, followed by Mexico.

(i) Technical regulations and SPS measures

232. Other measures applied to imports into LAC countries include technical regulations and sanitary and phytosanitary (SPS) measures. In most LAC countries numerous improvements were made to the development and administration of both technical regulations and SPS measures since 1989.

233. After the establishment of the WTO, most LAC countries sought to establish an up-to-date system to protect domestic consumers and producers, while pre-empting possible difficulties for LAC products in foreign markets. Their stated policy was to follow international norms for the setting of technical regulations and SPS measures. When more stringent requirements were established, they sought to address special concerns such as construction materials satisfying stricter seismic qualities. LAC countries also adopted a stated policy of imposing SPS measures based on an evaluation of the actual risks involved.

234. While in certain countries there were no general rules for preparing technical regulation and SPS measures at the start of the review period, several of them gradually introduced guidelines for the adoption of such requirements. Rules were introduced as well in new areas like genetically modified organisms.

235. In the largest LAC countries, numerous new technical regulations and SPS measures, covering hundreds of products, came into force over 1989-2009. The number of annual notifications concerning technical regulations made by LAC countries as a group also increased, from 30 in 1995,

[33] Namely Argentina, Brazil, Ecuador, Colombia and Peru.

to 142 in 2001, and to 231 in 2009; the equivalent numbers for SPS measures were 92, 116 and 293, respectively. However, the information available indicated that some notifications were not made within the multilaterally recommended periods.

236. On the other hand, many of the small LAC countries in the Caribbean and Central America found it difficult to set operational systems to adopt and implement technical regulations and SPS measures. In several of them, the legislation was brought up to date only in recent years, or the existing facilities were inadequate to ensure that SPS measures were based on risk assessments. Moreover, notifications to WTO were sparse, with a number of Caribbean countries having made no SPS notifications since the establishment of WTO, nor putting in place any formal procedures for doing so. In practice, in some countries only a handful of technical regulations were brought into force since 1989, while certain SPS measures predated the creation of the WTO and had not been revised. Enforcement of the few requirements that existed remained a challenge, a problem which also affected larger LAC countries.

237. In general, technical regulations and SPS measures constituted an area in which human resource constraints appeared to have imposed some of the heaviest burdens on small countries. In CARICOM members, this was addressed in part through efforts to establish a regional organization for standards and quality control.

238. Although the number of technical regulations and SPS measures in force has risen considerably during the review period, there is no evidence that they have been used in a systematic manner as unnecessary barriers to trade by LAC countries. However, in certain countries concerns have risen from time to time in relation to technical regulations or SPS measures. Between 1995 and 2009, Argentina and Mexico were the only two LAC countries involved as defendants in WTO dispute settlement cases: five concerning their technical regulations and two concerning their SPS measures; two cases concerning technical regulations led to the establishment of WTO Panels.

(j) Export taxes and other export restrictions

239. Before 1989, a small number of LAC countries applied voluntary export restraints on exports of certain products destined to some developed countries. A number of LAC countries also applied restraints on certain textile and clothing products under the GATT Multi Fibre Arrangement; after the establishment of WTO, export restraint arrangements were maintained under the WTO Agreement on Textiles and Clothing that ended on 1 January 2005. During the review period, several LAC countries applied export quotas to products under environmental control, the CITES or in support of United Nations resolutions.

240. Most LAC countries abolished export controls based on domestic supply considerations although a few continued to make occasional use of these controls. For example, El Salvador still restricted exports of certain goods to ensure domestic availability in 2009. At different times during the review period, various LAC countries required that foreign exchange earnings from exports be surrendered to the Central Bank. In Suriname this was equivalent to an export tax as the surrender requirements were applied using an exchange rate lower than the rate used by commercial banks.

241. During much of the review period, a number of LAC countries used export taxes to limit exports of selected products, encourage domestic processing and raise government revenue. LAC countries that applied those taxes included Argentina, Brazil, Mexico and certain Caribbean and Central American countries. With the notable exception of Argentina, in practice export taxes generally affected only a handful of products. Argentina had eliminated almost all export taxes by 1991, although it continued levying a 1.5% charge on agricultural exports. In 2002, however, following the devaluation of its currency, Argentina sharply widened the scope of export taxes while increasing their rates. Argentina also made use of export suspensions or volume restrictions in recent years.

(k) Export assistance

242. Export assistance remained a pillar of the trade policies of most LAC countries, which considered it a key element in the strategy for export-driven integration of their economies into world markets. In several LAC countries export assistance was provided mainly through free-trade zone schemes. Typically, these schemes allowed the duty-free importation of inputs used in export-processing activities, and exempted from income taxes the firms operating under the schemes. In the earlier years under review, Mexico's maquiladora programme represented the most important example of free-trade zones in the LAC region. However, the importance of this programme decreased sharply after the NAFTA and other preferential trade agreements required Mexico to eliminate export assistance programmes providing subsidies.

243. On the other hand, free-trade zones remained of great importance in Caribbean and Central American countries. Some of these justified their use as necessary to match the assistance provided by other LAC countries. In order to bring about a coordinated elimination of export subsidies for the benefit of all, efforts were made within the WTO to ensure that free-trade zones did not result in the provision of export subsidies. In this context, 14 LAC countries notified to the WTO that their free-zone regimes were programmes containing export subsidies; an extension was then granted until end 2004 to eliminate export subsidies, with the possibility of further extensions until the end of 2007.[34] Subsequently, nine LAC countries requested and obtained the continuation of the extension, and agreed to eliminate export subsidies by 2015 at the latest.[35] Accordingly, some of these countries started taking steps to eliminate export subsidies but, at the end of the review period, others did not seem to have developed a concrete strategy to transition to a subsidy-free export regime.

244. Other measures used by LAC countries to assist exporters included various types of drawback systems. During the review period, some LAC countries operated systems based on a fixed reimbursement or other schemes that refunded import duties at rates that could exceed the actual value of duties paid[36]; as such, some drawback systems were notified to the WTO as providing export subsidies.

245. The export competitiveness of some LAC countries was affected by their cascading internal taxation systems. The adoption of value added taxes by certain LAC countries during the review period went a long way towards addressing this problem.[37] However, in Brazil the comprehensive overhaul of the internal taxation system faced political and constitutional obstacles. Instead, tax and duty exemptions were used to offset the costs imposed on exporters by the complex taxation system, although exemptions linked to export or trade-balancing programmes were gradually discontinued.

246. A number of LAC countries assisted exporters by providing export financing, guarantees and/or insurance services through development banks or other government agencies. The smaller LAC countries, though, were seldom able to offer these types of export assistance. Export finance was of particular importance in Brazil, where interest rates were especially high. In certain cases, Brazil made the amount financed dependent on the percentage of domestic content. The manner in which Brazil applied official financing to aircraft exports was challenged in the WTO, and Brazil modified its procedures twice during the review period after the DSB determined that such financing constituted an export subsidy.

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[34] The LAC countries notifying that their free trade zones contained subsidies were: Antigua and Barbuda, Argentina, Belize, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Panama and Saint Lucia. Of these, all except Argentina and Chile requested an extension until 2004.

[35] The LAC countries beneficiary of this extension were Antigua and Barbuda, Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Jamaica, Panama and St. Lucia,.

[36] Countries operating such schemes included Bolivia, Colombia, El Salvador and Peru.

[37] LAC countries that adopted a VAT regime between 1989 and 2009 included Barbados, Dominica, Guyana, Paraguay, and Saint Vincent and the Grenadines.

(l) Other government assistance

247. In the past, LAC governments provided assistance to domestic producers through a plethora of industrial policy schemes. During the review period, in many LAC countries the authorities retained broad discretion to grant fiscal incentives to a wide range of activities. A number of horizontal incentives also existed, particularly in the larger LAC countries, for example, to support regional development, encourage R&D or develop micro, small and medium-size enterprises. Venezuela assisted domestic producers through the supply of refined petroleum products at below world prices.

248. In recent years, several LAC countries took steps to rationalize their assistance programmes. Thus, some CARICOM members undertook to reform various aspects of their support schemes, for example by freezing the granting of tax holidays or setting up new administrative arrangements to enhance transparency. At end 2006, Costa Rica was working on a draft law on transparency and rationalization of incentive regimes. In 2007, Peru established a general framework that regulates the granting and the renewal of fiscal incentives.

249. During the review period, a number of LAC countries maintained assistance schemes that linked benefits to minimum local content or value added requirements.[38] In an effort to increase domestic production of energy from alternative sources, the Dominican Republic adopted in 2007 a law granting incentives dependent upon the use of national inputs and prohibiting the import of biofuels if there was no shortfall in domestic production.

250. A number of LAC countries notified the WTO that they maintained programmes containing trade related investment measures (TRIMs).[39] Costa Rica notified that it would cease to apply in 1999 the only TRIM it maintained, and which related to tax credits for export products. Chile stopped applying WTO-inconsistent TRIM in 2003. Argentina, Colombia and Mexico requested extensions for the elimination of their WTO-inconsistent TRIMs.

251. Brazil maintained an important free-trade zone in Manaus, whose production was, however, sold almost exclusively in the domestic market. This free-trade zone was, thus, essentially a scheme to promote regional development, rather than exports. The same was also true of Peru's free-trade zone in Tacna. Brazil notified to WTO that a number of other assistance programmes provided subsidies for the development of particular regions, and for research and development.

252. Official credit programmes were available from development banks, particularly in the larger LAC countries. Some of those programmes were sector-specific, while others had a horizontal nature. In Brazil, the National Development Bank (BNDES) traditionally was one of the few domestic sources of long-term funds. It was estimated that some 30% of Brazil's total credit in 2008 went to earmarked activities, with BNDES offering more than half. BNDES was by some margin the largest development bank in the LAC region.

253. In some LAC countries, official credit targeted especially the rural sector. This was the case in Brazil, where a compulsory system was in place that required commercial banks to make available to rural borrowers a certain proportion of their daily balances, usually at interest rates significantly below the rates prevailing in the domestic market. Venezuela also set up a programme that required a certain percentage of credit to be channelled for agricultural activities at preferential conditions.

254. In their 2009 notification of subsidies to the WTO, 12 LAC countries indicated that they offered specific subsidies through various programmes; three indicated that they maintained no

[38] Including Argentina, Brazil, Chile, Guyana, Mexico, Paraguay, Peru and various CARICOM members.

[39] Namely, Argentina, Barbados, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Mexico, Peru, Uruguay and Venezuela.

notifiable subsidies, and the other 17 countries submitted no notification.[40] In contrast, in their subsidies notification for 1995 only eight LAC countries had indicated that they offered specific subsidies, eight others that they maintained no notifiable subsidies, and the rest had submitted no notification.[41]

(m) State ownership, privatization and competition policy

255. State enterprises came to play a central role in the economic life of several LAC countries under the former import substitution strategy; reducing such involvement occasionally faced political, legal and constitutional obstacles, but considerable progress was made across the region. Several LAC countries established formal privatization programmes under which the number of state enterprises was sharply reduced. In Argentina, some 90% of State-owned firms were sold to the private sector over 1991-1994, and most of the remaining public enterprises were privatized later in the same decade. Through most of the LAC region, the State withdrew from activities such as the supply of agricultural and mineral products, steel, fertilizer, petrochemicals, electricity, financial, railways and telecommunications.

256. In recent years the privatization process in the LAC region slowed down, came to a standstill or was even reversed. In some countries privatization never touched some of the most important sectors of the economy, for example the petroleum sector in Mexico or copper mining in Chile. In many LAC countries the State continued to play a key role in a wide range of activities.[42] In several LAC countries, this reflected a policy decision that government control was appropriate to accomplish strategic objectives.

257. State trading enterprises, defined as governmental and non-governmental enterprises that deal with goods for export or import, were a feature of several LAC economies. This was the case in particular in countries where the primary sector played an important economic role and governments sought to implement objectives such as providing price support, ensuring food or energy security, or supporting industries considered of strategic importance. Twelve LAC countries notified the WTO that they maintained state trading enterprises with monopolies on the production, importation, exportation and/or distribution of certain products.[43]

258. Privatization and the greater reliance on market mechanisms in LAC economies made competition laws increasingly important, and placed greater demands on the agencies responsible for the administration of these laws. Competition policy in the LAC region was of special importance because practically all LAC economies were characterized by high levels of market concentration in various key sectors, which led to low levels of competition in areas like telecommunications and energy supply.

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[40] The first three countries were Cuba, Suriname, and Trinidad and Tobago, while the 12 countries were Antigua and Barbuda, Argentina, Barbados, Chile, Costa Rica Dominican Republic, El Salvador, Grenada, Guatemala, Honduras, Jamaica and St. Lucia.

[41] The eight countries that offered subsidies in 1995 were: Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Uruguay and Venezuela; the eight countries that maintained no notifiable subsidies were Antigua and Barbuda, Cuba, Dominican Republic, Honduras, Nicaragua, Peru, Suriname and Trinidad and Tobago.

[42] Such as in electricity, petroleum and petrochemicals, port services, transportation services, and health services in Brazil; the electricity and petroleum sectors in Colombia; insurance, telecommunication and electricity transmission in Costa Rica; mining, electricity, telecommunications and financial services in Ecuador; petroleum and natural gas, chemicals, electricity, and telecommunications in Trinidad and Tobago; and electricity, fixed telephony, and banking in Uruguay.

[43] These were: Barbados, Brazil, Chile, Colombia, Costa Rica, Jamaica, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay and Venezuela.

259. During the review period, several LAC countries made considerable progress in creating competition policy frameworks by introducing explicit legislation to regulate competition.[44] On the other hand, several LAC countries did not adopt general competition policy legislation, although some were in the process of drafting legislation on the subject; they all had, though, specific provisions governing competition in certain activities.[45] Despite the progress made during the review period, in all LAC countries the effective implementation of competition policy and increasing the level of competition remained among the most important challenges for government policy.

(n) Government procurement

260. No LAC country was a signatory to the GATT Government Procurement Code, and none signed the WTO Plurilateral Agreement on Government Procurement. Argentina, Chile, Colombia and Panama were observers in this Agreement, with Panama the only LAC country negotiating accession to it.

261. In the past, some LAC countries maintained highly restrictive government procurement regimes. For example, government procurement in Colombia used to involve verifying whether local substitutes were available before approving the purchase of foreign products, while in Argentina local producers were given a voice in whether a comparable product was available locally. Brazil required foreign firms wishing to take part in government procurement to associate themselves with national firms, maintained local preferences and promoted the purchase of domestically developed informatics and telecommunications goods. Such regimes imposed significant barriers to trade in LAC countries, where the number and size of public sector enterprises meant that government procurement of goods and services constituted an important share of foreign trade.

262. Over the period under review, most LAC countries implemented significant reforms to modernize the procurement process, and increase the transparency and efficiency of their public procurement regimes, although in some countries this was a drawn-out process. Reforms were underpinned in most cases by new government procurement legislation.[46] However, in some CARICOM members there was no legislated guidelines defining the procurement selection process; in the case of Belize, the relevant legislation dated back to the colonial era.

263. In a few LAC countries, government procurement legislation provided that there should be no discrimination based on the origin of products, services or providers. This was the case, for example, in Chile, Dominican Republic, Guatemala and Panama.

264. On the contrary, other LAC countries used discriminatory procurement procedures in an attempt to support domestic activities. The type and level of preference offered to domestic procurement varied across countries. The most common method was the granting of price preference margins, with several LAC countries adopting them during the second half of the period under review.[47] In Venezuela the margin of preference was significantly increased in 2002; however, due to the substantial weight of inputs and capital goods, the share of purchases from foreign suppliers was large. The same is probably also the case in other LAC countries with a limited domestic offer.

[44] Venezuela in 1992, Jamaica and Mexico in 1993, Peru in 1994, Panama in 1996, Barbados in 2003, El Salvador and Guyana in 2006, and Dominican Republic in 2007.

[45] LAC countries without general competition policy legislation at the time of their last Trade Policy Reviews included: Bolivia, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay, Uruguay and many CARICOM members.

[46] LAC countries that adopted new government procurement legislation over 1989-2009 included: Argentina, Bolivia, Belize, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Uruguay and Venezuela.

[47] Preference margins were used by, among others, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Guyana, Honduras, Peru and Uruguay.

Potentially more restrictive was Ecuador's legislation, which enabled the authorities to limit tendering to domestic companies. In Mexico, most government procurement took place through tenders open only to Mexican persons and goods, or to Mexicans and foreigners from countries with which Mexico had signed relevant agreements.

(o) Intellectual property rights

265. In the past, the regulations on intellectual property maintained by some LAC countries were a source of friction with certain developed trading partners. This reflected in part the fact that some of those regulations were aimed at supporting the development of domestic industries under import-substitution strategies, an objective that had to be balanced against the protection of intellectual property rights (IPRs). A case in point was Brazil's earlier IPR legislation, which did not extend patent protection to chemicals and pharmaceuticals, offered only a 15-year period of patent validity, limited the protection granted to foreign trademarks, and allowed the authorities to be directly involved in the negotiation of contracts for technology transfer. The de-emphasis on import substitution in LAC countries thus explained in part their subsequent efforts to strengthen the protection of IPRs.

266. Trade Policy Reviews started examining IPR-related issues only after the establishment of the WTO. For all LAC countries except Haiti, as a least developed country, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into force as from 1 January 2000. This drove some LAC countries to reformulate many of their IPR regulations. In a few other countries, for example Mexico, the initial impetus for change came from broader economic liberalization efforts or from commitments under preferential trade agreements.

267. Some LAC countries with a civil-law legal system initially did not deem it necessary to modify their IPR legislation after the Uruguay Round, as the TRIPS Agreement was part of their national legislation (see above [Institutional and legal framework]). In practice, however, all civil-law LAC countries have eventually enacted and revised their IPR legislations to ensure and/or facilitate their application to all the areas referred to in the TRIPS Agreement. In the Andean Community, the TRIPS Agreement was applied together with the Community's IPR rules.

268. In almost all CARICOM members the implementation of the TRIPS Agreement did require the adoption of new domestic legislation. However, the necessary legislative changes were slow, and during much of the review period the terms and scope of IPR protection was, in general, less favourable than those in the TRIPS Agreement. This was the case for example in Guyana, Suriname and some of the smallest CARICOM members at the time of their most recent Trade Policy Review.

269. In contrast, the intellectual property legislation of some LAC countries went further than the obligations of the TRIPs Agreement in certain areas. In Mexico, for example, the term of copyright protection was extended from 50 to 75 years in 1993, and to 100 years in 2003. The view was held that the last extension compensated rightholders for their losses from piracy. This highlighted the commercial value of longer protection to rightholders, and the cost to consumers. A number of other LAC countries also came to offer copyright protection for the life of the author plus 70 years or more, with some of them doing so in the context of preferential trade agreements.[48]

270. Also using the flexibilities provided by the TRIPS Agreement, some LAC countries decided not to limit imports by an unofficial distributor of goods placed on the market in another country with the consent of the copyright holder (parallel import), or to make such decisions on a case-by-case basis. However, according to the Secretariat reports for the respective Trade Policy Review, countries like Brazil and Mexico did so while not allowing parallel imports in the case of patents. In contrast,

[48] LAC countries offering copyright protection for 70 years or more included Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay and Peru.

other LAC countries allowed parallel imports of products protected by patents, subject to certain conditions, but did not permit parallel imports of products protected by copyright.[49] Practically no LAC country had a record of the type of analysis undertaken to decide on the extensions of copyrights or on whether to authorize parallel imports, nor on how these decisions may have encourage innovation or creativity, or achieved a balance between the economic interests of right holders and users.

271. During the period since 1995, most LAC countries took steps to simplify administrative procedures, establish new specialized agencies, and reinforced the enforcement of IPR protection. However, many of them found it difficult to put in place the required institutions to provide the level of IPR protection required by the TRIPS. In general, enforcement of IPR regulations proved difficult because of insufficient resources and a lack of awareness that the law was being infringed. As a result, some concerns were expressed from time to time as to the enforcement of IPRs in LAC countries.

272. During the period under review, the IPR legislation of two LAC countries, Argentina and Brazil, was challenged under WTO's dispute settlement rules. The Argentinean legislation at issue concerned the protection of pharmaceutical products, and undisclosed information. The case involving Brazil related to the “local working” requirement contained in this country’s industrial property law.

(p) Sectoral policies: agriculture

273. The agricultural sector was in past years critical in the development of virtually all LAC countries. However, during the period under review the sector played very different roles across LAC countries, representing an engine of growth in some and a hindrance to development in others. At one extreme were MERCOSUR members, where agriculture made a key contribution to net exports, with Argentina and Brazil positioning themselves among the world's largest exporters of several products.[50] Also, Brazil's expansion of land under cultivation during the review period was remarkable. In contrast, in the smallest CARICOM countries agriculture mostly represented a historical legacy whose survival, even in a reduced form, was depended on continuous assistance and protection against foreign competition.

274. The share of agriculture in GDP increased significantly in Guyana and Paraguay, reflecting the relatively slow growth of other sectors as well as the opportunities for expansion at the extensive margin of production still available in these countries. More generally, however, in most LAC countries the share of agriculture in GDP decreased between 1990 and 2008, in some CARICOM countries falling by as much as ten percentage points. Accordingly, in several LAC countries the agricultural sectors came to make only a modest contribution to GDP, although in some this contribution remained significant.[51]

275. In the past, several LAC countries taxed the agricultural sector to foster manufacturing in the context of import-substituting policies. In recent years, agriculture remained implicitly and explicitly taxed in certain LAC countries, notably in Argentina. In certain other LAC countries, the earlier pattern of protection also discriminated against agriculture but this changed and the sector came to enjoy higher protection than manufacturing.

[49] These countries included Bolivia, Dominican Republic, Ecuador, Guatemala and Uruguay.

[50] Argentina and/or Brazil, individually, were among the world's ten largest exporters of, among others, cattle meat, chicken meat, coffee, cotton, garlic, honey, maize, orange juice, soybeans, sorghum, sugar, tobacco and wheat.

[51] Over 1990-2008, the agricultural sector accounted for less than 5% of GDP in Antigua and Barbuda, Barbados, Mexico, Saint Kitts and Nevis, Trinidad and Tobago and Venezuela, while it contributed 15% or more of GDP in Belize, Bolivia, Dominica, Guatemala, Guyana, Haiti, Honduras, Nicaragua and Paraguay.

276. In many LAC countries, the agricultural sector split into a segment made up of subsistence farmers, and a modern part competing against foreign products in domestic and international markets. During the period under review the gap between the two segments widened. A prime example of this was Mexico. In this country trade liberalization played a key role in this process, with liberalization benefiting some activities by increasing access to foreign markets, particularly the U.S. market, but other activities found it difficult to compete with imported products, some of them subsidized.

277. In general, and despite important structural changes during the review period, in many LAC countries the agricultural sector suffered from historical weaknesses arising from low labour productivity. As a result, in a number of LAC countries the sector continued to employ a significant proportion of the labour force while providing inadequate incomes. Because of its importance for employment, and its role in poverty reduction, LAC countries considered the agricultural sector as politically sensitive. As such, the sector benefited from a range of border and internal support measures. Over time, in some LAC countries, notably in the smaller Caribbean economies, these measures fostered high cost agricultural activities largely isolated from international markets.

278. Border measures maintained by LAC countries in support of the agricultural sector have included non-automatic import licensing, anti-dumping and high tariffs (including those resulting from the application of price band systems) – these are described in previous sections.

279. Internal support measures included grants, fiscal exemptions and lower tax rates, and extension services. A number of LAC countries used minimum price supports during part or the whole review period.[52] Direct payments to farmers were used in Dominican Republic and Mexico among others. Most LAC countries also offered different public finance programmes. In Brazil, official credit played a particularly important role through the compulsory lending to agriculture at rates below those prevailing in the domestic market. In Brazil and some other LAC countries, low-priced credit fostered the high indebtedness in the sector, which became a problem during periods of high interest rates.

280. At different times during the review period, state-owned companies and marketing boards played important roles in the agricultural sector. However, in most LAC countries their role diminished considerably, although marketing arrangements limited competition in countries like Dominican Republic and El Salvador. In Barbados, state entities maintained monopolies on the importation of a few agricultural products.

281. Certain crops like rice and sugar were supported by preferential access to the markets of the European Union, the United States or regional blocks. In recent year the changes affecting the EU's import regime for sugar led to major restructuring of the sugar industries of Caribbean countries. The banana industries of various LAC countries were also heavily influenced by preferential access to the EU market; the ruling by a WTO Panel that certain import practices by the EU contravened WTO rules sought changes that by eliminating existing distortions tended to benefit some Latin American countries but had a negative impact on banana production in a number of Caribbean countries.

282. No major changes were required in most LAC countries to meet their engagements under the WTO Agreement on Agriculture, since applied import duties on most agricultural goods were substantially below bound rates, as were assistance levels. As required by the WTO Agreements, almost all LAC countries converted their non-tariff measures into tariffs or tariff quotas, although in many of them very high out of quota duties still protected sensitive areas. During the period under

[52] Countries using minimum price supports included Brazil, Colombia, Dominican Republic and Mexico.

review, 20 LAC countries notified the WTO of the granting of domestic support to agriculture, while six of them notified giving export subsidies to agricultural products.[53]

(q) Sectoral policies: manufacturing

283. The manufacturing sector was of considerable importance in several LAC countries. In six of them, the manufacturing sector contributed in excess of 20% of total value added over 1990-2008; in contrast, in other ten countries its contribution was less than 10% of total value added.[54] In absolute terms, the manufacturing sectors of Brazil and Mexico were by far the largest in the LAC region, having accounted on average for about 28% and 33%, respectively, of the region's total manufacturing value added between 1990 and 2008. Both Brazil and Mexico had highly diversified manufacturing industries, some of which were world-class players.

284. In the past, several LAC countries pursued industrial policies largely based on the selective promotion of priority sectors, aiming at import substitution and development of national firms, with widespread government participation in selected industries. Specific sectoral policy objectives were often established in development plans that typically covered the automotive, computer or pharmaceutical industries. This reflected a widely held view that economic development was associated with increased manufacturing activity which had to be, thus, promoted. Although this policy had some initial success, it eventually reached its limits and started to generate economic unbalances and stagnation.

285. The move away from import substitution policies during the first part of the review period, radical in cases like Argentina, Bolivia, Chile and Peru, opened domestic production to increased competition from abroad. As a result, manufacturing across the LAC region came under considerable pressure during the review period. Almost all LAC countries experienced a process of deindustrialization during this period, in the sense that the share of manufacturing in total value added contracted while the shares of other economic sectors increased; the fall was usually small but it was significant in Guatemala, Guyana, Haiti, Jamaica and Panama.

286. The common external tariffs of the four trading blocks to which most LAC countries belonged were designed in part to assist the development of manufacturing, notably through tariff escalation. However, the effect was not uniform within blocks, with a tendency for manufacturing activities to cluster in particular countries. This was best illustrated by the experience of MERCOSUR, where Brazil emerged as a manufacturing powerhouse, while smaller MERCOSUR members struggled to maintain a viable manufacturing base.

287. Within the context of the CACM and CARICOM, a number of manufacturing activities emerged in countries like El Salvador, Jamaica and Trinidad and Tobago to serve regional markets protected from extra-regional competition by the respective common external tariffs. However, most CARICOM members were high-cost locations for the production of goods; manufacturing hence remained a niche activity, and would likely have contracted further in the smaller CARICOM countries without protection from import competition.

[53] LAC countries granting domestic support to agriculture during 1995-2009 included: Argentina, Barbados, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela. The six LAC countries that notified export subsidies were: Barbados, Colombia, Costa Rica, Mexico, Panama and Venezuela.

[54] The six first countries were Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Mexico, while the other ten were Antigua and Barbuda, Barbados, Dominica, Ecuador, Grenada, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

288. In Central America and a few Caribbean countries, free trade zones (FTZ) became the backbone of manufacturing sectors of great importance due to their capacity to generate exports and attract foreign investment. However, due to their high import needs, net exports and value added from FTZ were much less significant than gross exports suggest. Typically, activities in FTZ related to the simpler stages of processing of items such as textiles, clothing and electrical goods.

289. During the first part of the review period, production in FTZ benefited from the import quotas used to managed access to developed countries under the GATT Multi Fibre Agreement (MFA). This underpinned the growth of clothing as the key activity in many FTZ, with the United States becoming by far the most important market for these zones. However, the dismantling of quotas and roll back of market distortions after the expiry of MFA's successor, the Agreement on Textile and Clothing, resulted in much greater competition in the U.S. market. As a result, the clothing industries in FTZ came under great pressure, contracting sharply is some instances.

290. In the past, the industrial policies of a number of LAC countries had as one of their main aims to develop a local automotive industry. To assist their automotive industries, at different times during the review period a few LAC countries maintained not only high tariffs on motor vehicles but also measures such as foreign exchange balancing requirements and local content requirements. As a result, in some LAC economies the automotive industry became among the most highly assisted activities during the review period. For example, it was estimated that in Mexico the automotive industry benefited from an effective rate of protection of about 45% at the start of the review period, and in Brazil of 270% in the mid-1990s.[55]

291. By the end of the review period, Argentina, Brazil, Colombia, Ecuador, Mexico and Venezuela still subjected motor vehicles to some of the highest tariffs applied to manufactured products. Argentina and Brazil also had in place a automotive agreement to manage bilateral trade in automotive products that included trade-balancing requirements. On their part, Colombia, Ecuador and Venezuela maintained an agreement that provides advantages to the autoparts and components industry through tariff preferences and rules of origin requiring an assembly plant in one country to incorporate a minimum percentage of regional materials in order to export duty-free to the other signatory countries. The agreement also prohibited the import of used motor vehicles and parts. Brazil and Mexico also prohibited the importation of most used motor vehicles.

292. Decades of assistance saw Brazil and Mexico establish world-class industries that produce and export large quantities of automotive products, although from behind protected domestic markets. In contrast, the automotive industries of other LAC countries remained considerably smaller and less competitive.

(r) Sectoral policies: other non-service activities

293. A number of LAC countries have long mining traditions; in four of them, the average share of mining in GDP was at least 10% over 1990-2008, while in six others this share exceeded 5% (including petroleum extraction).[56] The mining sectors was particularly important as a generator of export revenue: in three LAC countries it contributed 40% or more of total merchandise exports over 1989-2008, while in other three it contributed at least 20%.[57]

[55] The effective rate of protection measures the net effect of protection given to value added, reflecting the nominal rate of tariff protection accorded to the inputs used by, and product from an industry or sector.

[56] The first four were Ecuador, Guyana, Trinidad and Tobago, and Venezuela, and the five last countries were Bolivia, Chile, Colombia, Mexico, Peru and Suriname. Estimates based on data from ECLAC, Statistical Yearbook 2009.

[57] The first three countries were Bolivia, Ecuador and Venezuela, while the last three countries were Chile, Colombia and Peru.

294. A number of LAC countries made significant changes to their mining regulations during the review period, for example, Brazil, Mexico and Venezuela removed or reduced restrictions to foreign participation in mining, while Chile and Peru introduced new taxes on mining activities.

295. The production of hydrocarbons was the largest mining activity in Trinidad and Tobago and Venezuela, and was also of great importance in Bolivia, Brazil, Ecuador and Mexico. In Mexico and Venezuela, the hydrocarbons industry suffered from legal constraints on private participation, and was dominated by state-owned enterprises that found it difficult to managed efficiently their resources and sustain the high level of investment required to implement petroleum projects.

296. The management of the electricity sector also proved a difficult challenge in many LAC countries, with crises erupting in Argentina, Brazil, Chile, Guyana, Dominica Republic and other countries during the review period. The electricity sector's poor performance repeatedly became a handicap to development. In several LAC countries, electricity production was costly and unreliable.

297. Over the last two decades, major regulatory changes were implemented in many LAC countries seeking to ensure the supply of electricity, and promote affordable tariffs and universal service programmes. Several LAC countries also embarked in the privatization of power utilities, which in many cases attracted sizeable private investment. However, in several cases privatization led to a high degree of market concentration which, without proper regulation, allowed operators to impose high tariffs. In other countries, consumption subsidies and the official setting of artificially low tariffs meant that operators often faced significant difficulties in financing the investment required. This undermined both public finances and the rational use of energy.

(s) Sectoral policies: services

(i) General considerations

298. Services was the largest sector in practically all LAC economies in terms of contribution to GDP. In about ten of them, mostly those in the Caribbean, the services sector accounted for at least three-fourths of GDP over 1990-2008.[58] The services sector's contribution to GDP tended to be the lowest, between 45% and 60%, in countries where primary sectors played large economic roles.[59] Between 1990 and 2008, the services sector's contribution to GDP increased significantly in most LAC countries, in some by more than ten percentage points.

299. The structure of many of the smallest LAC economies showed a dichotomy between highly competitive service activities, and the relatively low productivity of agriculture and manufacturing. In these countries a number of service activities, notably tourism and offshore financial services became strong competitors in world markets. Nevertheless, in most LAC countries inefficiencies in the supply of services imposed at times constraints on their development; the most serious problems arose in relation to domestic financial services, although transport services and telecommunications were also areas of concern.

300. The degree of involvement of the State in the supply of services decreased considerably during the review period. Nevertheless, in some LAC countries the State remained an important supplier of services, including financial services, transport and telecommunications.

[58] These countries were Antigua and Barbuda, Barbados, Cuba, Grenada, Jamaica, Saint Kitts and Nevis, Panama, Saint Lucia, Saint Vincent and the Grenadines and Uruguay. Value added in services was estimated as the sum of value added in construction; wholesales and retail trade, restaurants and hotels; transport, storage and communications; finance, insurance, real estate and business services; and community, social and personal services.

[59] The contribution of services to total value added was the lowest in Bolivia, Ecuador, Guyana, Nicaragua, Trinidad and Tobago, and Venezuela.

301. In the past, high costs and inefficiencies resulted from the shielding of services from foreign competition, including through restrictions on foreign participation. However, efforts were made during the review period to liberalize foreign investment and strengthen the regulatory framework. These went hand-in-hand with growing foreign participation, increased competition and adjustments to the market structure of key service activities.

302. Preferential trade agreements proved a powerful catalyst for improvements in the delivery of services in many LAC countries, both through the formal requirements contained in those agreements, and because of the competitive pressures they generated to increase overall efficiency in the domestic economies. The effect of NAFTA on Mexico's services sector was a good example of this. Most LAC countries extended their liberalization measures to all trading partners on an MFN basis.

303. Some LAC countries also participated actively in crafting the GATS. Reflecting different engagement levels and the characteristics of each country, the number of areas covered by sector-specific commitments under the GATS varied widely across LAC countries. Thus, the Dominican Republic and Mexico made specific commitments in, respectively, 72 and 65 of the 160 services subsectors defined in the Services Sectoral Classification List. In contrast, despite the importance of services for their economies, countries like Saint Lucia and Saint Vincent and the Grenadines made commitments in only 8 of the 160 services subsectors in that List.

304. Several LAC countries participated in the extended negotiation on financial services and telecommunications. Thirteen of them adopted the Fifth Protocol on Financial Services; 17 adopted the Fourth Protocol on Basic Telecommunications, with 15 accepting also the Reference Paper on regulatory principles in telecommunications. Argentina participated in the negotiation on financial services but did not present an offer. Brazil participated in both the negotiations on financial services and telecommunications but was not able to ratify the Fourth Protocol and, as at end 2009, was yet to ratify the Fifth Protocol.

305. In the case of most LAC countries, the commitments under the GATS bound policies that were already in place at the time of the negotiations; therefore, most LAC countries did not have to make significant changes to their legal regimes following the conclusion of the Uruguay Round.

(ii) Financial services

306. In most LAC countries financial services is a sizable and diversified sector. In several of them the sector's market structure changed markedly during the review period, with foreign participation increasing remarkably. In Mexico, for example, whereas the banking system was state-owned at the beginning of the review period, a process of privatization started in the early 1990s led to growing foreign control of banks, which reached about 70% in 2007. Commercial banks operating in most Caribbean countries were also predominantly foreign owned. In contrast, foreign participation in the banking systems of Brazil, Ecuador and Guatemala remained modest.

307. In several LAC countries, banks benefited from years of high inflation, which allowed them to earn high yields on non-interest-bearing deposits and thus compensate for administrative inefficiencies. Adjustment to an environment of lower inflation and positive real interest rates put banks under pressure; this together with general macroeconomic instability and supervisory failings led to serious systemic problems in the banking systems of a number of LAC countries during the review period.[60] Dealing with the crises had a high cost. In Mexico, the cost of rescheduling and debt relief programmes adopted following the financial crisis of late 1994 were estimated at 8% of GDP. The crisis that erupted in Venezuela the same year had a direct fiscal cost estimated at some 13% of

[60] Countries affected by financial crises over 1989-2009 included Argentina, Bolivia, Colombia, Dominican Republic, Guatemala, Jamaica, Mexico, Paraguay, Peru, Uruguay and Venezuela.

GDP. In Dominican Republic the 2003-2004 financial crisis required bank bailouts representing some 20% of GDP.

308. In the wake of those crises, most LAC countries implemented ambitious programmes to reform the legal and institutional framework of their financial sectors. This included the adoption of new general laws governing the banking and/or insurance industries.[61] The new statutes sought to, among other things, facilitate the restructuring and consolidation of banks, strengthen prudential supervision, and create deposit guarantee funds. In addition, many LAC countries adopted new legislation on specific issues like money laundering or bank secrecy. Within CARICOM, the six OECS countries placed their domestic banks under a uniform legislation and under the regulation of the Eastern Caribbean Central Bank.[62]

309. The resulting strengthening of the legal framework across LAC countries saw banks in the region weathered well the global financial crisis that started in 2007. This was possibly aided as well by many LAC financial institutions remaining centred on traditional banking intermediation.

310. The reforms carried out during the last two decades expanded the access by foreign operators to the financial sectors of several LAC countries. For example, in the past Venezuela maintained severe restrictions on the entry of foreign banks, and over 1975-93 none was permitted except for Latin American institutions under reciprocal agreements. The opening up to foreign investment of Venezuela's banking sector in 1994 was followed by a considerable increase in the number of branches and the market share of foreign banks. In Mexico, foreign investors were not allowed to hold more than 20% of the outstanding shares of banks that held more than 6% of the aggregate capital of the Mexican banking system, thus, in practice, precluding foreign control of the three largest Mexican banks. In early 1999, foreign investors were allowed to own a controlling share of a Mexican commercial bank, regardless of the bank's size, which resulted in the striking rise of foreign participation noted above.

311. In most LAC countries foreign capital was not subject to restrictions in domestic banks, and was granted national treatment although sometimes subject to reciprocity. However, in a number of LAC countries, the provision of services by foreign banks and/or insurance companies through branches was restricted. Brazil prohibited foreign financial institutions to establish new branches or increase their participation in institutions headquartered in Brazil, except under international agreements or when this was in the national interest. Most LAC countries restricted operations by offices representing foreign banks.

312. A few LAC countries, particularly in the Caribbean and Central America, operated separate regimes for onshore and offshore (international) banking and insurance. Offshore financial services companies benefited from minimal taxes and were not subject to exchange controls; they may generally conduct business only with non-residents and in foreign currency or assets. There were considerable regulatory and legislative reforms in LAC countries maintaining offshore regimes to address concerns about money laundering and tax evasion through offshore financial entities.

313. In a number of LAC countries high interest rates were of concern during much of the review period. For example, in Brazil the difference between lending and deposit rates stood at some 32 percentage points in late 2009, when in Jamaica the interest rates spreads reached nearly ten percentage points. In many cases, this reflected banks' high operating costs and limited competition

[61] Colombia, Paraguay, Uruguay and Venezuela were among the countries that adopted new banking and/or insurance laws in the aftermath of financial crises.

[62] Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines were the six WTO members making up the Organization of Eastern Caribbean States (OECS).

in the financial services sector. High interest rates explained many instances of targeted assistance through the use of subsidized credit in LAC countries.

(iii) Telecommunications

314. The telecommunications sector was one of the fastest growing in LAC economies, with the sector's contribution to GDP expanding considerably during the last two decades. The sector was also among the largest magnets for foreign investment. Throughout the LAC region, mobile telephony was by far the sector's most dynamic segment and met much of the rapidly expanding demand for services, while growth in fixed telephony lagged considerably behind.

315. The whole LAC region made efforts to provide for the telecommunications sector's large investment requirements, including through deregulation, the introduction of competition and the liberalization of foreign investment. Thus, during the review period, several LAC countries privatized their previously state-controlled telephone companies.[63] As a result, state involvement in the operation of telecommunications services decreased considerably in most LAC countries. However, in several LAC countries the State continued to be an important provider of basic telecommunications services, often under monopoly conditions[64]; in many of these countries, however, private operators were allowed to provide mobile telephony services.

316. As part of a strategy to maximize upfront revenue from the sale of state-owned telecommunications operators, privatization in a number of LAC countries involved the creation of private incumbents with exclusive rights in the provisions of key services such as fixed-line telephony or international long-distance services. As a result, privatization resulted in the creation of *de facto* monopolies or oligopolies that were able to exercise market power for years, leading to high prices and interconnection problems. For example, at the end of the review period, in Antigua and Barbuda only one private operator provided international fixed line services, while Guatemala's traditional operator still had a dominant role in fixed telephony services. In Peru one private firm controlled some 95% of all fixed telephone lines at the end of 2006, and in Dominican Republic the major operator had around three-quarters of the fixed telephony and internet markets and almost half of the mobile telephony market. Guyana's telecommunication sector was still characterized by a *de facto* duopoly in mobile telephony.

317. In some LAC countries the telecommunications sector was formally opened up to competition only years after its privatization. In Colombia, the long-distance monopoly ended in 1998 and the mobile duopoly in 2003. Venezuela terminated the monopoly on basic telephony in 2000. Bolivia abolished in 2001 the existing exclusivity rights for the supply of long distance telephony services pursuant to its commitments under the WTO. Ecuador also abolished the two regional monopolies in fixed telephony in 2001. Several CARICOM members pushed for the renegotiation of their agreements with the private-sector incumbent, eventually managing to end earlier than initially intended the monopoly they had granted to the private operator.

318. LAC countries introduced numerous changes to their legal environments for telecommunications over the review period. In Brazil and Mexico this required amending the Constitution. Between 1989 and 2009, new telecommunications laws were adopted by practically all LAC countries to promote the development of telecommunications. Institutions were also created or strengthened in order to foster the capacity to implement the new legislation, including through the establishment of independent regulatory agencies. In Guatemala some aspects of the regulatory

[63] These countries included Argentina, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Peru, Trinidad and Tobago, and Venezuela.

[64] These countries included Antigua and Barbuda, Costa Rica, Ecuador, Haiti, Honduras, Paraguay, Suriname and Uruguay.

regime were amended as a result of DR-CAFTA. In Costa Rica this Agreement required the opening up of the telecommunications market to new operators, and separating the regulatory, supervisory and operational functions; previously, a State-owned company enjoyed a monopoly on the supply of basic and several other services.

319. Nevertheless, in certain LAC countries the regulatory framework governing the telecommunications sector remained incomplete. Moreover, although regulatory changes had fostered competition, access to and use of the incumbent's fixed local network continue to be problematic in several countries. Mexico's regulatory framework was challenged in WTO in this respect – which was the only dispute under multilateral rules in the telecommunications area. The respective Panel report concluded in 2004 that, among other things, Mexico had failed to meet its multilateral commitments including in relation to interconnection rates, anti-competitive practices, and access to public telecommunications networks.

320. Some LAC countries allowed private participation in the telecommunications sector but restricted foreign investment in the supply of certain services. Thus, Mexico limited foreign investment participation to 49%, except in the case of mobile telephony, where it may exceed this limit subject to authorization. In Nicaragua, at least 51% of the capital of a licensee must be held by nationals, while the private sector may not hold more than a 51% stake in firms with state equity. In Brazil, the Executive Branch has the power to limit new foreign participation, although in practice foreign companies were allowed to invest in the sector. A number of LAC countries also restricted foreign participation in certain broadcasting services.[65]

(iv) Transport

321. Maritime transport was the most important means of transportation for international trade in LAC countries, except for land-locked Bolivia and Paraguay. In the past, the aviation markets of many countries were dominated by a few state-owned operators, but privatizations and the entry into the market of new airlines led to a considerable increase in competition during the review period. In many countries the main seaports and/or airports were owned by their respective governments and managed by government-owned authorities.[66] In a number of them, large-scale investment in port and airport infrastructure during the review period resulted in improvements in port productivity and to a reduction in tariffs. However, international trade in landlocked Bolivia and Paraguay faced transportation costs that were amongst the highest in the Western Hemisphere.

322. The level of development and regulatory frameworks of air and maritime transport services varied widely across LAC countries. Many of them undertook legislative reforms to modernize and strengthen their regulatory frameworks for the maritime and air transport sectors.[67] For example, in Brazil a 1995 constitutional amendment eliminated restrictions in maritime transport services. In contrast, Guatemala did not have any specific legislation on maritime transport.

323. Several LAC countries impose restrictions on foreign-ownership of ports and/or airports[68]; however, in some of them private operators may provide specific services through concessions. Other LAC countries carried out reforms to encourage greater private participation in port and airport activities. For example, the operation of Belize's main harbours was transferred to the private sector

[65] Including Chile, Dominican Republic, El Salvador and Peru.

[66] Including in Barbados, Brazil, El Salvador, most OECD members, Guatemala, Honduras, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, and Venezuela.

[67] Namely, Antigua and Barbuda, Barbados, Belize, Bolivia, Colombia, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Venezuela.

[68] This was the case in Costa Rica, Grenada, Mexico, Nicaragua, Panama, Paraguay, Suriname, and Trinidad and Tobago.

in 2002, and that of its international airport in 2003, while Jamaica gave the administration of one of its two international airports to a private foreign firm in 2003.

324. In some countries certain cargoes were reserved for specific carriers.[69] A number of LAC countries required reciprocity in international maritime transportation services, although in practice international maritime transport was provided almost entirely by foreign shipping lines. Brazil had bilateral agreements with several countries on cargo sharing or allocation preferences (including on government cargoes), and Argentina had bilateral agreements which provided for the equal cargo-sharing of bilateral trade carried on vessels operated by ship-owners of the signatories. Thirteen LAC countries were parties to the United Nations Convention on a Code of Conduct for Liner Conferences.

325. Several LAC countries maintained an International Ships' Registry, with Panama's registry having grown to become the largest in the world due, among other things, to its advantageous tax conditions and liberal registration regime. Panama also took advantage of its unique geographical location and its control of the Canal since 1999 to position itself as a nerve centre for global maritime transport.

326. Several LAC countries reserved domestic air transport services to firms owned and controlled by nationals.[70] Guatemala allowed companies providing domestic air transport services to be wholly foreign owned only since 2004. In general, the principle of reciprocity was the basis of the international bilateral agreements maintained by LAC countries in the air transport sector. In spite of revisions to make them more flexible, most such agreements established restrictive conditions for the provision of services.

327. In both maritime and air transport, practically all LAC countries reserved cabotage services to domestically established companies, although in some countries such entities may be domestic or foreign owned.

(v) Professional services

328. There was only a handful of common elements across LAC countries regarding professional services. One of such elements concerned the almost universal involvement of the State in the regulation of accountancy and law, as well as other professions where there were health or safety considerations such as medicine and engineering. The number of other professions actually regulated varied considerably across countries; hence, while there were some 60 professions regulated by law in Colombia, in certain CARICOM members most professional services were totally unregulated.[71]

329. The legal framework governing professional services also differed widely: in some LAC countries professions were governed through an overarching law, in other countries through profession-specific legislation, while still others followed both approaches. In many LAC countries the legal and institutional framework governing the exercise of professions services was often fragmented, and the information and expertise concerning the conditions under which services may be provided, particularly when foreigners were concerned, tended to be dispersed.

330. Most LAC countries usually required a licence for a person to engage in a regulated profession. In turn, a valid professional title was needed to hold a licence. In general, professional titles obtained abroad must be revalidated for holders to have the right to practise their professions.

[69] Thus, in Brazil, petroleum and petroleum products must be transported by national flag vessels; in Peru, a minimum of 25% of hydrocarbons transported in national routes is reserved for Peru's navy; while Ecuador confines the transport of hydrocarbons to national shipping companies

[70] Including Brazil, Costa Rica, Dominican Republic, Grenada, Jamaica, Mexico, Nicaragua, Panama, Peru, Suriname, Uruguay and Venezuela.

[71] This was the case in Grenada, Guyana, Saint Lucia, and Saint Vincent and the Grenadines.

However, some countries permitted professionals like architects and engineers to offer their services temporarily without satisfying this requirement.[72] In certain LAC countries revalidation was not required if there existed a mutual recognition agreement.[73]

331. Some countries reserved certain professional for nationals. Panama had in place a particularly restrictive regime that limited the provision of most regulated professional services to Panamanian citizens. The Dominican Republic imposed restrictions on professional practice by foreigners in certain areas of accounting, legal services, and architecture and engineering, while in El Salvador it was necessary to be a national to act as a lawyer or chartered accountant. A number of LAC countries applied residence requirements to certain professions, which in some cases represented a significant barrier to the provision of professional services by foreigners.[74] Others subjected the exercise of professions by foreigners to the principle of reciprocity.[75]

332. Twenty LAC countries made specific commitments in the GATS regarding different professional services, including legal, accounting, engineering and architectural services.[76] CAN members were required to recognize the professional degrees granted by another member. Within CARICOM, efforts were made to develop and harmonize requirements for the licensing and regulation of certain professions. Some LAC countries were parties to international agreements related to professional services, for example the Montevideo Treaties of 1888-1889.[77]

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[72] This was the case, for instance, in Bolivia, Chile, Colombia, Dominican Republic and Peru.

[73] These countries include Argentina, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Mexico, Panama, Peru and Uruguay.

[74] Such requirements were applied in some instances in Brazil and Costa Rica.

[75] This was the case for certain professions in Barbados, Brazil, El Salvador, Guyana and Mexico.

[76] These countries were: Antigua and Barbuda, Argentina, Barbados, Belize, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guyana, Haiti, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago and Venezuela.

[77] Treaty signed by Argentina, Bolivia, Paraguay, Peru and Uruguay.

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