

IV. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Overview

1. In 1990, when the first Trade Policy Review of Colombia took place, a major trade liberalization process had just been initiated under the *Apertura* programme. At the time, there were 25 different tariff rates with peaks of up to 200 per cent. Balance-of-payments restrictions, tariff surcharges, import quotas and monopolies were in force. Import licensing, applied selectively in all sectors, was focused on finished goods. Export controls guaranteed domestic market supplies.

2. As a result of the liberalization programme, the trade régime has been transformed. Tariffs have been rationalized and the spread reduced. The peak rate has fallen to 35 per cent while the simple tariff average is one-third of its previous level, at 11.5 per cent. Import surcharges have been eliminated; import prohibitions and licensing reduced; import procedures have been simplified; recourse to balance-of-payments measures has ceased; and distortive preferences favouring domestic suppliers in the area of government procurement have been repealed.

3. At present, the range of trade-related policy measures is focused on a few sectors, including agriculture, where protection and assistance are granted through: (i) levies under the Andean Price Band system; (ii) reference or minimum import prices; (iii) non-automatic import licensing; (iv) local-content requirements under the domestic absorption scheme; (iii) a mechanism for the stabilization of domestic agricultural prices; (iv) marketing arrangements; and (v) subsidized credit to small producers. Export assistance is still provided under the tax reimbursement (CERT) and duty exemption (SIEX) schemes, but at lower rates. Export finance is provided at close to commercial terms. In addition to tax exemptions, the free-trade zones régime now provides for credit on preferential terms. Overall assistance to domestic production by means of differential energy prices (e.g., for electricity, coal and oil) is being reduced as prices are raised to opportunity costs or world prices, as has already happened for fuel oil and propane gas (Chapter V).

4. In recent years, partly in accordance with regional or GATT/WTO commitments, legislation has been adopted or updated in a number of areas such as customs valuation, preshipment inspection, anti-dumping and safeguards. As in other Andean Group countries, the legal framework for the protection of intellectual property rights has been reinforced. New legislation is under preparation in certain other areas (e.g., import licensing, standards), but the authorities plan to use the available implementation periods for developing countries under the WTO provisions.

(2) Measures Directly Affecting Imports

(i) Registration and documentation

5. Since the previous review customs procedures have been greatly simplified and, according to the authorities, clearance is now made in hours, rather than days or months. New legislation on customs documentation and procedures was introduced in 1992; since then its provisions have been amended, clarified and expanded.¹ The Customs service, now the Directorate of National Taxes and Customs (*Dirección de Impuestos y Aduana Nacionales*, DIAN) has been streamlined by merging the tax and customs administrations (*Dirección de Impuestos Nacionales* and *Dirección de Aduanas*

¹Decree 1909, 27 November 1992, amended, *inter alia*, by: Decree 1672, 1 August 1994; Ministry of Finance Resolution 0371, 30 December 1992.

Nacionales) of the Ministry of Finance.² Further restructuring of DIAN, intended to improve duty collection and reduce evasion, has been outlined in proposals for revenue-enhancing tax reforms that were adopted in late 1995 (Chapter I).

6. It is not necessary to use an authorized customs agent to clear commercial shipments. No exclusive rights are granted to customs agents, but specific business requirements were put in force in April 1995.³

7. All commercial imports other than "minor (value) imports" or urgently needed spare parts, remain subject to registration with the Colombian Institute of Foreign Trade (INCOMEX); this is a same-day, automatic procedure.⁴ Registrations of imports from public sector agencies are screened to determine, *inter alia*, whether local substitutes are available.⁵ Imports of certain agri-chemicals such as pesticides or fertilizers must also be registered with the Ministry of Agriculture.

8. Basic customs clearance documentation requirements comprise an import declaration (*declaración de importación*)⁶, which must be accompanied by an import registration certificate (*registro de importación*), a commercial invoice, and a bill of lading or other appropriate transport documents.⁷ Other documentation may be required in certain circumstances, including the packing list (since 1990), a preshipment inspection certificate (*certificado de inspección pre-embarque*) and a customs value declaration (*declaración de valor en aduanas*), when the f.o.b. value is equal to or higher than US\$5,000. A certificate of origin is needed for goods eligible for preferential treatment (see sections (ii)(d) and (xviii)). Requirements for items subject to health (e.g., agricultural products, foodstuffs, alcoholic beverages), security (arms, munitions) or other controls (e.g., substances used in cocaine production) include, *inter alia*, import licensing, health, purity or conformity certification (see section (xv)). From 1995, no consular authentication is required for commercial invoices or documents issued by foreign authorities.⁸

9. All imports must be stored in bonded warehouses (privately-owned warehouses under customs control) for inspection. Merchandise deposited for more than six working days are subject to gradually increasing charges. Goods can be stored in bond for up to six months.

10. Following the introduction of a self-valuation procedure (*autoliquidación*) for importers in January 1993 (section (viii)), customs officials are now responsible for inspecting goods, when required by the Automatic Computerized Customs System, to verify the description against the import declaration. Customs clearance can be refused for a number of reasons, including when the declared value is less than the minimum official price fixed by the Customs (see section (ix)). Goods may be confiscated

²Decree 2117, 29 December 1992.

³Decree 2532, 6 November 1994; Customs Resolution 5855, 20 December 1994.

⁴Higher Council of Foreign Trade Resolution 001, 2 January 1995.

⁵Dun & Bradstreet Information Services (1994); Bureau of National Affairs (1995), IMF (1995).

⁶The payment of import duties and taxes is certified on this document.

⁷Decree 755 of 1990 cited in Dun & Bradstreet Information Services (1994), p.313.

⁸Decree 2150 of 1995.

if not correctly documented or classified.⁹ Since 1994, DIAN has been able to authorize the immediate delivery of imported merchandise to the importer upon presentation of the import declaration and a certificate of preshipment inspection issued by a specialized enterprise (*Sociedad de Certificación*) (section (vii)).¹⁰

(ii) Tariffs

(a) Structure

11. On 1 January 1991 Colombia adopted the Andean Group's *Nomenclatura Arancelaria de los Países Miembros del Acuerdo de Cartagena* (NANDINA), based on the Harmonized System of Commodity Description and Coding (HS).¹¹ As at 1 January 1996, the Colombian tariff (HS 96), which is published in the Official Journal (*Diario Oficial*) as well as by private firms, contains 6,728 ten-digit tariff lines.¹² The Higher Council of Foreign Trade (Chapter II) is responsible for modifications to the tariff.¹³

12. All duties are ad valorem, levied on the c.i.f. value of imports, except for cases where reference prices are in force (section (ix)). Since 1 January 1993 customs duties and other taxes affecting imports must be paid to any local commercial bank before customs clearance.

(b) Tariff levels

13. Since 1990, Colombia has restructured its tariff, reducing the overall average from an estimated 32.3 per cent in 1988 to 11.5 per cent in 1996 (Chart IV.1). The tariff structure has changed from one of 25 different rates, ranging from 0 to 200 per cent¹⁴ to five main rates, ranging from 0 to 20 per cent. The main exceptions to this, discussed later, are for automobiles and parts, tariff quotas for items tariffed under the Uruguay Round Agreement on Agriculture, and levies under the Andean Price Band system. Since the incorporation of the import surcharge rate in the tariff in 1992 (see section (v)), import duties have constituted the second most important source of indirect tax revenue, accounting for more than 6 per cent of central government income (19.6 per cent of total fiscal revenue) in 1994.

⁹Articles 30 (g) and 34 of Decree 1909, 27 November 1992, and their amendments. Colombian customs procedures provide that import declarations may be corrected where clearance is refused, on payment of penalty; where a correction is not possible, the goods may be confiscated pending legal action; during this period, an importer may present a Legalization Declaration for clearance against an administrative penalty.

¹⁰Article 1 of Decree 2531, 16 November 1994.

¹¹The Colombian version of the NANDINA nomenclature was first published in Decree 3104 (28 December 1990), modified by Decree 1550 (19 June 1991); a few months later rates were amended and tariff lines for certain items (e.g., industrial inputs such as diesel oil, chemicals, glass, glassware, precious metals, metal alloys as well as certain transport equipment for public use and scientific instruments) were split up (Decrees 2095 and 2096, 6 September 1991). All these changes were notified to the GATT (L/6884, 15 July 1991, L/6918, 22 October 1991). For trade within the Latin American Integration Association (LAIA), Colombia uses the NALADISA nomenclature which is also based on the HS.

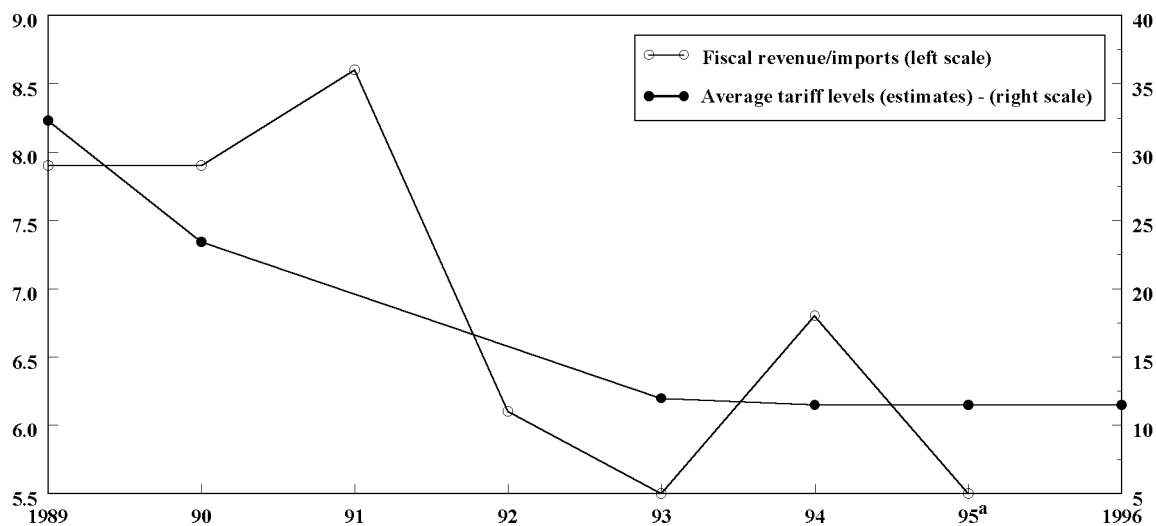
¹²As indicated in INCOMEX (1995), p. 28.

¹³Paragraph 2 of Article 14 of Law 7, 16 January 1991.

¹⁴This information corresponds to the situation as of 1988 (GATT, 1990, p. 122).

Chart IV.1
Average tariff levels and fiscal revenue from imports, 1989-96

Per cent



a January-May 1995.

Note: Fiscal revenue from imports includes proceeds from tariffs and surcharges only.

Source: Contraloría General de la República, DANE and DIAN, data contained in the Revista del Banco de la República (September 1995).

14. Since January 1995 Colombia has applied the five-tier Common External Tariff (*Arancel Externo Común*) or CET of the Andean Group, with rates of 0, 5, 10, 15 and 20 per cent, apart from certain exceptions.¹⁵ The latest tariff was issued in December 1995.¹⁶

15. The current framework of the CET, including national exceptions, are contained in Andean Group Decision 370 of the Commission of the Cartagena Agreement (*Comisión del Acuerdo de Cartagena*).¹⁷ Under this Decision, Colombia is authorized by the Andean Group to:

- apply rates of 0 or 5 per cent to products or raw materials and capital goods which are not produced by, or available from, other members of the group (section (e));

¹⁵Decree 205, 27 January 1995. The larger part of the CET rates are common to all members of the Andean Group except for Bolivia and Peru (GATT, 1993; GATT, 1994; and WTO, 1996).

¹⁶Andean Group Decision 381, adopted by Decree 2317, 26 December 1995.

¹⁷Andean Group Decision 370 (*Arancel Externo Común*), Official Gazette of the Cartagena Agreement 166, 2 December 1994. This Decision, adopted by Decree 205 (27 January 1995), determines the degree of harmonization between the customs tariffs of the members of the Andean Group.

- provide duty-free treatment for 31 eight-digit NANDINA items related to health and education;¹⁸

- exempt 230 eight-digit NANDINA items (corresponding to 242 ten-digit lines or about 4 per cent of the total) temporarily from CET rates.¹⁹ According to the Colombian authorities, this exemption reflects the fact that tariff escalation in the CET is not sufficient to encourage production of certain semi-manufactures.

16. In line with the common automotive policy followed by Colombia, Ecuador and Venezuela, Decision 370 authorizes the implementation of rates of up to 40 per cent on imports of completely built-up (CBU) motor vehicles, and up to 5 per cent on completely knocked-down (CKD) vehicles and motorcycles.²⁰ As from 1994, Colombian imports of CBU vehicles from outside the sub-region are subject to rates of 15, 20 and 35 per cent; CKD kits are dutiable at 3 per cent.²¹ Levies under the Andean Price Band system are also authorized under Article 8 of the Decision (section (iv)).

17. Specific duties on certain cinematographic products were abolished in December 1990, when the Harmonized System nomenclature was adopted.²²

18. Chart IV.2 illustrates changes to the distribution of ad valorem rates (i.e. excluding specific rates, tariff quotas, etc.) since the last Trade Policy Review of Colombia. The previous pattern of dominance of high rates has largely been reversed: in 1988 close to 50 per cent of tariff lines had rates higher than 25 per cent, while in 1996 almost 40 per cent of tariff lines lie in the range of 0 to 5 per cent.

(c) Tariff bindings, including Uruguay Round commitments

19. From 13 December 1990 to 30 June 1993, Colombia's GATT tariff binding obligations were waived, pending the transposition of its customs tariff into the HS and completion of Article XXVIII procedures. A new consolidated Schedule LXXVI was annexed to the Geneva (1993) Protocol

¹⁸These include electricity, certain medicines containing insulin, rubber prophylactics, photographic and cinematographic films, newspaper paper, printed material (comprising books, newspapers, maps, etc.), banknotes, waste and scrap and bars of iron or steel, tractors, certain harvesting machines, and several types of vessels (Annex 3, Andean Group Decision 370).

¹⁹This exemption is authorized for the four-year period December 1995 to December 1998. Under Article 9 of Andean Group Decision 370, the product coverage is to be reduced by 50 items each year and eliminated on the fourth year. While rates applied for these items are in general set at 5 per cent, in certain cases where the stage of processing is advanced the level is higher than that of the CET (Annex 4, Andean Group Decision 370). In Colombia's case, higher tariffs (1992 level) affect 30 ten-digit NANDINA items including: glucose, sulphur, fertilizers, petrochemicals and iron sheets and copper wires.

²⁰Article 7 of Andean Group Decision 370.

²¹These rates were introduced in 1994 in accordance with Article 3 of the Complementarity Agreement of the Automotive Sector and 9 of its Addendum. The special tariff treatment for CKD land transport equipment is contained in Chapter 98 (*disposiciones de tratamiento especial*) of the customs tariff.

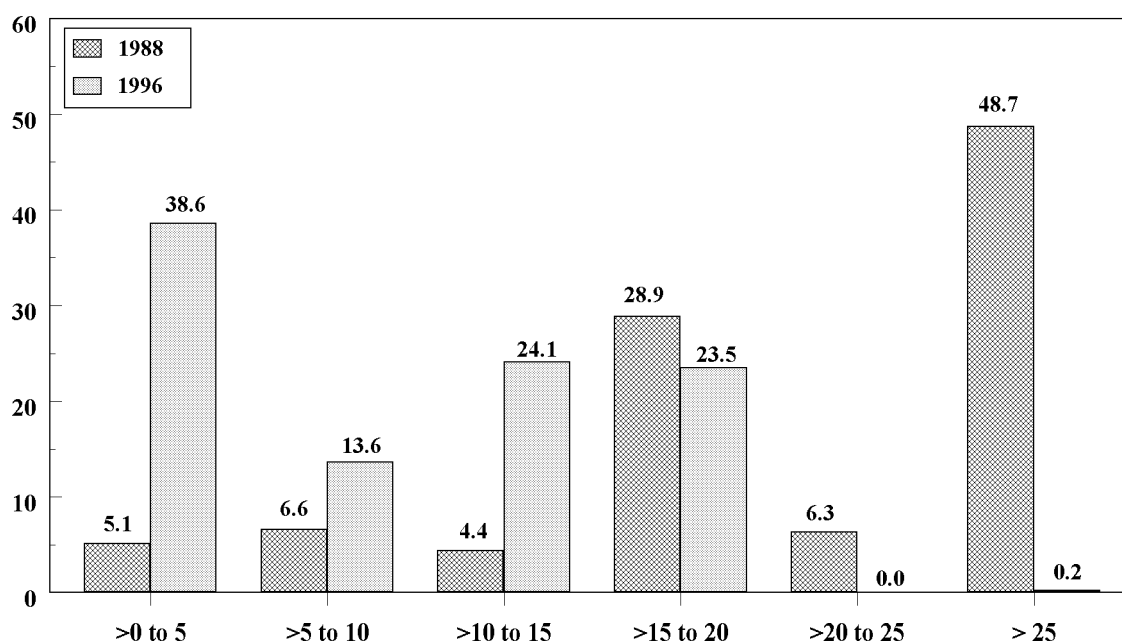
²²Decree 3104, 28 December 1990.

on 1 December 1993.²³ In December 1993, Colombia invoked Article XXVIII:(5) and thus reserved its right to modify its Schedule during the three-year period beginning on 1 January 1994.²⁴ The authorities indicated that this exemption had been requested with a view to preserving Colombia's rights relating to the renegotiation of bindings.

Chart IV.2

Distribution of m.f.n. ad valorem tariff rates, 1988 and 1996

Per cent; percentage of tariff lines



Source: Government of Colombia.

20. Under the 1993 Schedule, Colombia's tariff binding commitments prior to the Uruguay Round covered some 51 ten-digit NANDINA lines, including three agricultural items, with rates ranging from 15 to 80 per cent.²⁵ These are estimated to have represented 1 per cent of tariff lines or 3 per cent of merchandise imports in 1991, excluding petroleum products. Certain items from non-GATT contracting parties were subject to duties higher than bound rates.

21. In the Uruguay Round, Colombia extended its binding commitments to cover its entire tariff at ceiling levels. From 1995, the general level of bound rates on manufactured goods has been

²³GATT document L/7195/Add.4, 13 December 1993.

²⁴GATT document TAR/248, 23 December 1993.

²⁵Manufactured items under this Schedule are subject to rates of: (i) 30 or 35 per cent (certain chemicals, plastics, rubber items and man-made fibres), and, (ii) 40 to 80 per cent (certain industrial machinery and their parts, tools, electric power generators, electric transformers, measurement instruments, veterinary instruments, wrist watches).

35 per cent, except for certain items.²⁶ Colombia reserved the right to stage tariff cuts on textile and clothing items over a ten-year period. Regarding agricultural items, tariff bindings also reflect "tariffication" commitments (section (xi)). Final bound rates will range from 15 to 227 per cent, to be fully implemented by the year 2004; for those affecting three items (dry green peas, lentils, fresh apples) the final rates were already applied from 1995, as part of pre-Uruguay Round commitments.²⁷

22. Under current access commitments agreed in the Uruguay Round Agreement on Agriculture, tariff quotas apply to 67 four- or six-digit items. In-quota bound rates range from 75 to 227 per cent. In addition, minimum access quotas for 10 items have been established with in-quota bound rate at 80 per cent.²⁸ Applied rates in 1995 on the products concerned ranged from 0 to 64 per cent and, according to the authorities, imports of most goods subject to the minimum access obligation largely exceeded the quota commitment. A quota allocation system was planned to come into operation for certain products in the second half of 1996.

23. In view of the existence of binding commitments on manufactures in the pre- and post-Uruguay Round Schedules, Colombia's obligations were due to be consolidated into one List prior to the end of 1994.²⁹ For the period between January 1996 and April 1997, Colombia's binding commitments have been waived to allow the introduction of changes of the Harmonized System (HS 96) into its schedule.³⁰ The authorities indicated to the Secretariat that this single List, containing the transposition of schedules into the HS 96, was to be submitted by June 1996.

(d) Tariff preferences

24. As discussed in Chapter II, since 1990 Colombia has considerably enlarged the scope of its tariff preferences, which now cover imports originating in LAIA, Andean Group, Group of Three, Central American and CARICOM countries, and Panama (Table AII.2). Preferences permit reductions from the m.f.n. rate of between 12 and 100 per cent.

²⁶More specifically, exceptions comprise: (i) certain travel accessories (e.g., bags), clothing (including hats), automotive sector items, parachutes and wrist-watch bracelets, whose binding level at 40 per cent; (ii) certain chemicals and rubber items with bindings at 30 per cent; and, (iii) items contained in its 1993 Schedule of commitments (Part I, Section II, Schedule LXXVI, 15 April 1994).

²⁷Part I, Section I-A, Schedule LXXVI, 15 April 1994. Other commitments or aspects of the commitments contained in Colombia's Schedule and related to the Agreement on Agriculture and trade in services are discussed in sections (2)(xx); (3)(viii); (4)(iii) and (iv); and Chapter V.

²⁸Quota levels are to increase by rates ranging from 68 to 241 per cent; for maize and sorghum quotas start from zero. Binding commitments subject to tariff quota limitations allow for lower binding levels. Bound rates for imports outside quota levels, contained in Part-I Section I-A of the Schedule LXXVI, are significantly higher. Items with a zero increase in quotas include certain types of milk and milk fat (including butter), maize, rice, sorghum, millet, malt, wheat gluten, soybeans, certain oilseeds, animal fat and grease, vegetable oils, sugar and oilcakes.

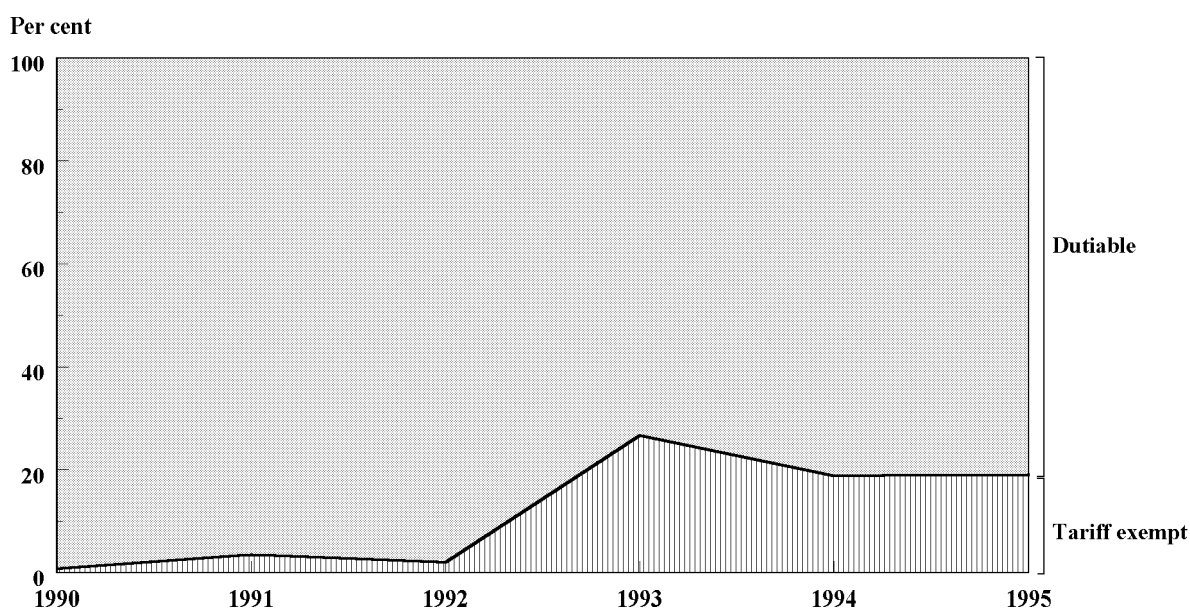
²⁹GATT document TAR/W/93, 13 October 1994.

³⁰WTO documents: WT/L/124, 16 January 1996; G/MA/W/6 (Draft Decision on Extension of Time-Limit), 24 June 1996 (final decision in WT/L/173).

(e) Tariff exemptions

25. Since 1990 the value of tariff exempt imports is estimated to have increased by a factor of 27; the leading product categories which benefited from this treatment include durum wheat, gasoline, machinery, telecommunication equipment, fertilizers, transport equipment, medicines and printing paper (Chart IV.3). The granting of such exemptions is subject to authorization by the Imports Committee (*Comité de Importaciones*) of INCOMEX. The Customs service is responsible for its implementation.

Chart IV.3
Tariff exempt imports, 1990-95



Source: DANE and DIAN.

26. In 1990, the tariff exemptions régime was re-defined by eliminating general exemptions (for imports by the private sector) and rationalizing export-related exemptions (see below).³¹ Tariff exempt imports now include: raw materials, inputs (including packaging material), semi-manufactures, capital goods and parts for export production, processing or repair under the Special Import/Export Systems (SIEX and *Vallejo Plan*)(see below); inputs and equipment for the fisheries sector; machinery and equipment for small-scale gold mining activities and for the pharmaceuticals and fertilizers industries; printing paper for the publication of scientific and cultural books and magazines; items forming part of foreign investment; imports by public entities; material for public educational and health services, and for mining and hydrocarbons exploration; and items for free-trade zones, free ports and specific regions (sections (3)(xiv) and (4)(v)).³²

³¹Decree 2184, 17 September 1990.

³²Fisheries Law (*Ley de Pesca*) 13, 15 January 1990; Article 9 of Decree 255, 11 February 1992; Law 191, 23 June 1995; Law 218, 17 November 1995.

27. Legislation on the *Plan Vallejo* and SIEX treatment was streamlined in 1992.³³ Eligibility for SIEX concessional treatment is tied to export performance requirements.³⁴ Between 1992 and 1994, SIEX benefits covered 3.8 per cent of total imports of capital goods; eligible imports grew progressively by 38 per cent to US\$167 million. For this three-year period, the value represented by the incentive (i.e., forgone fiscal revenue) rose by the same rate (38 per cent) and totalled US\$62.9 million.

28. Since 1991, it has been possible to import a specific list of capital goods (including transport equipment) temporarily (up to 5 years) with partial payment of duties. The latest list comprises 803 ten-digit NANDINA items representing 11 per cent of all tariff lines.³⁵

29. In 1991 sub-regional provisions were adopted with the objective of streamlining the duty-free treatment régimes of the Andean Group.³⁶ Members committed themselves not to grant any new concessional treatment from 31 March 1991, and to abolish by 31 December 1991 any exemptions that would weaken or were weakening sub-regional tariff undertakings. Exemptions under international treaties previously accepted by the member country were excluded from this obligation.

30. Andean Group Decision 370 allows for items that are not produced in the Andean sub-region to benefit from a 5 per cent tariff, while raw materials and capital goods enjoy a zero rate.³⁷ The list of items not produced in the sub-region was published by the Board of the Cartagena Agreement (*Junta del Acuerdo de Cartagena*, JUNAC) in February 1996.³⁸ Under this provision, Colombia has granted a one-year duty exemption for imports of capital goods for the textile and clothing sector.

31. Under the Andean Group common automotive policy, since 1993 imports of completely knocked-down motor vehicle kits for assembly in Colombia have been dutiable at 3 per cent. This provision is initially applicable until December 1998, subject to extension. The concession is contingent on meeting local or sub-regional content requirements (section (xvii) below and Chapter V).

(iii) Tariff quotas (other than Uruguay Round commitments)

32. Under the trade agreements maintained with LAIA partners such as Argentina and Brazil, preferential tariff treatment for certain items is assured only for specific quantities (Chapter II). Concessional treatment for goods under the SIEX régime is subject to individual quota limitations for each beneficiary, expressed in terms of U.S. dollars. Quotas for raw materials and inputs are set

³³INCOMEX Resolution 2386, titled unifying measures relating to the Special Systems for Imports and Exports and establishing other provisions (*por medio de la cual se unifican las medidas relacionadas con los Sistemas Especiales de Importación-Exportación y se dictan otras disposiciones*), 25 November 1992. More information on the operation of the *Vallejo Plan* and SIEX programmes can be found in the first TPR report on Colombia (GATT (1990) as well as in several sections ((2)(iii), (vi), (xi) and, (4)(viii) and (xiii)) of the present report.

³⁴Notification to the WTO Committee on Subsidies and Countervailing Measures (G/SCM/N/3/COL or L/7611/Add.11, 3 August 1995).

³⁵Customs Resolution 0248, 19 January 1995.

³⁶Decision 282, Harmonization of Tariff Exemptions (*Armonización de Franquicias Arancelarias*), January 1991.

³⁷Article 4, Andean Group Decision 370.

³⁸JUNAC Resolution 393, 15 February 1996.

annually (calendar year) and are renewable when fully utilized. For capital goods, a global quota is set for a determined period, except that capital goods imported for use in the production of flowers are not subject to tariff quota restraints.³⁹

(iv) Variable import levies and the Andean Price Band system

33. Variable levies, affecting imports of certain agricultural items originating in countries other than those of the Andean Group, were first introduced in 1991 in the context of a variable tariff (*Sistema de Aranceles Variables*) operated through a national price band system.⁴⁰ In early 1995 the national system was replaced by the Andean Price Band system (*Sistema Andino de Franjas de Precios*), adopted in November 1994.

34. The number of products subject to the system increased steadily from 1991 to 1995. Considering both reference items (*productos de referencia*), derivatives (*vinculados*) and substitutes, it rose from 71 items under the original Decree to some 118 items.⁴¹ Between 1991 and August 1993, variable levies were based on official prices, set on a weekly basis, and expressed as specific rates in U.S. dollars per tonne; from then until the adoption of the Andean Price Band, ad valorem rates were used.

35. The Andean Price Band system, implemented by Colombia since 1 April 1995, covers certain basic agricultural items and associated products.⁴² Under Article 4 of Decision 371, the products covered by the scheme are divided into: 13 "markers" (*productos marcadores*) whose international prices constitute the basis for the calculation of the price bands, and 138 derivatives or substitutes of the "markers" (corresponding to about 2 per cent of all tariff lines) which are included so as to avoid any effects of trade diversion or imbalance in the pattern of effective protection.⁴³

36. The methods for calculating Andean Price Band levies are shown in Table IV.1. Levies are now expressed in the form of additional ad valorem rates and in certain cases tariff cuts or suspensions are foreseen. The calculation of the levy on an associated product is based on that charged for its specified "marker" product (e.g., the levy on ham imports may be some percentage of that on pork meat).⁴⁴ Levies may range between 0 and 100 per cent.

³⁹Articles 8 and 11 of INCOMEX Resolution 2386, 25 November 1992.

⁴⁰Decree 672 of 1991.

⁴¹The items subject to the system as of mid-1991 included wheat, maize, rice, sorghum, wheat and other cereal flours, barley, starches, wheat gluten, soybeans, colza seeds, oilseeds and flour thereof, most vegetable oils, certain types of sugar, wastes and residues of food manufacturing (pellets, oilcakes) of vegetable or animal origin, and dextrine (GATT document L/6918, 22 October 1991).

⁴²Andean Group Decision 371, 26 November 1994; Board of the Cartagena Agreement (JUNAC) Resolution 360, 2 February 1995; and implementing Decree 547, 31 March 1995. Article 8 of Andean Group Decision 370, required that the level of variable import levies applied by individual Andean Group countries be harmonized at sub-regional level by 1 February 1995 at latest.

⁴³The category of "marker" products comprises 13 items: rice, barley, yellow maize, white maize, soybeans, wheat, raw soybean oil, raw palm oil, sugar, milk, poultry meat and pork meat. Associated products refers to 138 eight-digit NANDINA items and includes a wide range of items including butter, milk, cream, cheeses, ham, oilseeds, vegetable oils, oilcakes and several flours (Annexes 1 to 4, Andean Group Decision 371).

⁴⁴Chapters V and VI of Andean Group Decision 371.

Table IV.1

Method for the calculation of the variable import levy (Andean Price Band System)

"Marker" products		
Reference price < Floor price	Reference price = Floor or Ceiling price or Reference price between Floor and Ceiling prices	Reference price > Ceiling price ^a
Levy at per cent rate of: [(Reference price - Floor price) / Reference price] X 100	No levy (including the associated product)	Import tariff per cent reduction by: [(Reference price - Ceiling price) / Reference price] X 100
Associated products		
Import tariff of "marker" product < tariff of associated product	Same import tariff as that of the "marker" product	Import tariff of "marker" product > tariff of associated product
Levy at the <u>highest</u> rate obtained by one of the following formulas:	Same levy as for the "marker" product	Levy at the <u>lowest</u> rate obtained by one of the following formulas:
- levy on the "marker" X (import tariff of the "marker" / tariff of the associated)		- levy on the "marker" X (import tariff of the "marker" / tariff of the associated)
- levy on the "marker" - [tariff of the associated - tariff of the "marker"]		- levy on the "marker" - [tariff of the associated - tariff of the "marker"]

a In this case, the result represents the reduction rate applicable to the import tariff. The tariff on the associated product is also subject to a cut at the same level.

Source: Chapters V and VI of Andean Group Decision 371.

37. According to Andean Group Decision 371, Members may adjust the levies whenever there are "special" distortions in world prices of associated products. In total, the levies, including any adjustment, may not exceed Uruguay Round bindings.⁴⁵ Under certain conditions, levies may be applied on imports from other Andean Group members; for example when these members change rates below the common external tariff and imports from them cause distortions in competition or disturbances in domestic production.

38. In practice, between 1994, when the variable levies were just expressed as percentages, and April 1995, their average level ranged from zero (soybean oil, palm oil, 1995) to 75 per cent (milk, 1994) per cent; maximum rates affected milk (94 per cent, 1994), poultry (90 per cent, 1995) and swine (65 per cent, 1995). Between 1991 and 1995, imports of virtually all items (excluding palm oil) subject to variable import levies recorded overall growth rates in value from 15 per cent (barley) to 936 per cent (refined sugar). From 1992 to 1995, the share of imports of these items in total agricultural imports declined by 17 per cent to about 41 per cent; in 1995, imports of these items stood at US\$547 million, about two thirds of which consisted of wheat and maize.

39. The Andean Price Band has been discussed in the WTO Working Group for the Accession of Ecuador and the TPRB meeting on Venezuela's trade policies and practices.⁴⁶ The Colombian

⁴⁵Article 15 and Annex 5.1 of Andean Group Decision 371.

⁴⁶At the Working Group for the Accession of Ecuador to the WTO, certain participants noted that the Andean Price Band was against the letter and the spirit of the Final Act of the Uruguay Round. Ecuador undertook to gradually eliminate the system within a seven-year period in accordance with the timetable annexed to its Protocol of Accession (WT/L/77, 14 July 1995).

authorities are of the view that the Andean Price Band system neither affects tariff binding commitments nor restricts imports of agricultural goods. The authorities counter concerns over the predictability and transparency of market access conditions under this system, by noting that its parameters, which are determined four months prior to their entry in force, are calculated and adjusted on the basis of international prices published by well-recognized sources (e.g., Reuters). Transparency is ensured by the JUNAC, a sub-regional institution, which monitors and communicates price adjustments. Moreover amendments to the Andean Price Band system can only be agreed at sub-regional level.

(v) Import surcharges and surtaxes

40. As discussed earlier (section (ii)(b)), the import tax (surcharge), introduced in December 1986, was incorporated in the tariff in 1992 and notified to the GATT.⁴⁷ Its rate fell from 16 per cent in 1990 to 8 and 5 per cent in 1991.⁴⁸ Imports of LAIA origin were not affected. Other exemptions included temporary imports; imports under the SIEX and *Vallejo Plan*; imports by public entities; imports for the Free Port of San Andrés y Providencia.⁴⁹

(vi) Other levies and charges

41. Since 1994, inspection fees levied by specialized companies (sections (i) and (vii)) may not exceed 1 per cent of the f.o.b. value of the goods, with a minimum rate of US\$200.⁵⁰ Port fees are set by the ports concerned but do not distinguish between imports and exports. Private warehousing fees are levied at a monthly rate of 4 per cent of the c.i.f. value.

42. The value-added tax (Impuesto al Valor Agregado) or VAT is levied at a general rate of 16 per cent on goods and services.⁵¹ The VAT, first introduced in 1983, is levied on the c.i.f. import value. Different rates are applied to certain transport equipment in the following manner:

- 20 per cent: domestically assembled or built passenger vehicles up to 1,400 cc (including their chassis), motorcycles (and sidecars) of an engine capacity of more than 185 cc and leisure and sport boats; merchandise transport vehicles up to 10,000 pounds (including their chassis);
- 35 per cent: imported passenger vehicles up to 1,400 cc (including their chassis) motorcycles (and sidecars), leisure and sport boats; passenger motor vehicles with engine of cylinder capacity higher than 1,400 and up to 1,800 cc (including their chassis);

⁴⁷GATT document L/6988, 12 March 1992; Decrees 1689 of 1991; 193, 31 January 1992; and, 255, 11 February 1992.

⁴⁸Decree 2097, 6 September 1991 (GATT document L/6918, 22 October 1991).

⁴⁹GATT (1990); Dun & Bradstreet Information Services (1994).

⁵⁰Article 6 of Decree 2531, 16 November 1994; Article 25 of Customs Resolution 5624, 9 December 1994.

⁵¹As discussed in Chapter I (tax reform under Law 49), in 1990 the VAT rate was raised from 10 to 12 per cent and in January 1993 to 14 per cent. Additional revenue from the January 1996 increase is, *inter alia*, aimed at supporting indebted coffee growers (*Latin American Weekly Report*, 23 November 1995, p. 539; *Latin American Regional Reports-Andean Group*, 21 December 1995; *El Tiempo*, 31 January 1996; Article 14 of Law 223, 20 December 1995).

- 60 per cent: imported motor vehicles of a value equal or above US\$35,000 (including import duties);

- 45 per cent: other types of imported motor vehicles not falling in other categories.⁵²

43. Exemption from VAT applies to a list of items including most agricultural products, minerals, chemicals, crude petroleum, electricity, fertilizers, insecticides, unprocessed leather, wood, natural and man-made fibres, certain metal articles, raw materials for vaccines, farm machinery (including tyres for tractors), wire for fencing, certain school and cleaning material, propane gas, zinc for tiles, electric power generators, packing material and food bags, machinery for pencil production, pencils, cigarettes, matches, brooms, optical lenses (including contact lenses), medical articles (including wheelchairs), sales to tourists in border zones and research equipment imported by universities. Raw materials and inputs covered by the SIEX régime are exempt from all levies and charges affecting imports, including the VAT.⁵³ Since July 1996, imported machinery or equipment for recycling of waste or garbage and water treatment as well as any other apparatus used for improving the environment, have been exempt from VAT. Table IV.2 illustrates the structure of all taxes and charges affecting imports into Colombia of those representative products: milled rice, laminated steel and passenger cars.

44. Consumption taxes (*impuestos al consumo*) are levied on cigarettes, manufactured tobacco, beer, soft or mixed drinks, wine and other liquor. For domestic products the tax base is the wholesale distribution price (*precio de distribución*); for imports, it is the c.i.f. value plus customs duties, increased by a 30 per cent marketing margin. The rates of consumption tax are:

- 60 per cent on cigarettes and tobacco (increased in 1996 from 45 per cent and to be raised further to 65 per cent in 1998);

- 20 per cent on mixed beverages;

- 48 per cent on beers and siphon bottles;

- rates between 20 and 40 per cent on wine and other liquors, varying according to alcoholic content.

45. Since 1990 IVA's importance as a tax collection instrument has significantly grown; its share in the total amount collected from indirect taxes has risen by 46 per cent to 70 per cent or US\$4.2 billion (Chart IV.4). The share of fiscal revenue from foreign trade (i.e., customs duties and import surcharges) has dropped markedly in 1992, due to the elimination of import surcharges; since then it has remained relatively stable. In value terms, income from gasoline taxes has almost doubled.

⁵²Article 471 of Law 223, 20 December 1995.

⁵³Article 6 of INCOMEX Resolution 2386, 25 November 1992.

Table IV.2

Structure of charges on imports of selected products, 1996

Description	Milled rice		Laminated steel		Passenger car ^a	
	Rate per cent	Value	Rate per cent	Value	Rate per cent	Value
1 Value f.o.b		100.0		100.0		100.0
2 Freight	10.0	10.0	10.0	10.0	10.0	10.0
3 Insurance	5.0	5.0	5.0	5.0	5.0	5.0
4 Value c.i.f.		115.0		115.0		115.0
5 Import duty (on c.i.f. value)	20.0	23.0	10.0	11.5	35.0	40.2
6 Variable import levy	...	...	n.a.	n.a.	n.a.	n.a.
7 Inspection fees (on f.o.b. value)	1.0	1.0	1.0	1.0	1.0	1.0
8 Other charges (customs agent, port fees, consular fees, etc.)	...	...	...	...	...	...
9 Final value of import		139.0		127.5		156.2
10 VAT sales tax (on c.i.f. value)	n.a.	n.a.	16.0	18.4	35.0	40.2
11 Wholesale cost in Colombia		139.0		145.9		196.5

n.a. Not applicable.

... Not available.

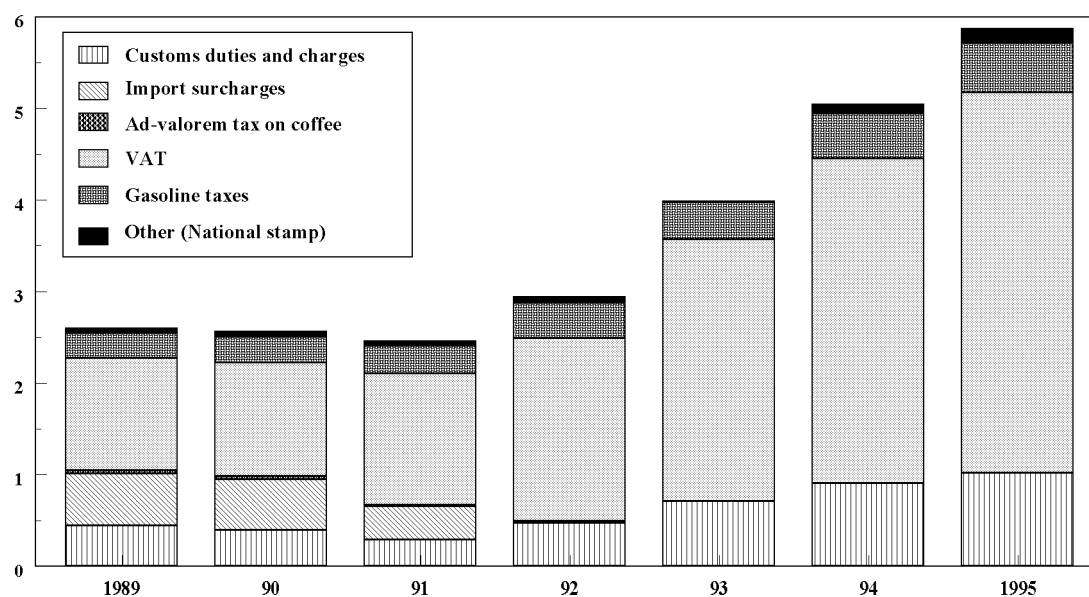
a Calculations for a passenger car with 1,300 cc engine and a c.i.f. value of less than US\$22,000.

Source: WTO Secretariat estimates based on data supplied by the Government of Colombia.

Chart IV.4

Structure of fiscal revenue from indirect taxes, 1989-95

US\$ billion



Source: Dirección de Impuesto y Aduanas Nacionales, DIAN; Dirección del Tesoro Nacional Ministerio de Hacienda y Crédito Público.

(vii) Preshipment inspection

46. In 1994 preshipment inspection was introduced with the objective of improving efficiency and flexibility in customs procedures. Legislation in this area, in force as of July 1995, is, inter alia, aimed at implementing the WTO Agreement on Preshipment Inspection.⁵⁴

47. While preshipment inspection is optional, the Government has reserved the right to make it compulsory for specific "sensitive" items (*bienes sensibles*) which are determined by the Higher Council of Foreign Trade whenever necessary; or in other cases.⁵⁵ In 1995, more than 303 items, corresponding to some than 4 per cent of tariff lines, were subject to compulsory inspection.⁵⁶ All imports subject to anti-dumping or countervailing measures must be accompanied by an inspection certificate.⁵⁷ In certain cases inspection is waived, including imports by the central Government or regional and local authorities, imports of semi-manufactures for export processing under the SIEX régime or goods valued at less than US\$5,000.⁵⁸

48. Inspection enterprises must meet economic, operational and technical criteria to be registered and authorized by DIAN to operate; a guarantee must be deposited with the Customs.⁵⁹ Currently, two specialized enterprises, the *Bivac de Colombia* (Bureau Veritas) and Inchcape Testing Services (ITS) undertake inspection of imported goods.⁶⁰

(viii) Customs valuation

49. Following an Andean Group Decision to apply the Tokyo Round Agreement on Customs Valuation on a de facto basis, Colombia signed the Agreement on 2 August 1993 and started applying it on a provisional basis.⁶¹ In accepting the WTO Agreements, Colombia has invoked the delayed application of the Customs Valuation Agreement and of the "computed value" method of valuation. Andean Group Decision 378 of 19 June 1995 adopted the WTO Agreement on Customs Valuation for the Group as a whole; in mid-1996, Colombia was preparing the regulatory framework required for the implementation of the WTO Agreement and this Decision.

⁵⁴Decree 2531, 16 November 1994 and Decree 861, 26 May 1995, notified in WTO document G/PSI/N/1/Add.2, 26 July 1995.

⁵⁵Article 2 of Decree 2531; Article 8 of Customs Resolution 5624, 9 December 1994.

⁵⁶These items were lastly listed in Decree 1574, 18 September 1995.

⁵⁷Decree 861, 26 May 1995. Imports from Panama were also subject to this obligation until mid-1996 (Decree 799 of 1996).

⁵⁸Decree 1131, 30 June 1995.

⁵⁹Articles 2 and 5 of Customs Resolution 5624, 9 December 1994. The amount of the guarantee is initially set at US\$1 million. As from 1 January 1996, it is adjusted at 0.1 per cent of the f.o.b. value of imports which have been inspected by the company during the previous year.

⁶⁰Bureau of National Affairs (1995).

⁶¹GATT documents VAL/M/29, 6 July 1992; VAL/M/31, 28 July 1993; VAL/M/33, 14 September 1994; VAL/51, 12 January 1994; VAL/W/62, 4 November 1994. Andean Group Decision 326, 22 October 1992 adopted by Decree 2615, 23 December 1993.

50. As noted earlier, since January 1993, importers have been responsible for correct declaration of the value of imported goods. Customs authorities can, however, verify any declaration at the point of entry or within two years of importation.

(ix) Reference and minimum import prices

(a) Andean Price Band System

51. The Andean Price Band system establishes reference, floor and ceiling prices for "marker" agricultural products (section (iv)). The formula for calculating c.i.f. floor (*precio piso*) and ceiling (*precio techo*) prices is: five-year monthly average of f.o.b. export prices (in U.S. dollars) plus estimated insurance and freight, minus the standard deviation of the historical series (floor) or plus the standard deviation (ceiling), multiplied by a standard adjustment coefficient of 0.5.⁶² Floor and ceiling prices were first established in February 1995 for the period 1 April 1995-31 March 1996; the first annual adjustment was made in December 1995, applying to the period 1 April 1996-31 March 1997. So far, the price variations allowed by the Andean Price Band have ranged from 6.5 to 24 per cent, depending on the product; the band has been broader (i.e., more than 14 per cent) for "marker" items such as rice, sugar, wheat, soybean oil, palm oil and pork meat (Table IV.3).

Table IV.3

Andean Price Band: floor and ceiling prices, 1995 to 1997
(US\$ per tonne)

"Marker" products	1 April 1995-31 March 1996		1 April 1996-31 March 1997	
	c.i.f. floor price	c.i.f. ceiling price	c.i.f. floor price	c.i.f. ceiling price
Crude palm oil	401	444	460	571
Crude soybean oil	479	523	510	594
White rice	328	373	322	369
White sugar	377	462	364	407
Raw sugar	282	344	272	307
Barley	142	154	143	153
Full cream milk	2,090	2,310	2,059	2,213
Full cream milk (Colombia and Ecuador)	2,200	2,420	2,125	2,279
Full cream milk (Venezuela)	1,980	2,200	1,993	2,147
Yellow maize	146	158	146	156
Yellow maize (Venezuela)	134	144	135	145
White maize	154	166	154	166
Soybeans	263	280	260	277
Wheat	164	188	169	188
Poultry meat	1,337	1,452	1,319	1,405
Pork meat	1,806	2,169	1,668	1,971
Pork meat (Venezuela)	1,624	1,987	1,537	1,840

Source: Resolutions 360 and 390 of the Andean Group.

⁶²This adjustment coefficient, contained in Annex 4 of Andean Group Decision 371, is set at a uniform rate for all "marker" products, except for sugar and milk in powder for which it is set at zero. The coefficient for yellow maize is negative and is to increase progressively from -1 to -0.5 by April 2001 at the latest.

52. Reference prices (*precios de referencia*) constitute the basis for calculating import duties and levies on "marker" products, or granting tariff cuts or suspensions. A reference price consists of the average international price quotations (daily, weekly or 15-day) recorded over the 15 days prior to arrival at the destination.⁶³ The reference price list is issued two-weekly basis by JUNAC.

(b) Other

53. Since 1992, sub-regional provisions have allowed for the introduction of minimum official prices (*precios mínimos oficiales*) or reference prices on a transitional and limited basis.⁶⁴ These were last defined in 1994 at the national level and are mainly intended to fight under-invoicing.⁶⁵ Official prices are compulsory and set the threshold for a declared value to be accepted. Reference prices are published in a circular of DIAN for indicative purposes.⁶⁶

54. In Colombia the methodology used for establishing such prices was elaborated in 1975 by the National Council of Customs Policy (*Consejo Nacional de Política Aduanera*), an advisory body to the Ministry of Finance at that time; since December 1993, official and reference prices have been set by the Customs. Factors such as import growth, price dispersion by country of origin and the difference between the declared and world price, are examined. Average minimum or reference prices for textile items are fixed after consulting the U.S. National Trade Data Bank (NTDB) database which registers all f.o.b. import prices in the United States.⁶⁷ In the case of motor vehicles, in principle the price lists issued by producers are taken into consideration. The reference lists of the Andean Price Band system (for its reference prices of "marker" items) or its methodology (derivatives) are used for agricultural items.⁶⁸

55. Since August 1993, agricultural items, almost all subject to the Andean Price Band system have been subject to minimum official prices for customs valuation purposes; at present 13 ten-digit NANDINA items are affected by reference prices and 40 by official prices which may be higher than minimal levels set under the Andean Price Band system.⁶⁹ Minimum import prices on a varying number of textile items (94 ten-digit NANDINA items for the period 16 January to 16 April 1996) are adjusted

⁶³Article 9, Andean Group Decision 371.

⁶⁴Article 2 of Andean Group Decision 326, 22 October 1992.

⁶⁵Customs Resolution 0932, 10 March 1994.

⁶⁶These should not be confused with compulsory reference prices set in the context of the Andean Price Band System.

⁶⁷The NTDB is a comprehensive database of the United States Department of Commerce, International Trade Administration.

⁶⁸Decree 547, 31 March 1995.

⁶⁹These include: certain bovine and poultry meat, cheese, beans, certain wheat types, wheat and soybean flour, paddy rice, certain oilseeds (sunflower, colza), fats and grease, certain vegetable oils, soybean oilcake and frozen orange juice (Customs Resolution 3198, 30 May 1996). The reference price on Cicolac a type of cheese used as an input by a local industry, was abolished in March 1996 to allow the firm to operate and preserve jobs (*El Tiempo*, 1 March 1996).

every three months.⁷⁰ Minimum official prices for motor vehicles were first introduced in 1975. In December 1995, they were in force for a large number of European, Japanese and American models, including some made in Latin American countries.⁷¹ These prices were set for 1996 models, updating the 1995 price list, and those for new models are adjusted every three months.

(x) Import prohibitions

56. At present Colombia operates import prohibitions for the protection of human health, animal and plant life, public morals, the environment or essential security interests in compliance with national legislation or international commitments.⁷²

57. Since 15 January 1991, imports of used motor vehicles have been "temporarily restricted", while imports of used motorcycles (including their used accessories and parts), and used autoparts and spare parts for all vehicles under NANDINA Chapter 87 have been "restricted" since September and May 1995, respectively.⁷³ The restriction relating to used auto parts was adopted in the context of the entry into force of the Complementarity Agreement in the Automotive Sector (*Convenio de Complementación del Sector Automotor*) (see sections (ii)(e), (xvii), (xviii) and Chapter V), but also for public security reasons. The restriction on used motorcycles and their parts was introduced, upon request of the association of domestic metal items producers, FEDEMETAL (*Federación Colombiana de Industrias Metalúrgicas*), with a view to protecting the local industry. The decision on "restricting" imports of used motor vehicles was taken for similar reasons.

58. The Imports Committee (*Comité de Importaciones*) of INCOMEX, previously called the Imports Board (*Junta de Importaciones*), establishes prohibitions or restrictions in line with policy guidelines set by the Government or the Higher Council of Foreign Trade. Its decisions are issued in the form of Circulars which are published in the Gazette of the Ministry of Foreign Trade, posted in INCOMEX, or sent to private publishers or directly to importers.

⁷⁰Customs Resolution 8971, 29 December 1995.

⁷¹More specifically, this measure concerns the following vehicles: Brazilian (Volkswagen), French (Citroen, Peugeot), German (BMW, Porsche), Japanese (Daihatsu, Mitsubishi, Nissan), Spanish (SEAT), United States (Ford, Chrysler, Dodge, Honda, Volkswagen) and Venezuelan -built (FIAT, Ford) (Customs Resolution 8792, 21 December 1995).

⁷²For example, Article 81 of the Constitution prohibits the importation and production of chemical, biological and nuclear weapons as well as entry of nuclear residues and toxic waste. Commitments under international conventions prohibiting production and/or trading of certain items on environmental grounds are discussed in sections (IV) (3) (v) and (4) (viii). As from 1990, imports, production and marketing of war toys (*juguetes bélicos*) is prohibited (Law 18, 22 January 1990). Other prohibitions include habit-forming drugs and pornographic material.

⁷³Imports Committee Act 6, 27 November 1993 and External Circular SOI 091 of INCOMEX, 29 December 1993 (used vehicles); Imports Committee Act 2, 2 May 1995 (used parts); Imports Committee Act 5, 30 August 1995 (used motorcycles including used parts etc.).

(xi) Import licensing

59. Until the entry into force of the WTO Agreements, Colombia maintained observer status in the Agreement on Import Licensing Procedures (Chapter II). Colombia met its WTO notification obligations in January 1996.⁷⁴

60. Automatic import licensing is operated through the import registration procedure. As at November 1995, 101 ten-digit NANDINA items (or 1.4 per cent of total tariff lines) were subject to prior licensing requirements (*régimen de licencia previa*), principally for environmental health or security reasons; this compares to 3,090 lines in 1989. Import licensing maintained by Colombia for balance-of-payments reasons was abolished in 1992 and Colombia disinvoked Article XVIII:B of the GATT.⁷⁵ Remaining licensing covers poultry parts and offal, certain chemicals used in cocaine production, narcotics, medicines, blood components, agri-chemicals, ammonium nitrate, explosives, fireworks, weapons and munitions, armoured vehicles and war boats, rubber items (e.g., used or reconditioned tyres), and certain used textile and clothing items.

61. Despite "tariffication" commitments, under recently enacted legislation, some agricultural items are subject to prior import licensing operated on domestic absorption/self-sufficiency grounds.⁷⁶ The Ministry of Agriculture is required to approve (*visto bueno*) the granting of prior import licences for 64 ten-digit NANDINA agricultural items, including poultry meat, wheat, malting barley, maize, rice, sorghum, wheat flour, starches, oilseeds, soybeans, soybean meal and oil, stearic acid, other animal and vegetable oils and fats, certain types of food for animals. Approval is contingent on the fulfilment of certain criteria, depending on the product (Table IV.4), including compliance with domestic absorption requirements (sections (xiv), (xvii) and Chapter V). In the WTO Committee on Agriculture in November 1995, certain Members expressed concern and sought explanations on this conditionality.⁷⁷ Items originating from Andean Group countries and Chile are not subject to this type of licensing.⁷⁸

62. Between 1991 and 1995 the share of items subject to prior import licensing dropped by 47 per cent to 6.7 per cent of total imports. In the same period, the share of agricultural items in total imports requiring prior licensing rose from 29 per cent to a peak of 99 per cent in 1994; it then fell to 68 per cent.⁷⁹ In 1995, the Ministry of Agriculture approved 96 per cent of the applications submitted for its *visto bueno*. Virtually all applications relating to imports of poultry and rice were refused. The main reason for their rejection (82 per cent of the cases) has been the normal situation of domestic supply.

⁷⁴WTO documents G/LIC/N/1/COL/1, 22 February 1996; G/LIC/N/3/COL/1, 22 February 1996. Colombia's previous notification dated back to 1989 (GATT document L/5640/Add.44, 24 October 1989).

⁷⁵Imports of these items originating in the Andean Group countries are not subject to import licensing (INCOMEX (1995), p. 28).

⁷⁶Relevant provisions are laid down in: Legislative Decree 444 of 1967; Law 7a of 1991; Law 101 and Resolution 012 of the Foreign Trade Council, 1993; Decrees 1279 and 2439, 2 November 1994; Resolutions 49 and 756 of the Ministry of Agriculture, 1994; Resolution 001 of the Higher Council of Foreign Trade, and Resolutions 045 and 362 of the Ministry of Agriculture, 1995.

⁷⁷These included Australia, the EU, Japan, Switzerland, the United States and Uruguay (WTO document G/AG/R/4, 19 January 1996).

⁷⁸INCOMEX (1995), p. 33.

⁷⁹Data supplied by INCOMEX.

Table IV.4
Criteria for import licence approval

Products	Absorption of domestic production	Compliance with reference price requirements	Importer must be a processor of agricultural raw materials	Method for licence allocation	Permit validity/ authority
Certain types of wheat (including durum wheat) and meslin.	X	X	X	First-come-first-served basis or simultaneously on a pro rata basis.	One crop semester (from 1 December to 31 May of the following year and from 1 June to 30 November) licence issued by the Ministry of Agriculture.
Barley, white maize, rice (husked), malt, sorghum, certain starches; flours of wheat, meslin and maize; wheat groats, meal and pellets.	X	No	X	Idem	Idem
Yellow maize and wheat for forage.	X (Domestic production of sorghum)	No	X	Idem	Idem
Certain oilseeds and oleaginous fruits (including their flours or meals and oils); certain animal fats and oils; stearic and oleic acid.	X (Domestic production of African palm oil)	No	X	Idem	Idem
Poultry meat not cut in pieces, chilled or frozen; rice (semi-milled or wholly milled, broken) dog or cat food sweetened and other food preparations.	X	No	No	Idem	Idem
Poultry cuts, fresh or chilled.	Criterion of protecting domestic industry.	No	No	No	Licence approved by the Import Board of INCOMEX.

Source: G/AG/N/COL/1, 25 September 1995.

63. The delivery of prior import licences for certain goods (e.g., used, defective, waste) is subject to approval by the Imports Committee. This procedure which takes an average of three days, consists of determining whether there is a specific need to import in the light of the situation in the domestic market (i.e., adequate and competitive supplies from domestic producers) and the economic "feasibility" (including all import costs) of the import.⁸⁰

⁸⁰INCOMEX (1995), p. 11 and 25.

64. All prior import licences are issued by INCOMEX following the approval of the Imports Committee. Generally, licences are valid for six months, apart from agricultural and livestock products (three months) and capital goods (one year). Certain items or substances also require prior authorization from the Ministries of Health or Agriculture. Since 1995, import licences for chemicals (precursor substances) for narcotics production have been issued on the basis of needs certificates (*Certificados de carencia*) and a monthly quota authorized by the National Directorate of Narcotics (*Dirección Nacional de Estupefacientes*) for each importer; such licences cannot be extended.

65. Imports of raw materials and inputs covered by the SIEX régime are excluded from prior licensing requirements, except for used machinery and equipment (including transport and telecommunications material).⁸¹ The SIEX Evaluation Committee (*Comité de Evaluación de Sistemas Especiales de Importación-Exportación*) of INCOMEX authorizes imports of these items.

(xii) State trading

66. In January 1996 Colombia submitted to the WTO a notification on State-trading enterprises subject to Article XVII provisions, covering departmental monopolies for distilled spirits.⁸² Between 1990 and 1995 the share of all public sector imports declined steadily from 17 to 5 per cent of the total (Chart IV.5). The items concerned were mainly inputs and capital goods for manufacturing, fuels and lubricants and transport equipment.

67. The activities of State enterprises involved in production and trade (*empresas industriales y comerciales del Estado*) and those of mixed-ownership companies (*sociedades de economía mixta*) are governed by framework legislation dating back to the 1960s and 1970s.⁸³ These enterprises are established by case-specific law which, in the case of mixed firms, indicates the degree of State participation and privileges. When State participation exceeds 90 per cent or more of the capital, the firm is considered as wholly State-owned. Table IV.5, based on information supplied by the Colombian authorities, is a cautious attempt to indicate the range of State enterprises in all trade-related sectors of the economy in 1996. Apart from monopolies such as ECOPETROL, little information is available about the scale of operation of such enterprises, which in some cases is considerable.⁸⁴

⁸¹Articles 6 and 19 of INCOMEX Resolution 2386, 25 November 1992.

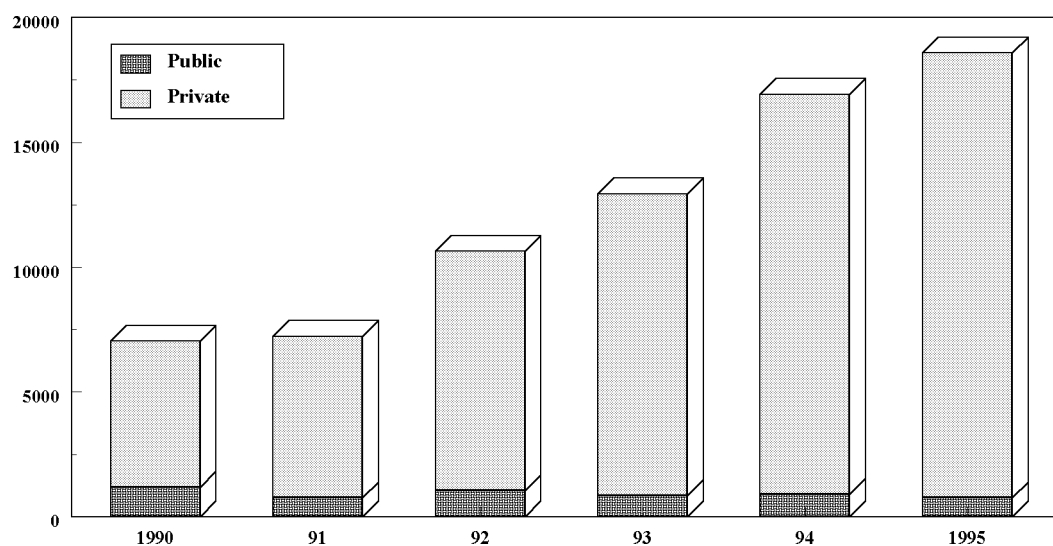
⁸²WTO document G/STR/N/1/COL, 12 January 1996 containing a communication dated 30 June 1995. In the context of the Working Party on State Trading Enterprises, the United States sought, *inter alia*, information on the value of trade of the firms notified (G/STR/W/10, 15 March 1996).

⁸³Decrees 1050 and 3130 of 1968; Decree 130 of 1976.

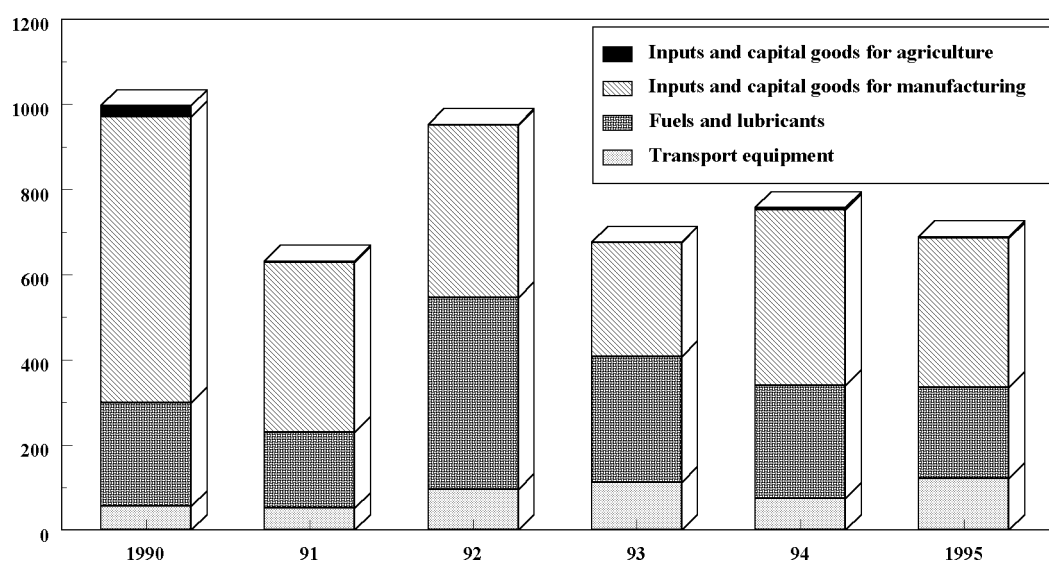
⁸⁴For example, in December 1995, the State Institute of Industrial Development (*Instituto de Fomento Industrial*, IFI) was a shareholder of up to 100 per cent (mostly between 20 and 70 per cent), in 34 firms (of which 19 were operational and 5 to be liquidated); these operated mainly in sectors such as manufacturing (food, paper, chemicals), financial services and construction (IFI, 1996, p.35).

Chart IV.5
Imports by sector of origin, 1990-September 1995^a
 US\$ million

(a) Total imports (share of)



(b) Public sector imports, by product category



^a January-September 1995.

Source: INCOMEX data extracted from the imports register and cited in Revista del Banco de la República (September 1995).

Table IV.5
State enterprises in Colombia, 1996

Firm	Activity	Situation in privatization programme
GOODS		
Agriculture		
<i>Instituto de Mercadeo Agropecuario (IDEMA)</i>	Marketing of agricultural products	No plans
<i>Empresa de Comercialización de Productos Perecederos (EMCOPER)</i>	Trading of perishable agricultural products	In liquidation process since 1992
<i>Empresa Colombiana de Productos Veterinarios (VECOL)^a</i>	Production and trading of veterinary products	Final liquidation in January 1996 and replacement by a new company (<i>Empresa Promotora de Proyectos Agroindustriales</i>) largely by the regional Government of Cundinamarca
<i>Corporación de Abastos de Bogotá (CORABASTOS)^a</i>	Distribution of agricultural products	Final liquidation 31 December 1996
<i>Central de Abastos de Cali (CAVASA)</i>	Distribution of agricultural products	Final liquidation 31 December 1996
<i>Central de Abastos de Barranquilla</i>	Distribution of agricultural products	Final liquidation 31 December 1996
<i>Central de Abastos de Medellín</i>	Distribution of agricultural products	Final liquidation 31 December 1996
Mining and energy		
<i>Empresa Colombiana de Petróleos (ECOPETROL)</i>	Production, refining and transportation of petroleum	No plans
<i>Terpel Antioquia</i>	Distribution of gasoline	
<i>Corporación Eléctrica de la Costa Atlántica (CORELCA)</i>	Generation and distribution of electric energy	No plans
<i>Interconexión Eléctrica (ISA)</i>	Operation of major electric power stations	No plans
<i>Empresa de Energía Eléctrica de Bogotá</i>	Generation and distribution of electric energy	No plans
<i>Generación y Comercialización de Energía SA ESP-ISAGEN</i>	Generation, transmission and distribution of electric energy	55 to 60 per cent of hydro-electric and thermal power stations
<i>Instituto Colombiano de Energía Eléctrica (ICEL)</i>	Generation, transmission and distribution of electric energy	No plans
<i>Empresa de Energía del Pacífico (EPSA)</i>	Generation and distribution of electric energy	Up to 55 per cent
<i>Gas Natural</i>	Gas distribution in Bogotá	60 per cent
<i>Promigas</i>	Gas transportation	38 per cent
<i>Invercolsa</i>	Investment in gas distribution firms	52 per cent
<i>Minerales de Colombia (MINERALCO)</i>	Administration of resources of emeralds, copper, gold, etc.	...
<i>Colombiana de Minería (COLMINAS)</i>	Mining	No plans
<i>Carbones de Colombia (CARBOCOL)</i>	Exploration, mining, processing and marketing of coal	No plans
<i>Empresa Colombiana de Carbón (ECOCARBON)</i>	Promotion and development of the coal industry	No plans
<i>Compañía de Carbones del Oriente (CARBORIENTE)</i>	Exploitation and processing of coal	No plans
<i>Cerro Matoso SA</i>	Ferro-nickel plant	48 per cent

Table IV.5 (cont'd)

Firm	Activity	Situation in privatization programme
Manufacturing		
<i>Instituto de Fomento Industrial (IFI)</i>	Participation in several firms	No plans
<i>Regional Development Corporations</i>		
<i>Departmental Distilleries (14)</i>	Monopoly rights for the production and marketing of liquors	No plans
<i>Artesanías de Colombia^a</i>	Promotion and development of the handicrafts industry	No plans
<i>Empresa Editorial de la Universidad Nacional</i>	Publishing	No plans
<i>Corporación de la Industria Aeronáutica Colombiana (CIAC)^a</i>	Assembly, repair and import of aircraft	No plans
<i>Industria Militar (INDUMIL)</i>	Imports, production and trade of arms, ammunition and explosives	No plans
SERVICES		
Communications		
<i>Empresa Nacional de Telecomunicaciones (TELECOM)</i>	Telecommunications	No plans
<i>Instituto Nacional de Radio y Televisión (INRAVISION)</i>	Television and radio broadcasting	No plans
<i>Compañía de informaciones audiovisuales (AUDIOVISUALES)</i>	Television entertainment production	No plans
<i>Administración Postal Nacional (ADPOSTAL)</i>	Postal services	No plans
Transport		
<i>Empresa Colombiana de Vías Férreas (FERROVIAS)^a</i>	Maintenance and development of the rail network	No plans
<i>Metro de Medellín</i>	Underground rail transport	No plans
<i>Servicio Aéreo a Territorios Nacionales (SATENA)</i>	Air transport	No plans
Financial and insurance services		
<i>Banco Popular^a</i>	Commercial banking	93.3 per cent
<i>Banco del Estado^a</i>	Banking services	No plans
<i>Banco Central Hipotecario^a</i>	Urban housing development credit	No plans
<i>Banco de Comercio Exterior de Colombia (BANCOLDEX)^a</i>	Export financing	...
<i>Almagrario (Almacén de Depósito del IDEMA, Caja Agraria y el Banco Ganadero)^a</i>		
<i>Banco Ganadero^a</i>	Financing livestock sector development	No plans
<i>Banco Cafetero^a</i>	Commercial lending and development bank for rural coffee regions	No plans
<i>Caja de Crédito Agrario, Industrial y Minero (Caja Agraria)^a</i>	Agricultural development bank	No plans
<i>Concasa</i>	Savings and housing credit corporation	...
<i>Fondo para el Financiamiento del Sector Agropecuario (FINAGRO)^a</i>	Financing operations for agricultural loans	No plans

Table IV.5 (cont'd)

Firm	Activity	Situation in privatization programme
<i>Instituto de Fomento Industria</i> (IFI)	Financing the establishment of basic manufacturing activities	No plans
<i>Fiduciaria La Previsora</i> ^a	Funds management	No plans
<i>Fiduciaria Popular</i> ^a	Funds management	No plans
<i>La Previsora Compañía de Seguros</i> ^a	Insurance	No plans
Tourism and leisure		
<i>Corporación Nacional de Turismo de Colombia</i> (CNT)	Tourism development enterprise	No plans
<i>Hotel San Diego</i> ^a	Hotel services	No plan
<i>Promotora de Vacaciones y Recreación Social</i> (PROSOCIAL)	Promotion, establishment and financing of tourism and leisure services	No plans
Other services		
<i>Instituto de Seguros Sociales</i> (ISS)	Management and monitoring of pension fund services	No plans

... Not available.

a Mixed-ownership firm (capital participation of the private and public sector).

Source: Government of Colombia.

68. Under the Constitution, Departments exercise autonomy in the administration of liquor monopolies, covering the production, distribution and sales of distilled liquors (*licores destilados*), ethyl and drinkable alcohols.⁸⁵ Revenue raised from these monopoly rights must cover health and education expenditure of the Department.⁸⁶ In Departments making use of the monopoly right, the entry of these items requires a permit which is granted after the signing of a contract between the Departmental authorities and the importer or distributor.⁸⁷ Fourteen Departments have their own distilleries which produce *aguardiente* (83 per cent of total volume), rum (15 per cent), gin, vodka, brandy, other liquors and industrial alcohol. In 1994, the main export markets for *aguardiente* were Venezuela, the United States, Peru, Chile and Panama.

(xiii) Countertrade

69. All countertrade operations have been officially suspended since May 1986 (Decree 1459) and the corresponding mechanisms have been eliminated in the context of the *Apertura* programme, Decree 370, which provides INCOMEX with authorization and registration powers in this area, remains in force; however, the authorities have indicated that these powers are not used.

⁸⁵Law 14 of 1983.

⁸⁶Article 336 of the Constitution.

⁸⁷Articles 61 and 63 of Law 14 (implementation procedures).

(xiv) Standards and other technical requirements

70. Standards policies are aimed at optimizing the quality of goods and services available in the market as well as improving the competitiveness of Colombian products. The formulation and implementation of standards and technical requirements are based on the principles of non-discrimination and national treatment. The authorities consider that, in principle, Colombian regulations on standards, sanitary and phytosanitary measures observe the provisions of the relevant WTO Agreements. However, to comply with the significant changes introduced in the consultation and notification procedures, Colombia is carrying out administrative and legislative changes which may not be finalized in 1996.

(a) Standards, testing and certification

71. Since 1992, the National Council on Standards and Quality (*Consejo Nacional de Normas y Calidades*) of the Ministry of Economic Development has approved an annual standardization programme, established, co-ordinated and supervised by the Standardization and Quality Division (*División de Normalización y Calidad*) of the same Ministry.⁸⁸ The Superintendency of Industry and Commerce (*Superintendencia de Industria y Comercio*, SUPERINDUSTRIA), an autonomous technical agency, is responsible for the accreditation and supervision of certification and inspection institutions as well as for the testing and measurement laboratories. It also verifies compliance with compulsory standards and issues certificates of conformity. These can also be delivered by accredited national institutions (e.g., ICONTEC, *Corporación Colombia Internacional*, *Centro de Investigaciones de las Telecomunicaciones/CINTEL*)⁸⁹ as well as accredited or recognized organizations in the country of origin on a reciprocal basis (see below).

72. The Colombian Institute of Technical Standards (*Instituto Colombiano de Normas Técnicas*, ICONTEC) is responsible for carrying out the national standardization procedure, including the elaboration of standards. In 1995, ICONTEC was working out standards and certification requirements relating to environmental protection on the basis of relevant ISO provisions.

73. International standards or those elaborated by reliable entities (e.g., American Society for Testing and Material/ASTM, American National Standards Institute/ANSI, Society of Automotive Engineers/SAE, American Welding Society/AWS) are used as a basis for developing Colombian technical specifications and regulations. Nevertheless, in certain cases these standards have been considered unsuitable because they refer either to measurement units not utilized in the country or to testing requirements that do not meet domestic conditions. In particular, ISO environmental conditions have to be partly changed because of Colombia's tropical climate.

74. Provisions exist for the homologation of standards with Venezuela, with which an agreement was signed in 1992; co-operation for harmonization has been initiated with Mexico (in the context of the Group of Three) and Ecuador. Certificates issued by ICONTEC, SUPERINDUSTRIA, *Cooperación Colombia Internacional* and CINTEL for Colombian exports are accepted by Venezuela's COVENIN on a reciprocal basis. ICONTEC and Venezuela's FONDONORMA have initiated a harmonization procedure on existing standards.

⁸⁸Decrees 2152 and 2153 (30 December) of 1992.

⁸⁹At present 13 national institutions are accredited.

75. On 16 November 1993, the National System of Standardization, Certification and Metrology (*Sistema Nacional de Normalización, Certificación y Metrología*) was re-organized and the concept of compulsory technical standards was introduced; until then compliance with specific technical standards was limited to imports by public entities.⁹⁰ In February 1995, a certificate of conformity (*certificado de conformidad*) with mandatory national technical standards (*normas técnicas colombianas*, NTC) was introduced for a number of imported or locally manufactured goods.⁹¹ These include soaps, detergents, plastic and rubber goods, glass items, wood products, printers, iron and steel goods, certain cooking utensils, lighting bulbs, electro-technical goods (transformers, cables), electric household apparatus, car parts, containers for the transportation of certain gases and liquids, cement, construction material, civil engineering and architectural material, mining equipment, dental equipment, and toys. At present, 306 out of a total of 3,597 NTCs are compulsory.

76. Andean Group guidelines on standards were also updated with a view to eliminating barriers to sub-regional trade and promoting the modernization of the manufacturing industry. These are included in Andean Group Decision 376 of 18 April 1995, on the Andean System of Standardization, Accreditation, Testing, Certification, Technical Regulations and Metrology (*Sistema Andino de Normalización, Acreditación, Ensayos, Certificación, Reglamentos Técnicos y Metrología*), amending Decision 180. Its provisions are based on proposals by the ISO, provisions of the WTO Agreement on Technical Barriers to Trade as well as experience from the regional integration process. The establishment of Andean standardization (*Red Andina de Normalización*) and testing laboratory (*Red Andina de Laboratorios de Ensayos*) networks is envisaged.⁹²

77. Colombia has notified its standardizing body and national enquiry point to the relevant WTO Committee.⁹³

(b) Sanitary and phytosanitary regulations

78. Domestic legislation on sanitary and phytosanitary standards has been recently updated.⁹⁴ Andean Group Resolutions 344 and 347 contain, *inter alia*, a list of the sanitary norms to be observed in the intra-sub-regional trade of animal and fish products. Colombia is a member of the International Office of Epizootics.

79. Sanitary and phytosanitary norms affecting imports depend on the type of product, the means of transport, the situation in the country of origin and whether relevant international provisions are

⁹⁰GATT (1990); Decree 2269, 16 November 1993.

⁹¹Decree 300, 10 February 1995, regulated by: SUPERINDUSTRIA Resolution 343 (certification modalities for importers' compliance with compulsory standards), 27 February 1995; INCOMEX External Circular 023 (concepts applied for granting and legitimizing certificates of conformity for items subject to compulsory standards) 22 March 1995; INCOMEX External Circular 082, 23 October 1995.

⁹²*Asociación Nacional de Industriales* (1995).

⁹³WTO documents G/TBT/ENQ/4, 30 January 1996; G/TBT/CS/1, 7 February 1996.

⁹⁴This includes: Decree 677 amending the régimes affecting medicines, cosmetics, toilet, health and cleaning products (*Régimen de Registros y Licencias, el Control de Calidad, y Régimen de Vigilancia Sanitaria de Medicamentos, Cosméticos, Preparaciones Farmacéuticas a base de Recursos Naturales, Productos de Aseo, Higiene y Limpieza y otros productos de uso doméstico*), 26 April 1995; and a 1993 compilation by the Colombian Agricultural Institute (ICA) of quarantine and inspection requirements affecting vegetable material and biologic agents (*Inspección y Cuarentena Vegetal requisitos para la introducción en Colombia de material vegetal y agentes biológicos benéficos para la agricultura*).

observed.⁹⁵ The Colombian Agricultural Institute (*Instituto Colombiano Agropecuario*, ICA) of the Ministry of Agriculture, and the National Institute for the Surveillance of Medicines and Foodstuffs (*Instituto Nacional de Vigilancia de Medicamentos y Alimentos*, INVIMA) of the Ministry of Health are the regulatory and implementing authorities in their respective domains.⁹⁶ Their responsibilities include the elaboration of regulations, inspection and certification.

80. As stated earlier, in addition to Colombian certificates, imports of certain items must be accompanied by documents issued by the authorities of the exporting country. These include a sanitary certificate (preserved and canned meats, milk), a phytosanitary certificate (fruits, vegetables), a grading certificate (eggs), a disinfection certificate (merchandise in used sacks), a manufacturer's certificate (ensuring compliance of alcoholic beverages with country of origin and Colombian laws) and a purity certificate (canned food, nutritious oils, lard, essences for liquors, confectionery, bakery goods).⁹⁷

81. In 1992 an Andean Group Decision was adopted to put in place a surveillance mechanism against tropical pests and diseases, and a sub-regional inventory of those affecting animals of economic importance was elaborated.⁹⁸ Work was initiated with Venezuela in January 1995 to harmonize requirements relating to sanitary registers including those for foodstuffs, medicines and cosmetics.

82. In early 1996, the authorities were considering the introduction of temporary fumigation requirements on fresh fruit and produce shipments from the United States.⁹⁹ This move was prompted by the discovery of the Oriental fruit-fly in California in October 1995.

83. Colombia has submitted to the WTO Committee on Sanitary and Phytosanitary Measures information on the national notification authority, enquiry point and involvement in bilateral and multilateral agreements in this area.¹⁰⁰

(c) Marking, labelling and packaging

84. Domestic and imported food products, tobacco products, pharmaceuticals, insecticides and other toxic products remain subject to specific marking and labelling requirements.

⁹⁵For medicine evaluation purposes, INVIMA recognizes the pharmacopoeia of France (Codex), Germany (DAB), the United Kingdom (BP), the United States (USP), the World Health Organization and any other in force at EU level (Paragraph (1) Article 22 of Decree 677, 26 April 1995).

⁹⁶Decree 1840 (ICA's responsibilities regarding pests, sanitary and phytosanitary quarantine measures, various controls, registration and accreditation of specialized firms), 3 August 1994; Decree 677 (INVIMA), 26 April 1995.

⁹⁷Dun & Bradstreet Information Services (1994); Bureau of National Affairs (1995).

⁹⁸Andean Group Decision 328, titled Andean Agricultural and Animal Health (*Sanidad Agropecuaria Andina*), 30 October 1992, and JUNAC Resolution 403 (*Inventario Subregional de Plagas y Enfermedades de los Animales de importancia económica para el Área Andina*), 30 April 1996.

⁹⁹Journal of Commerce, 17 January 1996.

¹⁰⁰WTO documents G/SPS/5/Rev.1, 1 December 1995; G/SPS/ENQ/3, 24 October 1995; and G/SPS/W/38, 6 December 1995.

(xv) Government procurement

85. As stated in Chapter II, Colombia is not a signatory to the WTO Agreement on Government Procurement.

86. Government procurement policy and legislation have been modified recently with the objective of extending the 1990 economic reforms in this area and implementing the principles set in Article 209 of the new Constitution. Law 222 of 1983¹⁰¹, containing the conditions affecting public procurement in Colombia, was replaced by Law 80 of October 1993 which has since been elaborated by a number of Decrees.¹⁰²

87. The new legislation gives equal treatment to foreign and domestic companies on a reciprocal basis.¹⁰³ However, if conditions of offer are equal, preference is given to national suppliers. Among foreign bidders, preference is given to the offer utilizing more national components in terms of material and human resources as well as greater technology transfer. A 25 per cent surcharge added to bids from foreign companies, and the obligation to associate with domestic firms, have been eliminated.

88. The law covers all public sector agencies (including departmental and municipal administration) and entities where the State owns more than 50 per cent of the capital.¹⁰⁴ Contracts for the exploration and exploitation of natural resources, telecommunications, radio broadcasting, postal services, public and financial services are regulated by other laws.

89. At present, two procedures are available: public or open bidding (*licitación o concurso público*) and direct purchase or contracting (*contratación directa*). The direct purchase procedure is used when the contract or purchase value is lower than a specific amount, depending on the annual budget of the entity (Table IV.6), or in cases of: tied loan conditions; inter-agency contracts (excluding insurance); artistic or exclusive professional services; leasing or purchase of real estate; emergency situations; absence or inadequate number of bidders; goods and services relating to national defence and security; agricultural and related products available in commodity exchange markets; health services; contracts affecting State enterprises (industrial, trading, mixed-ownership) covered by Law 80.¹⁰⁵

¹⁰¹Under the Decree Law 222 of 1983, the authorities could unilaterally interpret, alter or cancel contracts of public procurement or public works. Preference was given to local goods and services and a foreign contractor was obliged to associate with a Colombian firm. More information on the previous legislation is found in GATT (1990).

¹⁰²These include: Decree 2681 (credit operations) of 1993; Decree 624 (selection procedures for contracts for gas pipelines for public use), 22 March 1994; Decree 855 (direct contracts and their adjudication), 28 April 1994; Decree 856 (requirements for registration to chambers of commerce), 28 April 1994; Decree 1584 (technical criteria for classifying suppliers/bidders in the register), 25 July 1994; Decree 1985 (delegation of contracting capacity) of 1994; Decree 2245 (registration fees for suppliers/bidders), 6 October 1994; Decree 679 (regulating a number of operational aspects of Law 80), 28 March 1994; Decree 94 (competence for contracting) of 1995; Decree 95 (loan conditions) of 1995; Decree 194 (modifications to the register of suppliers/bidders) of 1995.

¹⁰³Articles 20 and 21 of Law 80.

¹⁰⁴Article 2 of Law 80.

¹⁰⁵Article 24 of Law 80.

Table IV.6

Threshold values for selecting public tender procedures

(In minimum monthly wages equivalent to Col\$ 142,125 or US\$142 in 1996)

Size of the entity (annual budget of the agency)	Minimum contract value
1,200,000 or more	1,000
Less than 1,200,000 or higher or equal to 1,000,000	800
Less than 1,000,000 or higher or equal to 500,000	600
Less than 500,000 or higher or equal to 250,000	400
Less than 250,000 or higher or equal to 120,000	300
Less than 120,000 or higher or equal to 12,000	250
Less than 12,000 or higher or equal to 6,000	125 ^a
Less than 6,000	125 ^a

a As of 1996.

Source: Article 24 (1) (a) of Law 80 of 1993; Decree 2150, 5 December 1995; Decree 62, 5 January 1996.

90. Law 80 established a central unified register of suppliers (*registro único de proponentes*), maintained by local chambers of commerce, thus ending agency-specific registration requirements and procedures. National firms must register with local chambers of commerce. Foreign firms have to submit to the register proof of similar registration in their country of origin and appoint a legal representative in Colombia. Qualified bidders are classified according to their experience as well as their technical and financial capacities.¹⁰⁶

91. No information is available on the sums spent on government procurement of goods and services by item, supplier, purchasing method or public entity; this type of data is not compiled centrally, because each public entity autonomous in its procurement decisions.

(xvi) Local-content requirements

92. Since 1988, agro-industrial enterprises importing and processing agricultural products have been required to show that they have acquired local products.¹⁰⁷ Implementing legislation, which has been recently amended, is mandatory and enforceable.¹⁰⁸ Compliance with domestic absorption quota requirements is necessary to obtain an import licence. The Ministry of Agriculture administers the scheme (Chapter V).

93. Since December 1993, mandatory local-content requirements, adopted in the context of the Andean Group automotive agreement (Chapters II and V), have applied to all motor vehicle assembly enterprises in Colombia.¹⁰⁹ Enterprises complying with the requirements enjoy a 3 per cent concessional tariff rate for their imports of CKD vehicles (section (ii)(e)). Recent (1995) legislation introduced

¹⁰⁶For this purpose a methodology (including specific formulae) is detailed in Decree 1584 (25 July 1994).

¹⁰⁷Law 81 of 1988; Decree 501 of 1989.

¹⁰⁸Law 101, 23 December 1994; Decree 1279, 22 June 1994.

¹⁰⁹Colombia signed on 13 September 1993 a Complementarity Agreement for the Automotive Sector with Venezuela and Ecuador. Since 1995, the régime has been implemented under Decree 440 (8 March 1995) which replaced Decree 2642, 28 December 1993. Additional information on this mechanism can be found in WTO (1996).

the concept of sub-regional procurement and the corresponding content requirements in accordance with the May 1994 Addendum to the Complementarity Agreement (Chapter V).¹¹⁰ The Ministry of Economic Development is responsible for supervising and implementing the measure. In 1995, these measures were notified under Article 5.1 of the Agreement on Trade-Related Investment Measures to the WTO Committee on TRIMs.¹¹¹

(xvii) Rules of origin

94. According to its notification to the WTO Committee on Rules of Origin, Colombia does not have any judicial decisions or administrative rules generally applicable to non-preferential rules of origin.¹¹² Preferential rules of origin must satisfy the guidelines of the General Régime of Origin of the LAIA, or the rules of the Andean Group or the relevant provisions of other agreements signed with other countries.¹¹³ Andean Group rules are either sectoral or product-based.¹¹⁴

95. In general, two criteria are used for granting preferential treatment: (i) change in tariff classification of the product concerned as a result of processing; (ii) utilization of raw materials which are imported from third countries, up to 50 per cent of the f.o.b. value of the exported goods. Under the Agreement of the Group of Three, until 1 January 1998 a regional content ranging between 40 and 50 per cent is required to obtain agreed preferential treatment; after this date content requirements are to be set between 50 and 55 per cent. The Agreement with Chile provides for duty-free treatment from 1 January 1994 for motor vehicles and parts (except sparking plug cables and radiators) with 40 and 50 per cent of local value added, respectively. For imports of motor vehicles from other signatories of the Complementarity Agreement for the Automotive Sector, content requirements vary depending on the vehicle category and the sub-regional origin. Colombia requires local content for category 1 vehicles of 35 and 40 per cent of f.o.b. value from Ecuador and Venezuela, and 30 per cent for category 2.

¹¹⁰Decree 440, 8 March 1995

¹¹¹WTO document G/TRIMS/N/1/COL/1, 11 April 1995 and Add.1, 2 August 1995; G/TRIMS/N/1/COL/2, 21 September 1995. Article 5(1) of the TRIMs Agreement requires the notification of all measures not in conformity with its provisions. These include compliance in order to obtain an advantage (Annex, illustrative list).

¹¹²WTO document G/RO/N/1/Add.1, 22 June 1995.

¹¹³More information on LAIA rules of origin, based on LAIA Resolution No.78, 24 November 1987 is contained in GATT (1993) and GATT (1994a).

¹¹⁴The general rules are found in Andean Group Decision 293, 21 March 1991. Specific rules of the Andean Group are contained in JUNAC Resolutions 307 (13 September 1991), containing conditions for products of metal base industries, and 336, titled Specific Origin requirements (*Requisitos Específicos de Origen*), 11 March 1993, relating to regional value added by the car assembly industries within the Group. Rules of origin for ammeters, voltmeters, switches, linebreakers, zip fasteners, products of phthalic anhydride, acetylsalicylic acid, petroleum derivatives, bioriented polypropylene film, benzoic peroxide, talc and chlorofluoromethane products are stipulated in other Andean Group Resolutions.

(xviii) Anti-dumping and countervailing duty actions

96. Colombia's first legislation on anti-dumping and countervailing measures, introduced in October 1990, was subsequently modified in January 1993¹¹⁵ and February 1995 with the objective of streamlining its provisions in the light of new multilateral obligations in this area.¹¹⁶ The latest legislation (Decree 299) which supersedes previous texts, implements the WTO on Anti-dumping and Subsidies and Countervailing Measures affecting imports from non-members of the Andean Group.¹¹⁷ Andean Group rules apply to goods from the sub-region; these differ, *inter alia*, in the definition of subsidies, where the broader GATT Article VI definition is used rather than that of the relevant WTO Agreement.¹¹⁸

97. From 1991, INCOMEX has been responsible for the implementation of the legislation.¹¹⁹ Final decisions are made by the Higher Council of Foreign Trade after hearing the opinion of the Trade Practices Committee (*Comité de Prácticas Comerciales*), an independent body responsible for studying the results of the investigations carried out by INCOMEX. INCOMEX provides technical support at all stages, including the imposition of duties. Investigation procedures may be initiated *ex officio* by INCOMEX, or on request of a major proportion of the domestic industry (representing more than 50 per cent of production). All procedural decisions are published in the Gazette of the Ministry of Foreign Trade.

98. In the latest legislation, procedures have been accelerated. The time period in which investigations for preliminary determination of dumping have to be carried out has been reduced from five months to 65 days. Definitions have been laid down to assist the calculation of dumping margins and adjustments for market and export prices. *De minimis* clauses have been introduced for the margin of dumping (less than 2 per cent of the export price), the amount of subsidy (less than 1 per cent *ad valorem*) and the volume of imports (less than 1 per cent of the volume of domestic consumption).

99. In the absence of international obligations (e.g., in the case of non-WTO members), the injury test is subject to a "mirror clause" which makes it applicable only if similar treatment would be granted to Colombian exports in the country of origin. In this case, provisional duties can be imposed simultaneously with the initiation of the investigation.

100. Definitive duties can remain in force up to a maximum of five years and are not subject to a sunset clause. The level of duties can only be revised one year after their entry in force, *ex officio*

¹¹⁵As stated in Chapter II, Colombia adhered to the Tokyo Round Codes on Subsidies and Anti-dumping in May 1990 and April 1992 (GATT documents SCM/102, 10 May 1990; and ADP/75, 15 April 1992).

¹¹⁶Decree 2444, 17 October 1990, contained in GATT documents SCM/1/Add.29, 18 April 1991, and ADP/1/Add.29, 12 May 1992. The legislation was subsequently amended by: Decree 150, 25 January 1993 (contained in ADP/SCM/1/Add.29, Rev.2, 17 May 1994); Decree 299 Regulating the Application of Anti-dumping and Countervailing Duties, 10 February 1995 (contained in G/ADP/N/1/COL/1 or G/SCM/N/1/COL/1, 3 April 1995).

¹¹⁷Article 1 of Decree 299 of 1995.

¹¹⁸Andean Group Decision 283 (21 March 1991) allows the Board of the Cartagena Agreement (JUNAC) to authorize the adoption of anti-dumping and/or countervailing measures.

¹¹⁹GATT document SCM/1/Add.29/Suppl.1, 14 April 1992.

by INCOMEX or upon request by an interested party. The legislation contains an anti-circumvention clause which may extend the scope of a definitive duty in force to parts or components for assembly or finishing operations in Colombia.

101. As stated in section (iv), Colombia uses the Andean Price Band system to counter subsidized exports of agricultural items.

102. Colombia has regularly submitted to the GATT and subsequently WTO Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures semi-annual reports on actions in this area. Between November 1995 and February 1996 Colombia replied to questions raised in the Committee on Anti-Dumping Practices by Australia, Canada, Hong Kong, Republic of Korea, Mexico and the United States, relating to various aspects of its legislation. Table IV.7 contains information on cases where Colombia has had recourse to anti-dumping procedures in recent years; no countervailing action has been adopted in the period under review.

103. Since May 1995 definitive anti-dumping duties have been levied on tin-free steel imports from the United States. These duties are to remain in effect for five years.

(xix) Safeguard actions

104. Colombia first introduced safeguards legislation in 1994; several provisions have been modified by Law 170 approving the WTO Agreements, including those allowing for emergency safeguard measures for agricultural and fisheries products.¹²⁰ The legislation, which has been notified to the WTO, was discussed at a special meeting of the Committee on Safeguards held in July 1995. Under the new law, safeguard measures are not to be applied for more than one year. Provisional measures may be adopted in critical circumstances in the form of a supplementary customs duty.¹²¹

105. INCOMEX is responsible for the implementation of the legislation and may initiate investigations ex officio. Its findings and recommendations are transmitted to the Customs, Tariffs and Foreign Trade Committee (*Comité de Asuntos Aduaneros, Arancelarios y de Comercio Exterior*) which forwards its views to the Higher Council of Foreign Trade (*Consejo Superior de Comercio Exterior*) for a final decision on the imposition of safeguard measures. Decisions taken at the different stages of the safeguard procedures are published at the Gazette of the Ministry of Foreign Trade.

¹²⁰Decree 809, 21 April 1994; Decree 2657, 1 December 1994. WTO documents G/SG/N/1/COL/1 (notification), 3 April 1995; and G/SG/M/2/Suppl.1, 18 March 1996.

¹²¹For agricultural and fisheries products, excluding those covered by the variable import levies régime (section (iv)), safeguard measures (in the form of customs duty) can be adopted for a maximum of 90 days in case of a fall of international prices below domestic production costs (Articles 17 to 19 and 23 of Decree 809).

Table IV.7
Anti-dumping and countervailing cases, 1992-96

Product	Origin	Investigation	Provisional duties (dumping margin and duration)	Final duties (dumping margin and duration)
Anti-dumping				
Orthophosphoric acid	EC (Belgium)	Initiated: 9 May 1991	72 per cent (as of 31 July 1991)	57 per cent (from 13 May 1992 to ...)
Orthophosphoric acid	United States	Initiated: 14 August 1991	78 per cent (as of 22 April 1992)	78 per cent (from 14 August 1992 to...)
Steel bars	Cuba	Initiated: 15 December 1992; Terminated (no injury): 17 May 1993	None	None
Maize glucose, ordinary starch	Mexico	Initiated: 30 December 1992 Terminated (no injury): 30 September 1993	As of 17 May 1993 and until completion of the investigation: 35 per cent (glucose), 32 per cent (starch).	None
Compound chemical coffee-grade fertilizer	EC (Belgium)	Initiated: 4 February 1993	As of 6 July 1993: 33 per cent.	16 per cent (from 30 November 1993 to...)
Chemical fertilizer	EC (Netherlands)	Initiated: 10 June 1993 Terminated (no injury): 10 March 1994		
Homopolymer polypropylene	United States	Initiated: 18 June 1993	As of 3 November 1993: 28 per cent.	30 per cent (from 18 March 1994 to...)
Fixed batteries	EC (Germany)	Initiated: 6 September 1993 Terminated (no dumping): 7 June 1994		
Ethyl acetate	United States	Initiated: 4 October 1993	As of 4 March 1994: 77 per cent.	77 per cent (from 1 July 1994 to...)
Chrome plate	EC (United Kingdom)	Initiated: 11 October 1993		
Chrome plate	United States	Initiated: 3 May 1994 Terminated: 3 October 1994		
Rice	Viet Nam	Initiated: 14 September 1994		
Countervailing				
No cases				

... Not available.

Source: Colombia's notifications to GATT and the WTO.

106. The Special Safeguard Provisions of the WTO Agreement on Agriculture, allowing for the imposition of an additional duty above the bound tariff level at a determined trigger volume or price level, affect 55 four-digit and one six-digit NANDINA tariff items that are covered by the "tariffication" commitment.¹²² Some of these items are also covered by the tariff quota commitment; in addition, some of these are included in the Andean Price Band system.

¹²²Article 5 of the Agreement and Part I, Section I-A, Schedule LXXVI, 15 April 1994.

107. Colombia has retained its right to use the transitional safeguard mechanism under the provisions of the WTO Agreement on Textiles and Clothing.¹²³ It has submitted its list of textile and clothing products, covering 16 per cent of the volume of imports in 1990, that are included in the first phase of integration into GATT 1994.¹²⁴ The list comprises eight ten-digit HS items, mainly yarns of man-made fibres, woven fabrics of silk and textile made-ups (e.g., skirts, cotton-made articles).

108. Since 1991, no safeguard action under Article XIX has been adopted by Colombia against imports from any GATT/WTO Member.¹²⁵

109. Specific safeguards provisions, affecting preferential trade, are contained in regional, sub-regional or bilateral agreements to which Colombia is a signatory.¹²⁶ Since 1990, regional safeguard action has been taken, on a selective basis, in the context of the Andean Group; such action has to be authorized by the Board of the Cartagena Agreement. Between May and December 1995, in response to complaints from farmers, rice imports from Venezuela were banned, while a 20 per cent tariff (the actual CET rate) was imposed on sugar imported through Venezuela.¹²⁷ A 2.98 per cent tariff was imposed for six months on polypropylene bags from Ecuador. On 2 June 1995, an investigation was initiated against imports of steel bars from Venezuela. The JUNAC requested the suspension of, or objected to the adoption of, safeguards by Colombia in 1990 and 1991 against imports of fish and meat flour, and polypropylene bags.

110. Since 1990, safeguard action, in the form of additional ad valorem tariffs, has been taken on three occasions against non-GATT/WTO countries. Rice from Viet Nam has been subject to safeguard action since July 1994; no expiry date has been proposed. Imports of textiles, clothing and footwear from China were subject to additional duties ranging from 40 to 100 per cent between February and December 1995.

(xx) Other measures

111. Smuggling, which serves to a large extent as a money laundering mechanism¹²⁸, is subject to fines and administrative sanctions but not imprisonment.¹²⁹ Action is being taken by the Customs authorities in the context of certain programmes to strengthen control, inspection and monitoring procedures.

¹²³This was notified pursuant to Article 6 paragraph 1 of the WTO Agreement on Textiles and Clothing (document G/TMB/N/10, 1 March 1995).

¹²⁴Article 6, and paragraph 7 (b) of Article 2 of the WTO Agreement on Textiles and Clothing (document G/TMB/N/55, 28 April 1995).

¹²⁵WTO document G/SG/N/2/COL, 28 March 1995.

¹²⁶These are contained in: Montevideo Treaty (approved by Law 45 of 1981); Chapter IX of the Cartagena Agreement (Law 8a of 1993); the Agreement of the Group of Three (Law 172 of 1994); and the bilateral Agreement with Chile (Decrees 2717 of 1993 and 1741 of 1994).

¹²⁷EIU (1995b).

¹²⁸Latin American Weekly Report, 13 July 1995, p.311.

¹²⁹Decree 1750, 4 July 1991.

112. According to estimates by the domestic clothing industry association (*Asociación de Confeccionistas de Colombia, Asoconfección*), in 1994 smuggling involved goods worth US\$2.5 billion which could have generated fiscal revenue (from duties and taxes) of US\$952 million. It seems that most of the smuggled goods consist of electrical household appliances and cigarettes, mainly from the United States. In February 1996, the Colombian Minister of Justice stated that close co-operation for the monitoring of supply and marketing channels to Colombia was to be sought with the U.S. authorities.¹³⁰

(3) Measures Directly Affecting Exports

(i) Registration and documentation

113. New regulations on export documentation and procedures were introduced in 1990.¹³¹ The single export document (*Documento Único de Exportación*) was replaced by a shipment authorization request. Export documentation (e.g., showing compliance with any export restraint provisions in force) must be verified and a sample of 5 or 10 per cent of the merchandise inspected before shipment authorization (*autorización de embarque*) can be delivered by the Customs. More flexible documentation and procedural requirements apply for flower and coffee shipments.

114. All exporters seeking refunds of value-added tax (IVA) on exports must be registered in the National Exporters' Register of INCOMEX.

115. To obtain an export authorization, the exporter must submit a customs declaration, the definitive commercial invoice and bill of lading. Depending on the merchandise or destination, additional documentation requirements may include sanitary or phytosanitary certificates for animal or food products. Certificates of origin are required for exports benefiting from preferential treatment, and special documentation for goods subject to restraints or tariff quotas at destination (e.g. textiles and clothing).

(ii) Export taxes, charges and levies

116. Export taxes are levied on coffee, crude oil, gas, coal and ferro-nikel (see also Chapter V).¹³²

117. Exporters of coffee pay a coffee contribution tax (*contribución cafetera*), of which the level is determined by the difference between the export value of coffee sold to the National Coffee Fund (*Fondo Nacional del Café*, FNC), and its estimated cost, taking into account the domestic buying price for export-type coffee.¹³³ Revenue from this tax goes to the FNC.

¹³⁰*El Tiempo*, 15 February 1996.

¹³¹Ministry of Finance Resolution 3492, 24 August 1990.

¹³²Law 6 of 1992.

¹³³Law 9 of 1991. From 1991 to 1995 the annual revenue from this tax ranged between US\$3 million (1992) and US\$599 million (1994).

118. Coffee exporters may be required to surrender, without payment, a certain proportion of the volume of Excelso (untreated) coffee that they wish to export, or pay the National Federation of Coffee Growers (FEDECAFE) the peso equivalent, when it is so decided by the Price Committee (*Comité de Precios*), composed of the Ministers of Finance and Agriculture and the Managing Director of FEDECAFE. However, this measure has not been applied since the end of 1991.¹³⁴

119. Since July 1992, a monthly special contribution tax (*contribución especial*) has been levied on exploitation of oil and gas, and exports of coal and ferro-nickel.¹³⁵ Rates were last modified in December 1995 and range from 0.6 to 7 per cent (Chapter V); those affecting oil and gas are to be phased out by the year 2001. The tax is calculated on different values depending on the product and are based on f.o.b. export prices certified or set by the Ministry of Mines and Energy. Production on which royalties are charged is exempt from the special contribution; this is also the case for gas for electricity-generating plants and residential consumption. From 1997 onwards, the amount of the tax will not be deducted from company revenue subject to the revenue tax (*impuesto sobre la renta*). Revenue (in pesos) from this tax has almost doubled since 1993; in 1995 it stood at US\$173 million. Oil contributes 95 per cent to the total amount collected.

(iii) Minimum prices

120. Minimum export/surrender prices, fixed by the Management Board (*Junta Directiva*) of the Central Bank on the basis of the international market prices in the New York Coffee, Sugar and Cocoa Exchange, continue to be applied to green coffee.¹³⁶ F.o.b. prices are certified (oil) or set (coal and ferro-nickel) by the Ministry of Mines and Energy for tax purposes (i.e., calculation of special contribution tax discussed earlier).

(iv) Export prohibitions

121. No export prohibitions on commercial grounds are applied by Colombia at present, except for coffee qualities that do not meet the standards established by FEDECAFE. Exports of denatured or semi-roasted coffee are also prohibited at times when a domestic consumption subsidy is in force (Chapter V).¹³⁷

(v) Export licensing

122. Export licensing in the form of a prior authorization or certificate is required for items covered by limited preference or trade restrictive agreements with the United States covering sugar, canned tuna and certain clothing items, and the EU on bananas. Sugar exports to the United States under preferential terms are subject to an annual quota, operated through eligibility certificates issued by the United States and delivered by INCOMEX to exporters (Chapter V). Access and preferential treatment for exports of underwear and women's and girls' woollen suits to the U.S. market are also limited by the recently concluded bilateral agreements discussed below (section (vi)). Since May 1995,

¹³⁴IMF (1995).

¹³⁵Article 13 of Law 6 of 1992; Articles 52 to 59 of Law 223, 20 December 1995.

¹³⁶Article 25 of External Resolution of the Bank of the Republic, 2 September 1993. and its amendment (External Resolution 34/94).

¹³⁷Articles 10 and 11 of Decree 1538, 15 May 1986.

the distribution of the tariff quota affecting banana exports to the EU has required origin and export certificates; quota allocation procedures were modified in January 1996 after a Memorandum of Understanding had been signed with the United States (Chapter II).¹³⁸

123. Since 1991, export authorization (*visto bueno*) from the Ministry of Agriculture has been required for eight 10-digit NANDINA items comprising rice and sugar.¹³⁹

124. Goods covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) require CITES certificates on export. Other goods covered by conventions such as the Montreal Protocol on ozone depleting substances, or embargoes agreed in the United Nations, require no special certificates other than the shipping authorization (*autorización de embarque*) issued by Customs¹⁴⁰. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal may be enforced sometime in 1996.¹⁴¹

125. Since 1991, INCOMEX has delivered export licences for items subject to restrictions, import quotas or special documentation procedures in the market of destination; other cases fall under the responsibility of the Customs service.

(vi) Voluntary restraints, surveillance, retention schemes and similar measures

126. As a member of the Association of Coffee Producing Countries, Colombia is committed to retain 10 to 20 per cent of its export volume of coffee whenever world price developments activate the APPC's retention scheme.¹⁴² This was the situation for the crops in 1993/94 and 1995/96 (Chapter V).

127. Since 1990 Colombia has been party to three bilateral agreements under the Multifibre Arrangement (Chapters II and V), but these are no longer in force.¹⁴³ One agreement, in force from January 1987 to end-December 1994, provided for a consultation system, without setting quotas in the EU market. The second agreement covered exports of cotton terry-towels, washcloths and sets to Canada for the period from September 1991 to end-December 1992. A third agreement affected exports of cotton poplin, broadcloth and printcloth to the United States between January 1992 and end-December 1993; in 1994, limitations covered cotton printcloth fabric (219 metres) and men's and boys' suits of wool (122,715 units).¹⁴⁴ These restraints were terminated in December 1995.

¹³⁸Decree 855, 25 May 1996.

¹³⁹*Asociación Nacional de Industriales* (1995).

¹⁴⁰Reportedly, the smuggling of rare species to the United States is a major problem. In 1994, Colombia confiscated 9,000 turtles, 6,900 snakes and 20,000 snake skins (Latin American Regional Reports-Andean Group, 3 August 1995, p.7).

¹⁴¹This Convention is due to be ratified in 1996 when Law 163 passes through the Constitutional Court (Chapter II).

¹⁴²More information on the APPC and its retention scheme can also be found in WTO (1995a) and WTO (1996).

¹⁴³COM.TEX/SB/1778 (24 August 1992), 1828 (20 April 1993) and 1851 (23 July 1993).

¹⁴⁴Information supplied by the United States pursuant to Article 2.1 of the WTO Agreement on Textiles and Clothing (document G/TMB/N/63/Add.1, 10 August 1995).

128. Under the WTO Agreement on Textiles and Clothing, two "special access" memoranda of understanding affect exports of underwear and women's and girls' wool suits to the United States. These began in June and August 1995 and run to the end of 1997. The quantitative limit for the former, which is being increased progressively on an annual basis, is divided into two parts: an access restraint (2.25 million dozen) and a preferential treatment restraint similar to that of products having used U.S. cotton fabric under the ATPA's Guaranteed Access Level (20.25 million dozen) (Chapters II and V). These were to rise by 41 per cent in 1996 and a further 6 per cent in 1997.¹⁴⁵ Quotas affecting wool suits for women and girls were set at 201,000 units (restraint for clothing using U.S.-made parts) and 80,400 units (restraint without origin limitations) for 1995; a 2 per cent annual quota increase is foreseen for 1996 and 1997.

129. Since 1994, yellowfin tuna exports to the United States have been subject to embargo. The authorities hoped that this prohibition would be eliminated with respect to catches from the Eastern Pacific by mid-1996.¹⁴⁶

(vii) Export subsidies

130. A few months after adhering to the Tokyo Round Agreement on Subsidies and Countervailing Measures, Colombia declared that it would refrain from establishing any export subsidy programmes inconsistent with its competitive and development needs and the provisions of the Agreement.¹⁴⁷

131. Tax reimbursement certificates (*certificados de reembolso tributario*, CERT) cover the reimbursement of domestic indirect taxes, charges and other levies paid by exporters as well as a subsidy element. These certificates, introduced in 1967, remain available to promote secondary and non-traditional exports.¹⁴⁸ Coffee, petroleum and petroleum products, and exports under special arrangements are excluded from CERT benefits. This measure is viewed by the authorities as a compensatory instrument against currency appreciation, distorted international prices or penetration costs relating to market and product diversification. Legislation on CERTs was updated in 1992 and 1995.¹⁴⁹ The CERTs, issued by the Central Bank when export proceeds are surrendered in the foreign exchange market, are freely negotiable bonds quoted in the stock exchange; they can be used for payments of income tax, customs duties, and certain other taxes. As from 1992, CERT benefits do not cover exports to Andean Group partners.¹⁵⁰

¹⁴⁵WTO documents G/TMB/N143, 21 February 1996; and G/TMB/R/11, 30 April 1996.

¹⁴⁶*El Tiempo*, 30 January 1996.

¹⁴⁷GATT document SCM/105, 19 September 1990.

¹⁴⁸IMF (1995). The CERT régime was notified to the WTO in June 1995 (document G/SCM/N/3/COL or L/7611/Add.11, 3 August 1995).

¹⁴⁹Legislation in force comprises: Article 173c of Decree-Law 444 of 1967; Law 48 of 1983; Article 11 of Decree 631 of 1985; Decree 446, Decree 1608 and Resolution 2386 of 1992; and Decree 708 of 1995.

¹⁵⁰Decrees 1608 and 1650 of 1992.

132. Between 1991 and 1992 the levels of CERT nominal rates were cut by half and set at 0, 2.5, 4 and 5 per cent of the value of exports, depending on the product and country of destination.¹⁵¹ Higher rates for certain items have applied for short periods.¹⁵² The value reimbursed is calculated as a percentage of the f.o.b. value. From 1992 to 1995, the share of CERT-eligible to total exports dropped by 7.2 per cent to about 44 per cent; the number of tariff lines benefiting from CERTs dropped to 2,577.

133. Between 1991 and 1994 the effective overall average rate of CERT (i.e. the total amount granted divided by the f.o.b. value of eligible exports) fell by about 48 per cent to 3.6 per cent.¹⁵³ The estimated subsidy element of this rate, i.e., the amount that is not directly related to the reimbursement of domestic indirect taxes, charges and other levies paid by the exporter, also declined from 2.1 to 1 per cent in 1994. In 1994, recommendations were made to the Higher Council of Foreign Trade to increase CERT expenditure by 10 per cent annually to US\$123 million by 1998.¹⁵⁴ However, for 1995, official estimates for total disbursements under CERTs indicate an 18 per cent rise to US\$94 million, relative to the previous year. The subsidy element was to drop by 11 per cent to 19.8 per cent of the total expenditure, or US\$18.6 million.¹⁵⁵

134. Since 1992, more than 82 per cent of tariff items have been eligible for CERT benefits, and between 1992 and 1994, about 30 per cent of total exports benefited. In 1993, major recipients of the subsidy element were the agricultural, meat, textiles and leather industries (Chapter V). While the highest rate covers 69 per cent of the items concerned, 70 per cent of CERT expenditure goes to bananas and flowers, which represent one third of non-traditional exports in value and receive the lowest rate.¹⁵⁶

135. Under the SIEX régime, unrestricted duty-free access of capital goods and inputs for the production of export goods is, *inter alia*, intended to strengthen export diversification and technological renewal.¹⁵⁷ The SIEX, which was first notified to the GATT in 1992 under Article XVI:1, was considered by the authorities to be a subsidy for economic development purposes, and thus was covered by Article 14 of the Tokyo Round Subsidies Code.¹⁵⁸ The granting of SIEX benefits is subject to export performance requirements (section (xii)).

¹⁵¹Decree 446 of 1992.

¹⁵²Between September and December 1992 (Decree 1469, 10 September 1992) CERT rates for certain exports were set at 3.5, 4.3, 5.6, 7 and 8.5 per cent. From April to December 1995, levels were increased to 5.5, 6, 6.5, 7 and 8 per cent for a number of cases (Decree 708 of April 1995).

¹⁵³*Departamento Nacional de Planeación* (1994a).

¹⁵⁴*Departamento Nacional de Planeación* (1994a).

¹⁵⁵G/SCM/N/3/COL

¹⁵⁶*Departamento Nacional de Planeación* (1994a).

¹⁵⁷For certain capital goods, this fiscal treatment may take the form of deferred payment of income tax.

¹⁵⁸GATT documents L/6630/Add.25, 24 January 1992 and L/7162/Add.8, 26 April 1993.

136. Estimates provided to the Secretariat in the context of the TPR exercise indicate that from 1991 to 1994 the effective rate of the SIEX export subsidy fell progressively by 25 per cent to 2 per cent.¹⁵⁹ In 1993, the main beneficiaries of the subsidy were agricultural, textiles and clothing activities.

137. A transport subsidy for freight and transshipment fees to export markets to which Colombia does not have a direct cargo route has applied since the early 1980s. At present, the subsidy is granted for a five-year period with decreasing rates, set at 26 per cent for the first three years and 13 per cent subsequently. The scope of the measure has diminished considerably; in the past, the main destinations benefiting from the subsidy were Asia (40 per cent), Oceania (27 per cent), the Caribbean markets (20 per cent) and Africa (10 per cent). The main exports benefiting from the scheme were maize flour, citric acid, meat preparations, books and magazines, textiles and fabrics, leather articles, and footwear.¹⁶⁰ Currently, the scheme covers only exports to certain Central American countries and Haiti. The authorities are aware that this measure constitutes an export subsidy under the WTO Agreement on Subsidies.

138. In conformity with its commitments under the WTO Agreement on Agriculture, Colombia will be progressively reducing its budgetary outlays for export subsidies (CERT and SIEX) by 24 per cent, and the quantities benefiting from such subsidies by 14 per cent overall, within the ten-year period starting from 1995.¹⁶¹ According to Colombia's WTO Schedule, for the base period (1986 to 1990) the average annual expenditure for the subsidization of agricultural exports, amounting to US\$377 million, benefited mainly rice (31 per cent), cotton (19 per cent) and fruit (16 per cent) as well as cocoa beans, sugar, vegetables and cut flowers (almost equal shares totalling 25 per cent).

139. Colombia will also eliminate its programmes of export subsidies for manufactured items, classified as prohibited under the WTO Subsidies Agreement, by 2003.¹⁶² It considers that the uneven distribution of the subsidy element in its assistance schemes, between sectors, could be better addressed by the establishment of a drawback system for the full reimbursement of indirect taxes. Financial resources could then be freed and channelled into other export promotion activities.¹⁶³

140. Since 1990, certain Colombian exports to Argentina (PVC film, disposable syringes), Peru (hollow sections of aluminium alloys) and the United States (fresh cut flowers, miniature carnations, roses)¹⁶⁴ have been subject to provisional or definitive anti-dumping or countervailing duties or price

¹⁵⁹Departamento Nacional de Planeación (1994a). In their submission to the GATT Committee on Subsidies and Countervailing Measures, the authorities estimated that the effective rate of the SIEX export subsidy in 1994 stood at 0.5 per cent (forgone duty revenue divided by total exports excluding coffee and oil) of the f.o.b. export value (G/SCM/N/3/COL).

¹⁶⁰Ministerio de Comercio Exterior (1996).

¹⁶¹Article 9 paragraph (2)(b)(iv) of the Agreement; Part IV Section II, Schedule LXXVI, 15 April 1994.

¹⁶²Article 3 and Sub-paragraph (b) paragraph 27.2 of the WTO Agreement on Subsidies and Countervailing Measures.

¹⁶³Departamento Nacional de Planeación (1994a).

¹⁶⁴Anti-dumping duties levied on flower exports to the United States were reduced from 22.7 per cent to 6.4 per cent in January 1995. The United States is the destination for 80 per cent of Colombian flower exports (EIU, 1995c).

undertakings. According to the authorities of these countries, dumping margins vary from 0 to 83 per cent. Investigations held by Australia on woven polypropylene primary carpet backing fabric and Mexico on polypropylene film and zip fasteners did not result in the adoption of any measure.¹⁶⁵

(viii) Duty and tax concessions

141. No other duty and tax concession schemes other than those described earlier are in operation at present.

(ix) Export finance

142. Since 1991, the Foreign Trade Bank of Colombia (*Banco de Comercio Exterior de Colombia*, BANCOLDEX), a mixed-ownership entity with 89 per cent capital participation by the Ministries of Foreign Trade and Finance, has been entrusted with providing export credit under competitive market conditions as well as a variety of other export-related financial services (e.g., post-shipment operations, creation and acquisition of firms, leasing, modernization and fixed investment).¹⁶⁶ Beneficiaries are direct exporters (producers and international trading companies) and indirect exporters (producers selling to traders, suppliers of inputs for export goods and firms providing export services) as well as foreign buyers of Colombian goods and services.

143. Preshipment credit in pesos is subject to interest equivalent to the average fixed-term 90-day deposit rate (*Depósitos a término fijo*, DTF) increased by 4 to 4.5 percentage points. The LIBOR rate, increased by 5.5 additional percentage points, applies for credit in U.S. dollars. Reimbursement cannot exceed three years for credit in pesos or five years for credit in U.S. dollars.

144. Between 1992 and 1995, finance in U.S. dollars grew from 17 per cent to more than 60 per cent of an annual portfolio of some US\$1.8 billion. 87 per cent of BANCOLDEX funds, available to more than 2,300 customers, are utilized for preshipment operations. Export coverage progressed from 17 per cent in 1991 to 33 per cent in 1995. In 1995, half of its financial resources were obtained in the international financial market.

145. BANCOLDEX is to expand its credit facilities to finance the participation of national companies in domestic or international tenders; the establishment or acquisition of existing international trading networks; export-related investment abroad; and part of export-related infrastructure projects (e.g., ports, warehouses).

(x) Export insurance and guarantees

146. Since 1994 export credit insurance has been offered by the Foreign Trade Insurance Company (*Aseguradora del Comercio Exterior*, SEGUREXPO) a mixed-ownership entity. It covers commercial risks up to 90 per cent, political risks up to 85 per cent and extraordinary risks involved in export

¹⁶⁵Information based on notifications to the GATT and WTO.

¹⁶⁶Under Law 7 of 1991, export finance responsibilities were shifted from the Export Promotion Fund (*Fondo de Promoción de Exportaciones*, PROEXPO) to BANCOLDEX. Since 1967, PROEXPO has been responsible for export promotion and finance.

credits for goods and services.¹⁶⁷ The overall cost to the exporter for full risk coverage ranges from 0.12 to 2.75 per cent of the f.o.b. value depending on factors such as the type of product, destination, etc.

(xi) Export promotion and marketing assistance

147. Since 1992 PROEXPORT (*Promoción de Exportaciones*), an agency under the Ministry of Foreign Trade, has provided guidance and support for the strengthening of export activities. Its services consist, *inter alia*, of the supply of information on market opportunities to a system of Export Units (*Unidades de Exportación*) which groups exporters by product, foreign market or marketing channel. By early 1996, the system comprised 100 units involving 556 firms; 50 more units were to be added by the end of the year.¹⁶⁸ In the past, the units focused on the Chilean, Mexican, United States, Venezuelan and Central American markets, but in 1996 efforts were being made to provide greater information on the European market.

148. Advice to individual exporters on matters such as market opportunities (e.g., international tenders) or items eligible for preferential treatment abroad is provided in its Centres for the Exporter (*Centros de Atención al Exportador*). PROEXPORT organizes business trips abroad, participation in international trade fairs and training courses on foreign trade issues. It also maintains a network of offices in foreign markets of major interest to Colombia.¹⁶⁹ Export promotion expenditure is set at US\$18 million for 1996.

(xii) Export performance requirements

149. SIEX benefits, discussed above are tied to export performance obligations. At least 70 per cent of the estimated increase in the volume of output (defined as additional units during the life-cycle of the machinery) produced by the imported (duty-free) machinery must be exported. Concerning raw materials, inputs, semi-manufactures and machinery parts, export commitments are established in value terms; these are equivalent to at least one and a half times the amount of the tariff quota (section (2) (iii)).¹⁷⁰

(xiii) Free-trade zones and export-processing zones

150. The free-zone régime is used to promote economic and regional development through foreign trade in goods and services.

¹⁶⁷Risks in the markets of Costa Rica, Cuba, Guyana, Haiti, Iraq, Nicaragua, Suriname, the former-Soviet Republics and Yugoslavia are not covered (*Departamento Nacional de Planeación* (1994a).

¹⁶⁸In 1995, the programme included export products such as flowers, vegetables, educational equipment, textiles, clothing, footwear, leatherware, furniture, industrial machinery, autoparts, electric apparatus, articles of graphic arts, toys and software (*El Tiempo*, 16 February 1996).

¹⁶⁹These include Canada, Chile, Chinese Taipei, Ecuador, Germany, Japan, Mexico, Puerto Rico, Spain and Venezuela.

¹⁷⁰Articles 12 and 13 of INCOMEX Resolution 2386, 25 November 1992.

151. Between 1991 and 1993, the legislation on free-trade zones was updated and notified to the WTO.¹⁷¹ At present, Colombian law provides for the establishment of free zones for industry (*zonas francas industriales de bienes y de servicios*), tourism-related services (*zonas francas industriales de servicios turísticos*) and technology (*zonas francas industriales de servicios tecnológicos*). A process for the privatization of the management of the zones with a view to improving their foreign investment, employment and export earnings performance was completed on 30 June 1994. In this context, existing zones under public sector management were liquidated and the establishment of new zones, administered by private companies, was authorized.¹⁷² Since 1994, requirements have included the elaboration of an ecological study and the delivery of an environmental licence (*licencia ambiental*) before starting construction works in a free industrial zone.¹⁷³

152. General tax concessions available in the free-trade zones comprise exemption from payment of import duties, surcharges, and indirect taxes as well as from import licence, import registration and foreign exchange requirements.¹⁷⁴ Free-zone operations are also exempt from income tax (*impuesto de renta*) and the remittance tax on earnings abroad.¹⁷⁵

153. BANCOLDEX provides credit facilities, in pesos or U.S. dollars, on preferential terms for firms operating in the free zones, including tourism zones. These credits are intended to cover fixed investment, technology or infrastructure projects. The amount of credit can be as much as the net value of exports for a period not exceeding 10 years. Grace periods vary from 2 to 5 years. Interest for loans in pesos is set at the prevailing rate for fixed-term deposits (*Depósitos a término fijo*, DTF).

154. Currently six out of 12 authorized free-trade zones are operational; these consist of nine industrial zones and three tourist zones.¹⁷⁶ In early 1996, authorization for the establishment of three more zones was envisaged.

155. The authorities are of the view that the free zones have not yet fulfilled expectations in terms of exports, employment and technology transfer. However, it is hoped that recent privatizations will convert them into more effective export-promotion instruments and allow them to attain high competitiveness levels relative to similar zones in other countries.

¹⁷¹G/SCM/N/3/COL or L/7611/Add.11, 3 August 1995. The new legal framework in this area comprises Law 7, 16 January 1991; Decree 2131, 13 September 1991; and Decree 971 of 1993.

¹⁷²Decree 2111, 29 December 1992; Decree 1125, 16 June 1993; Decree 2480, 13 December 1993.

¹⁷³Decree 1258 of 1994.

¹⁷⁴Dun & Bradstreet Information Services (1994).

¹⁷⁵G/SCM/N/3/COL

¹⁷⁶The nine industrial zones are located in Baranquilla (new), Bogotá, Cali (new), Cartagena (three firms, 23 per cent of total zones production), Cúcuta (10 firms, 14 per cent of total zones production), La Candelaria (new), Palmase (new), Rionegro (six firms, 58 per cent of total zone production) and Santa Marta (five firms, 5 per cent of total zone production). Data correspond to the situation in 1994 (G/SCM/N/3/COL). In 1996, the authorities indicated that 85 firms, involved in food processing, textiles, clothing, footwear, petrochemicals, plastics, iron and steel manufacturing, were installed in these zones; 75 per cent of their exports were sent abroad.

156. The Colombian Government intends to bring the current legislation on free zones into line with the provisions of the WTO Agreement on Subsidies by the year 2003.

157. Apart from the free-zone régimes, several types of special customs régimes (*régimen especial aduanero*) apply. The Department of the Islands of San Andrés, Providencia and Santa Catalina (in the Caribbean) have enjoyed a free-port régime since 1959. Merchandise can be imported free of customs duty, indirect tax or other restrictions. A special consumer tax (*impuesto al consumo*) is levied at 10 per cent of the c.i.f. value of foreign goods, except for fuels, construction material, capital goods for the local industry (including fisheries), medicines, and passenger boats.¹⁷⁷ Imported goods enter the port of Leticia (Department Amazon) free of customs duties and all (national and foreign) goods are subject to the IVA tax.¹⁷⁸

158. Since 1991, imports into certain zones in the territory of municipalities of the Departments of Guajira, Nariño, Cauca and the region of Urabá have benefited from duty-free treatment. However, all domestic and foreign items are subject to IVA, except for motor vehicles assembled in Colombia.¹⁷⁹

(4) Measures Affecting Production and Trade

(i) Adjustment assistance

159. The Institute of Industrial Development (*Instituto de Fomento Industrial*, IFI) provides finance in local or foreign currency for a wide range of projects in the manufacturing sector, including working capital, fixed assets, modernization, reconversion, technology transfer and development (section (ii)), and environmental projects. For the period 1994-98, it is to provide overall financial support of US\$900 million to small and medium-size industry.

160. IFI provides assistance for the expansion of jobs or through programmes to increase productivity in small and medium-size firms such as PROPYME (*Programa de Atención a la Pequeña y Mediana Empresa*) created in 1994. PROPYME, which covers firms with 11 to 200 employees, was assigned US\$160 million for 1996. Since 1994, a National Plan for Small-size Enterprises (*Plan Nacional para la Microempresa*) of less than 10 employees has operated through a network of technology-related services available to these firms as well as financial facilities provided through the Fund for the Financing of Small Enterprises in Urban Areas (*Fondo de Financiamiento de Microempresas del Sector Urbano*, FINURBANO). For 1996, FINURBANO's resources stood at US\$60 million.

161. Efforts are also undertaken, *inter alia*, in areas such as the introduction and training for the utilization of computer-aided design (CAD, CAM, CIM) and automated production processes; the establishment of sectoral or regional centres for productivity and technological development (*Centros de Productividad y Desarrollo Tecnológico*); and the improvement of dissemination of information on standards and industrial property rights.

¹⁷⁷Article 16 of Law 47, 19 February 1993.

¹⁷⁸Decree 0190, 22 January 1994. Leticia is the only Colombian port located on the international free perimeter of the Amazon River established under a joint agreement between Colombia and Peru (*Convenio de Cooperación Aduanera Colombo-Peruano*) for the benefit of these remote territories.

¹⁷⁹Paragraph 2 Article 5 of Decree 2817, 17 December 1991; and Article 12 of Customs Resolution 0499, 27 February 1992.

162. Financial facilities through PROPYME, FINURBANO and other IFI instruments participating in these programmes include conditions such as: duration of up to 10 years (fixed assets); period of grace up to 3 years (coal mining); and different rediscount rates ranging from 13 per cent (small-size firms) to 2.5 percentage points above the fixed-term deposit rate (*Depósito a tasa fija*, DTF).¹⁸⁰ Since 1994, IFI resources have been directed to sectors other than manufacturing. In 1995, the financial institutions, manufacturing and agro-industry were the major beneficiaries of its credit facilities which were mainly destined to working capital. Large companies absorbed more than two thirds of available credit while PROPYME and FINURBANO accounted for another 30 per cent. IFI met financial needs of firms involved in the sectoral competitiveness agreements (Chapter V and below).¹⁸¹

(ii) Assistance for research and development (R&D)

163. Since 1992 fiscal and financial incentives have been available for research and development purposes (Law 6 of 1992). The amount invested in scientific or technological research which is undertaken in conjunction with universities approved by the Colombian Institute for the Development of Higher Studies (*Instituto Colombiano para el Fomento de la Educación Superior*, ICFES) or other institutions designated by the National Planning Department (*Departamento Nacional de Planeación*) is deducted from the revenue subject to income tax (*impuesto a la renta*).¹⁸² Granting of incentives through individual contracts is subject to prior authorization and verification of results by the Colombian Fund of Scientific Research and Special Projects (*Fondo Colombiano de Investigaciones Científicas y Proyectos Especiales*), jointly established by IFI and the Colombian Institute for Scientific and Technological Development (*Instituto Colombiano para el Desarrollo de la Ciencia y Tecnología*, COLCIENCIAS).¹⁸³ In 1995, more than US\$6 million were used to finance 21 projects.

164. The four-year (1995-98) national programme for science and technology, aimed at improving productivity and innovation, includes training and research. Its US\$219 million budget is partially funded by an IDB (Inter-American Development Bank) loan of US\$100 million. The programme is administered by COLCIENCIAS.¹⁸⁴

(iii) Production assistance, tax concessions

165. Since 1974, agricultural producers have benefited from loans at preferential/subsidized interest rates; since 1990, efforts have been made to move progressively toward commercial terms. All banks and financial institutions are obliged to finance FINAGRO's loan operations to small producers by purchasing agricultural development bonds (*Títulos de Desarrollo Agropecuario*, TDA) for an amount equivalent to 10 per cent of their commercial loans; this compulsory investment can now be replaced by an individual bank portfolio for the sector. Resources collected through TDAs are channelled to the Fund for the Financing of the Agricultural Sector (*Fondo de Financiamiento del Sector Agropecuario*,

¹⁸⁰IFI (1995).

¹⁸¹IFI (1996).

¹⁸²Article 158-1 of Law 6a of 1992.

¹⁸³Article 6 of Law 29 of 1990; and Decree 591 of 1991 regulating the modalities of contracts for the development of scientific and technological activities (*por el cual se regulan las modalidades específicas de contratos de fomento de actividades Científicas y Tecnológicas*).

¹⁸⁴*Latin American Weekly Report*, 24 August 1995, p. 379; *The IDB Projects*, (1995), p. 14.

FINAGRO) which grants the loans. Interest rates, paid by FINAGRO to the banks, are two percentage points below the average fixed-term 90-day deposit rate (*Depósitos a término fijo*, DTF) or four percentage points below the DTF rate depending on the type of TDA.¹⁸⁵ In 1993, Capitalization Incentive in Rural Areas (*Incentivo a la Capitalización Rural*, ICR) was introduced and has operated since August 1994; this consists of subsidizing projects aimed at modernizing the production and marketing of agricultural items (Chapter V). Since 1994, the EMPRENDER Fund has provided capital and financial incentives for greater participation of the private sector in marketing and processing agricultural products (Chapter V).

166. The prices charged by the publicly owned or semi-private institutions to agricultural producers for support services (warehousing, certification, quality controls, diagnosis, licensing etc.) are set on the basis of costs and market conditions. Pricing is adjusted annually to reflect CPI changes; for 1996 a 17 per cent increase was planned (Chapter I).

167. In the tax reform of December 1995, resources totalling US\$123 million were allocated to indebted coffee growers.¹⁸⁶ Debt relief measures for small producers consist of paying off interest and capital (up to Col\$ 3 million per debtor by 31 December 1994) while those benefiting other growers (debt exceeding Col\$ 3 million by 31 December 1995) cover the amount resulting from the originally agreed interest rate and the (18 per cent) annual rate which is due. As stated earlier (section (2)(vi)), finance will be provided through the increase of two percentage points in the general VAT rate which will raise US\$66 million (for 1996 and 1997) as well as the departmental growers' committees (US\$57 million in the period 1996-2000).

168. According to information accompanying Colombia's WTO Schedule LXXVI, the cost of assistance provided to agriculture by the Ministry of Agriculture in various forms (general services, support of agrarian adjustment investment, payments related to environmental programmes) was estimated at an average annual amount of US\$227 million in the period 1990-91.¹⁸⁷ This type of assistance to producers is excluded from reduction commitments under the Uruguay Round Agreements on Agriculture.

169. Prices for electricity, natural gas and fuels monitored by the Government's National Energy Commission, have been set at lower than world market level (although not below cost). The Government's intention is to raise prices to opportunity costs or international levels, and this has already happened for fuel oil and propane gas (Chapter V). Pre-tax wholesale prices of petrol and diesel for the domestic market are set at about 60 to 70 per cent of world prices by the State-owned company ECOPETROL.

(iv) Pricing and marketing arrangements

170. Since December 1991, minimum guaranteed prices (*Precios Mínimos de Garantía*) have applied to agricultural products; they constitute the minimum prices for selling crops in the domestic market (Chapter V). They currently apply to white and yellow maize, rice, beans, sesame and soybeans.¹⁸⁸

¹⁸⁵*El Tiempo*, 1 February 1996.

¹⁸⁶Articles 14 and 276 of Law 223 of 1995.

¹⁸⁷Annex Table 4 contained in WTO document G/AG/AGST/COL.

¹⁸⁸Ministry of Agriculture Resolution No. 015 of 31 January 1996. This is applied under Article 50 of Law No. 101 c/1993.

The mechanism is reportedly intended to ease investment decisions of the national producers. To reflect international trends, prices are determined on the basis of the floor price in the Andean Price Band (section (2)(ix)(a)) plus import costs (e.g., duties, charges) minus drying and warehousing expenses; this deduction keeps minimum guaranteed prices below import costs. Minimum prices are adjusted every six months by the Ministry of Agriculture.

171. In agriculture, intervention prices (*precios de intervención*) are set on an ad hoc, temporary basis for regional assistance purposes (section (v) and Chapter V) as well as to compensate for market imperfections. These differ according to the region. Since 1995 the objective has been to guarantee the income-yielding capacity of agricultural production in zones covered by the National Plan for Alternative Development (*Plan Nacional de Desarrollo Alternativo*, PNDA).¹⁸⁹

172. IDEMA and other State-owned companies (section (2)(xiii) and Chapter V) are, inter alia, responsible for ensuring adequate marketing channels (including retail trade in rural areas and urban areas where basic needs are not satisfied) for agricultural and fisheries products. For this purpose, it may, but does not currently, grant credit to community organizations.

173. The price, paid by the National Coffee Fund (FNC), ranges between 30 and 85 per cent of the coffee export price, depending on the Fund's financial situation. The difference between the producer and export price reflects transport, marketing, regional programmes, stock accumulation and other costs.

174. Since the end of 1991, consumer price controls have been eliminated, except those affecting essential medicines, public household services (*servicios públicos domiciliarios*)¹⁹⁰ and public transport in urban areas.¹⁹¹ Increases in retail prices of the medicines in question, domestic and foreign, are monitored by the Ministry of Economic Development, while a National Committee on Prices of Medicines (*Comisión Nacional de Precios de Medicamentos*) formulates policy.¹⁹² Upon consultation with manufacturers, maximum prices can be revised on the basis of changes in the prices of raw materials or inputs affecting production costs.¹⁹³

175. As part of its Uruguay Round commitments, Colombia is committed to cutting financial support to agricultural producers by 13.3 per cent or to US\$345 million between 1995 and 2004.¹⁹⁴ In calculating the initial amount of the Aggregate Measurement of Support (AMS), average expenditure for the base

¹⁸⁹The PNDA, a programme exclusively destined to small-size producers, is aimed at providing sustainable legal production alternatives to illicit drug producers. For the period 1995-98, the PNDA expenditure is estimated at US\$300 million.

¹⁹⁰I.e: water supply, sewage, electricity supply, gas distribution, telecommunications in rural areas.

¹⁹¹Between 1991 and 1992 more than 16 items, including certain beverages (e.g., soft drinks, beers), nylon fibres, grey cement, matches, wheels, tyres, motor vehicles, ammonia, soaps and detergents, were freed from price controls.

¹⁹²Article 245 of Law 100 of 1993. The Commission consists of the Ministers of Economic Development and Health and a representative from the Presidency of the Republic.

¹⁹³Resolutions 044 of 1992 and 1746 of 1993.

¹⁹⁴Article 3 of the Agreement on Agriculture; Part IV Section I, Schedule LXXVI, 15 April 1994.

period, 1986-88, includes budgetary outlays for specific products and subsidized preferential loans as well as the cost of the producer price support mechanism (about 71 per cent of the total AMS), discussed earlier.¹⁹⁵ In the base period, average producer (administered) prices for rice, maize, sorghum, wheat, soybeans, dried beans, barley, and sesame seeds (*ajonjolí*) ranged from 19 to 176 per cent above international prices.

(v) Regional assistance

176. In agriculture, intervention prices (*precios de intervención*) are, inter alia, utilized to reactivate the economy of regions which depend on a single crop.

177. The main incentives provided for the manufacturing and services sectors are found in the free-zones and special customs régimes (section (3)(xiv)). The Institute of Industrial Development (*Instituto de Fomento Industrial*, IFI) has encouraged industries to move to border and coastal areas by granting loans on concessional terms. Since 1985, investment in firms established in areas affected by the volcano *Nevado del Ruiz*, have been exempt from the revenue tax (*impuesto a la renta*).

(vi) Competition policy

178. Both Andean Group and national legislation apply in competition policy matters. Recent Andean Group provisions aim to prevent or correct distortions caused by restrictive business practices, agreements, parallel action, joint operations or abuse of dominant position, which could restrict, impede or weaken competition within the sub-region.¹⁹⁶

179. In the past, national competition legislation has often been used to provide a legal basis for the operation of price controls rather than the promotion of unrestricted competition, as stipulated in the legislation.¹⁹⁷ However, in an effort to strengthen the pro-competitive aspects of the law, in 1992, specific anti-competitive practices were defined in Decree 2153 and actions to be taken against such practices were spelled out.¹⁹⁸

180. The Superintendency of Industry and Commerce (*Superintendencia de Industria y Comercio*, SUPERINDUSTRIA) of the Ministry of Economic Development, restructured in 1992 (sections (2)(xv) and (4)(vii)), inter alia, oversees the implementation of competition rules and defends consumers against abuses despite the absence of explicit consumer protection legislation. Its investigations on specific business practices, undertaken on its own accord or when a complaint is filed, may lead to suspension or modification of the anti-competitive practice in question. Fines of up to 300 minimum monthly wages can be imposed on managers or legal representatives; for firms, these can attain 2,000 such wages. Between September 1993 and 11 March 1996, 149 cases of mergers (*concentraciones jurídicas-económicas*) investigated by SUPERINDUSTRIA. Amendments are to be introduced to the legislation so that SUPERINDUSTRIA can publicly disclose information relating to its investigations on mergers.

¹⁹⁵Tables 6 and 8, WTO document G/AG/AGST/COL.

¹⁹⁶Andean Group Decision 285, 21 March 1991.

¹⁹⁷Law 155, 24 December 1959.

¹⁹⁸Articles 44 to 52 of Decree 2153, 30 December 1992, define concepts (illegal agreements and action, abuse of dominant position, mergers) and actions to be taken in their respect.

181. There appears to be a concentration of ownership in a number of sectors.¹⁹⁹ For example, one business group controls a number of banks and has extensive interests in the communications media, in addition to productive and commercial activities. It seems that in practice SUPERINDUSTRIA's scope of action has been limited by legal and constitutional authorizations. It cannot intervene in the media and communications sector on its own accord; despite its awareness of violations to existing competition provisions it cannot act unless an independent complaint is brought.

(vii) Enforcement of intellectual property rights

182. Since 1975, Colombia has become a signatory to major international conventions on intellectual property, trademarks, copyrights and patent protection, and is a member of the World Intellectual Property Organization (WIPO).²⁰⁰

183. Apart from the ratification of the Uruguay Round Agreements (Chapter II), no legislation has yet been introduced to bring domestic legislation into conformity with the provisions of the Agreement on TRIPS as Colombia intends to avail itself of the five-year transition period available for developing countries. At this stage, no indication can be given on the areas where changes may be required.²⁰¹ Colombia grants m.f.n. and national treatment in this area.

(a) Industrial property

184. Industrial property protection is based on recent Andean Group provisions, effective since 1 January 1994.²⁰² Wide-ranging Andean Group provisions cover patents, industrial designs, utility models, industrial secrets (undisclosed information), trademarks (including exclusive rights), trade names and geographical indications.

185. Until 1992, all licensing agreements for the use of a foreign patent, trademark or technology had to be approved by the National Royalties Committee (*Comité Nacional de Regalías*) of the Ministry of Economic Development and registered by the Exchange Office of the Central Bank.²⁰³ The approval criteria included several considerations relating to social and economic development, the effects on the balance-of-payments and Colombia's international commitments.

¹⁹⁹IDB (1996), pp. 47, 53 and 54.

²⁰⁰Between 1975 and 1994 the following conventions were signed and implemented by law in Colombia: (i) Law 48 of 1975 covering the Universal Copyright Convention and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; (ii) Law 33 of 1987 covering the Berne Convention for the Protection of Literary and Artistic Works; (iii) Law 23 of 1992, covering the Geneva Phonograms Convention; (iv) Law 26 of 1992 covering the Geneva Treaty on the International Registration of Audiovisual Works; (v) Law 178 of 1994, Paris Convention for the Protection of Industrial Property; (vi) Law 243 of 1995 covering the Union for the Protection of New Varieties of Plants (UPOV) Convention.

²⁰¹The Customs Service has no instructions for dealing with falsified/counterfeit goods. Since 1991, Colombia has been on the "watch list" under the "Special 301" provision of the 1988 Trade Act of the United States.

²⁰²Andean Group Decision 344, entitled Common Régime on Industrial Property (*Régimen Común sobre Propiedad Industrial*), 21 October 1993, and regulated by Decree 117, 14 January 1994.

²⁰³This requirement was repealed by Andean Group Decision 291, 29 March 1991, (Chapter III) and Decree 259 of 1992.

186. At present agreements involving the importation of technology, technical services, basic engineering, trademarks, patents and other technology-related contracts must be registered with INCOMEX. Registration can be refused when the agreement contains provisions restricting competition, as defined in Andean Group Decision 291 (Chapter III).

187. Regarding enforcement procedures in respect of the provisions of Andean Group Decision 344, Articles 534 to 618 of the Code of Commerce (*Código de Comercio*) contain sanctions against infringement of intellectual property rights.

188. Patents and trademarks are regulated by SUPERINDUSTRIA which, as discussed earlier, also has responsibilities in the areas of standards and competition policy matters (sections (2)(xv) and (4)(vi)). Registration is entrusted to SUPERINDUSTRIA'S Division of Distinctive Signs (*División de Signos Distintivos*). All regulations relating to industrial property matters are published in the relevant gazette (*Gaceta de la Propiedad Industrial*).

189. Between 1992 and 1993 SUPERINDUSTRIA underwent major modernization in the area of patents and trademarks which resulted in more effective management of the application process. By the end of 1994 it had cleared up the backlog of applications from previous years.

Patents

190. Recent Andean Group provisions have extended the length of patents to 20 years, including in the area of pharmaceuticals where the prior ten-year restriction has been lifted.²⁰⁴ Compulsory licences (*licencia obligatoria*) can be awarded three years after grant or four years after application of the patent, if an interested party has not been able to obtain a contractual licence (*licencia contractual*) on reasonable terms or on the grounds of legitimate public interest.²⁰⁵ The burden of proof in an infringement case is on the defendant. A compulsory licence can be granted when a patent is not considered as being adequately worked; working requirements are to be eliminated upon full implementation of TRIPS Agreement.

191. No transitional ("pipeline") protection is provided for pharmaceuticals. This absence of transitional protection is covered by the relevant provision of the Andean Group Decision.²⁰⁶ An exception to this provision is feasible only with prior agreement among Andean Group countries.

192. Law 100, 23 December 1993, establishes a régime providing only generic pharmaceutical products to the population under Social Security or Health Promoting Entities. Reportedly, if enforced, this law would lead to the disappearance of brand-name pharmaceuticals in the Colombian market.

193. Parallel imports are allowed from countries where a product is legally marketed.²⁰⁷

²⁰⁴Article 30 of Andean Group Decision 344, 21 October 1993.

²⁰⁵Article 42 of Andean Group Decision 344, 21 October 1993.

²⁰⁶Article 2 of Andean Group Decision 344 (*novedad mundial*).

²⁰⁷Article 35 and 106 of Andean Group Decision 344, 21 October 1993.

194. Following the introduction of Andean Group Decision 344 in 1993, since July 1994, 490 applications for patents for pharmaceutical products and processes have been filed before SUPERINDUSTRIA; more than two thirds have been of U.S. origin.

195. Andean Group provisions for the protection of the rights of producers of plant varieties have been adopted by Colombia.²⁰⁸ Producer certificates (*certificados de obtentor*) may be granted to producers of new varieties after being entered in the national register of protected varieties (*registro nacional de variedades vegetales protegidas*). The duration of the certificates ranges between 15 and 25 years, depending on the type of plant. A Sub-regional Committee for the Protection of Vegetable Varieties (*Comité Subregional para la Protección de las Variedades Vegetales*) is to prepare an inventory on existing biodiversity in the sub-region; it is also to harmonize procedures, elaborate technical details and propose common standards in this area.

Trademarks

196. Andean Group Decision 344 defines well-known trademarks. Opposition to trademark registration can be made by any person in any Andean Group country within a period of 30 working days from the date of publication of the application for registration. If similar marks are owned by different individuals in different countries, they may only market the products covered by the trademarks in their country of origin unless they have a registered agreement with the local owner. Under the Decision, the cancellation period for non-use has been reduced from five to three years. Trademark registration is valid for ten years and can be extended for periods of similar duration. Industrial designs are registered for an eight-year period.

197. A trademark may be licensed or assigned. Domestic legislation requires registration and use of the trademark in Colombia.

(b) Other Intellectual property

198. Protection of intellectual property rights (national and foreign) is currently based on domestic laws and Andean Group Decision 351, which has been in effect since 1 January 1994, as well as international conventions cited earlier (section (vii)).²⁰⁹ The new legislation covers a broad range of works, including computer software programmes and databases, videos and sound recordings.²¹⁰ It includes ancillary rights which, in addition to protection for the author or creator of a copyrighted work, also cover the rights pertaining to the interpreter or translator of a copyrighted work. Authors

²⁰⁸Andean Group Decision 345, entitled Common Régime for the Protection of Producers of Vegetable Varieties (*Régimen Común de Protección a los derechos de los Obtentores de Variedades Vegetales*), regulated by Decree 533, 8 March 1994; Decree 2468, 4 November 1994; and ICA Regulations 1893 and 3123 of 1995.

²⁰⁹Law 44, 5 February 1993, which modified and complemented Law 23 of 1982; Andean Group Decision 351, entitled Common Régime on Author's Rights and Related Rights (*Régimen Común sobre Derecho de Autor y Derechos Conexos*) (17 December 1993) regulated by Decrees 460 (16 March 1995) and 162 (22 January 1996).

²¹⁰Chapter VIII of Andean Group Decision 351 is devoted to the protection of software and databases. Although software protection is similar to that of literary works, its provisions stipulate in detail how such a programme can be used. Databases are protected to the extent that the selection and grouping of information constitute genuine work.

rights are protected for the author's lifetime plus 50 years (Andean Group Decision) or 80 years (national law), except for sound recordings and copyright works of juridical persons which benefited from 30 years protection, until an increase to 50 years was enacted in 1993 (Law 44).

199. No protection is available for semiconductor mask work layout designs.

200. Copyrights are regulated by the Copyrights unit of the Ministry of Interior. Registration procedures for works and products are been carried out by the National Registry of Authors' Rights (*Registro Nacional del Derecho de Autor*).²¹¹

201. Colombia applies an income withholding tax of 24 per cent on computer software which, when combined with a remittance tax of nearly 10 per cent on royalties, yields an aggregate withholding tax greater than 30 per cent on royalty remittances to foreign licensors.

202. The 1993 legislation significantly increased penalties for copyright infringement. The authorities are now empowered to destroy pirated material and to close and cancel the operating licence of any establishment where copyright infringement has occurred. They have increased efforts to reduce video and audio piracy; record-level seizures took place in 1994; between July 1995 and June 1996, 10,280 pirated videos were confiscated. Regarding software piracy, in March 1996, 1,500 compact discs (each containing 75 programmes) and 5,000 laser discs as well as the machinery used for their production were seized. Concerning literary works, 453 boxes containing books and 7,000 copies of work of national authors were confiscated between April and May 1996.

(viii) Other measures

203. The Constitution provides for environmentally sustainable economic development and clarifies the rôle of the State in ensuring reasonable utilization of natural resources as well as protecting the environment.²¹² Environmental legislation is in force with respect to pollution (air, water, noise), forest management, production, distribution and use of chemicals (e.g., for water treatment, pesticides, etc.) imports of dangerous waste, and protection of the ozone layer. Reportedly, the new legislation is based on stringent foreign standards which are difficult to enforce as they do not take into account Colombia's environmental, social and economic conditions. To cope with this problem, new environmental standards are being developed with specific control systems corresponding to national conditions and priorities.²¹³ Bans on the capture, exploitation, processing and marketing of white shrimp and other species have been introduced. In manufacturing, where the six biggest industrial centres generate 80 per cent of air pollution in the country, 25 main industry associations have signed a cleaner-production agreement to control toxic emissions as well as to analyse their volume and composition by the end of 1995; other undertakings include efforts to mitigate social and environmental risks and to guarantee better use of natural resources.²¹⁴

²¹¹Decree 460, 16 March 1995.

²¹²Articles 79 and 80.

²¹³UNCTAD document TD/B/WG.6/Misc.6, p.5.

²¹⁴Latin American Economy & Business, August 1995.

204. Institutional aspects were reinforced in 1993 with the establishment of the Ministry of Environment (*Ministerio de Medio Ambiente*) and the re-structuring of regional autonomous corporations (*Corporaciones Autónomas Regionales*).²¹⁵

205. In recent years Colombia has subscribed to all major environment-related international agreements²¹⁶, and participated in negotiations on the restructuring of the Global Environment Facility (GEF).²¹⁷ The national development plan for the period 1994-98, *El Salto Social* (discussed in Chapter I), which refers, *inter alia*, to action leading towards cleaner production, plans to channel about US\$1.6 billion to environmental projects. For 1996, US\$200 million are available from Institute of Industrial Development (*Instituto de Fomento Industrial*, IFI) for the financing of manufacturing projects intended to reduce environmental effects.

206. Colombian producers and exporters are concerned about cost-raising and questionable environmental measures in force or to be adopted in certain foreign markets. These include unilateral trade restrictions which affect tuna (section (3)(iv) on export prohibitions, Chapter II) and exports of shrimp to the United States; emerging (easily recyclable) packaging standards for coffee and fruit, and production conditions for flowers (e.g., in Germany); and the possible introduction of eco-labelling requirements for certain textile items (e.g., t-shirts and bed-linen in the EU).

²¹⁵Law 99 of 1993.

²¹⁶Colombia is a signatory to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (to be ratified in 1996), the Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol on Ozone-depleting Substances and the International Tropical Timber Agreement.

²¹⁷GEF is funding, on concessional terms, projects and programmes in developing countries. Its programmes are jointly managed by the UNDP, the UNEP and the World Bank.