

ANNEX A

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ANSWERS OF MEXICO TO QUESTIONS FROM THE PANEL

1. It seems that there are two questions to be answered with respect to the possible changeover from use of sugar to use of HFCS by a particular consuming industry and a particular consuming company. First, whether such a switch is technically possible in the light of the product in question and the manufacturing process, and second, the incentive to do so in the short term and long term. What evidence supports the conclusion that the predicted increase in HFCS use by industries other than soft drink bottlers, over 400 per cent in 1997 over their actual use in 1996, is likely? Is there any information on the rate of increase of HFCS use by these industries during the period of investigation?

The basis of Mexico's determination of the likelihood of increased imports included a prospective analysis backed by the pattern observed in the period under investigation. In addition, this examination included estimates of the potential consumption of sugar likely to be switched as a result of competition from dumped HFCS imports, so as to demonstrate that, even on the assumption that there was indeed an alleged restraint agreement between soft drink bottlers and the sugar industry, the potential demand from other consuming industries pointed to the existence of a likely increase in dumped imports.

As part of its determination and in the context of the analysis of the threat of injury factors listed in Article 3.7 of the WTO Anti-Dumping Agreement, Mexico quantified the probable volume of potential demand for HFCS that industries other than soft drink bottlers might generate, so as to illustrate the convincing reasons for believing that in the immediate future there would be a substantial increase in dumped imports. Nevertheless, the United States of America (USA) boiled down Mexico's entire determination to specifying the figures which, in its opinion, ought to be included in the analysis. In particular, the crucial problem the USA identified in Mexico's determination was the size of the rate of increase, which, according to its own calculations, would be obtained from the estimate.

In its second written submission, Mexico rejected the USA's emphasis in demonstrating that the calculations were incorrect and asserting, from its own interpretation of the SECOFI determination, that the determination was inconsistent with the terms of the Anti-Dumping Agreement. In this regard, Mexico reiterates that the determination of the likelihood of increased dumped imports should not be reduced to the results of a mathematical calculation and above all when the calculation includes an estimate of future events. Since the Anti-Dumping Agreement does not establish quantitative parameters for compliance with the Agreement's provisions regarding a substantial increase in imports or the assumed magnitude of the likelihood of the occurrence of a future event, objecting to an investigating authority's determination on the basis of the validity of one figure goes beyond the provisions of the Agreement itself, and in no sense can obligations that do not stem from the Anti-Dumping Agreement be imposed on Mexico.

Again, as part of the reply, Mexico would point out that the commercial interchangeability and substitution of HFCS and sugar was amply analysed by SECOFI in the course of the anti-dumping investigation. The investigating authority's conclusions and findings, as well as the basis for arriving at the determination, were sufficiently documented in the record and established in the original preliminary and final resolutions.

In particular, the evidence on the functions and applications of HFCS and sugar were analysed in paragraphs 187 to 206 of the preliminary resolution¹ and 400 to 422 of the original final

¹ "Preliminary resolution of the anti-dumping investigation into imports of high fructose corn syrup, merchandise classified in tariff headings 1702.40.01, 1702.40.99, 1702.60.01 and 1702.90.99 of the General

resolution. The evidence analysed by the investigating authority included more particularly: specialized literature on sweeteners, opinions of technical and industrial experts, promotional catalogues of HFCS producers and information obtained from industrial users in different production sectors.

Similarly, from an analysis of the information provided by importers of HFCS originating in the US on their sales lists, as well as information from industrial users of HFCS and sugar, the investigating authority concluded that the imports under investigation were competing on the Mexican market for the same consumers as those of domestic sugar producers.

Specifically, on the basis of sales of imported HFCS by the three main importing firms, the investigating authority found that they went to the following consumer sectors different from soft drink bottlers: food, juices and concentrates, non-carbonated beverages, wines and spirits, bread-making, biscuits, sweets and pastry, pharmaceuticals and dairy products.

From the analysis of all the information described, the investigating authority determined the commercial interchangeability and substitution of HFCS for sugar in various industrial applications. Such substitution, which obviously varies depending on the product and production process, began when HFCS started to be imported from the USA.

Again, the economic context predicted for 1997 was broadly in favour of increased use of HFCS over both the long and the short term. In the three years from 1994 to 1996, the position of HFCS import prices relative to domestic sugar prices was marked by more and more undercutting. Similarly, the tariff reductions on HFCS imports from the USA as a result of the North American Free Trade Agreement, the absence of non-tariff barriers and the excess production capacity of the industry in the USA made for greater incentives to use an abundant low cost substitute. Obviously, for a producer of goods using nutritional sweeteners, the lower production cost using HFCS compared to sugar was a crucial element in deciding which sweetener to use, since both products were commercially interchangeable in the production process.

The likelihood of increased use of HFCS by industries other than soft drink bottlers is also based on the sales performance of those industries observed in 1996, as can be seen from the information supplied in exhibit MEXICO-39² - summarized in the following table - pertaining to the analysis of sales of HFCS imports on the Mexican market by two of the main importers, Almidones Mexicanos, S.A. de C.V. and Arancia, C.P.C., S.A. de C.V., which together account for 81 per cent of the imports investigated.³

Import Tariff, originating in the United States of America, irrespective of the country of provenance", published in the Official Journal of the Federation, 25 June 1997.

² It should be noted that MEXICO-39 was supplied as an annex in the dispute settlement procedure brought before the previous Panel, and hence the WTO Secretariat has that annex.

³ See paragraph 42 of the revised final resolution.

**High Fructose Corn Syrup (HFCS-42 and HFCS-55)/Wet Base
Import Sales
Market Segment/1996**

Industry	Tons		
	Almex	Arancia, CPC.	Total
Soft drinks	96,093,060	17,173,661	113,266,721
Other industries	18,711,717	37,984,593	56,696,310
Total	114,804,777	55,158,254	169,963,031

Source: Sales by importing firms: written statement by Almidones Mexicanos, S.A. de C.V., sheet 1654 of 28 May 1997 and reply by Arancia CPC, S.A. de C.V., by sheet 2627 of 5 August 1997 to investigating authority request UPCI.310.97.114 of 16 July 1997.

In addition, from information on sales of imported HFCS for 1994 supplied by Arancia Corn Products, S.A. de C.V. (previously Arancia CPC, S.A. de C.V.) and information given in the previous paragraph, it was found that from 1994 to 1996 HFCS sales to industries other than soft drink bottlers showed a significant increase. Also, from January to December 1996, monthly sales of imported HFCS by that enterprise to industries other than soft drink bottlers revealed a rise, particularly in the second half of the year. The sales pattern in the two periods indicated showed increasingly larger substitution and consumption of HFCS in those industries.

**High Fructose Corn Syrup (HFCS-42 and HFCS-55)/Wet Base
Import Sales by Arancia CPC, S.A. de C.V.**

Industry	1994 (kg.)	1996 (kg.)	1996/1994 (%)
Soft drinks	750,660	17,173,661	2,188
Other industries	17,555,457	37,984,593	116
Food	3,855,744	10,045,261	161
Beverages (not soft drinks)	3,561,994	12,611,743	254
Marketing company	560	2,539	353
Pharmaceuticals	91,404	150,070	64
Milk products	1,151,560	4,296,570	273
Bread-making and biscuits	8,894,195	10,878,410	22
Total	18,306,117	55,158,254	201

Source: Reply by Arancia CPC, S.A. de C.V., in sheet 2803 of 15 August 1997 to investigating authority request UPCI.310.97.1325 of 28 July 1997 (includes changes as a result of *in situ* verification of information on 23 to 26 September 1997).

The growing HFCS use and consumption in industries other than soft drink bottlers, as well as the existence of consumption of sugar that could be replaced, revealed that, if the conditions under which HFCS had been imported from 1994 to 1996 continued, an increased displacement of sugar in those industries was imminent. While the pace of such a substitution differed among industrial users, from the outlook at the time of the investigation period there was no obstacle to prevent the situation moving faster in the immediate future.

**High Fructose Corn Syrup (HFCS-42 + HFCS-55)/Wet Base
Import Sales by Type of Activity by Arancia CPC, S.A. de C.V.
First Half of 1996**

Industry	Jan	Feb	Mar	Apr	May	Jun	Jan-Jun
Soft drinks	197,886	253,205	297,640	85,190	189,010	113,045	1,135,976
Other industries	2,084,590	1,667,870	1,574,600	2,398,176	3,786,474	4,091,382	15,603,092
Food	404,140	454,203	576,250	779,099	1,263,684	1,179,876	4,657,252
Beverages (not soft drinks)	862,710	526,347	625,205	702,072	1,022,605	1,571,091	5,310,030
Marketing company	0	0	0	0	0	0	0
Pharmaceuticals	11,075	18,530	13,535	13,705	10,550	4,200	71,595
Milk products	175,735	115,910	25,010	292,165	546,525	470,735	1,626,080
Bread-making and biscuits	630,930	552,880	334,600	611,135	943,110	865,480	3,938,135
Total	2,282,476	1,921,075	1,872,240	2,483,366	3,975,484	4,204,427	16,739,068

Source: Reply by Arancia CPC, S.A. de C.V., in sheet 2803 of 15 August 1997 to investigating authority request UPCI.310.97.1325 of 28 July 1997 (includes changes as a result of *in situ* verification of the information on 23 to 26 September 1997).

**High Fructose Corn Syrup (HFCS-42 + HFCS-55)/Wet Base
Import Sales by Type of Activity by Arancia CPC, S.A. de C.V.
Second Half of 1996**

Industry	Jul	Aug	Sep	Oct	Nov	Dec	Jul-Dec
Soft drinks	836,400	1,490,815	1,993,597	2,512,333	4,461,440	4,743,100	16,037,685
Other industries	3,125,040	2,769,807	3,673,645	4,378,471	4,487,479	3,947,059	22,381,501
Food	1,254,105	728,547	984,840	856,635	834,970	728,912	5,388,009
Beverages (not soft drinks)	1,039,915	1,195,295	965,965	1,460,551	1,739,784	900,203	7,301,713
Marketing company	0	0	0	0	1,120	1,419	2,539
Pharmaceuticals	1,960	14,365	0	32,460	16,350	13,340	78,475
Milk products	398,160	383,500	349,350	441,770	559,805	537,905	2,670,490
Bread-making and biscuits	430,900	448,100	1,373,490	1,587,055	1,335,450	1,765,280	6,940,275
Total	3,961,440	4,260,622	5,667,242	6,890,804	8,948,919	8,690,159	38,419,186

Source: Reply by Arancia CPC, S.A. de C.V., in sheet 2803 of 15 August 1997 to investigating authority request UPCI.310.97.1325 of 28 July 1997 (includes changes as a result of *in situ* verification of the information on 23 to 26 September 1997).

**High Fructose Corn Syrup (HFCS-42 + HFCS-55)/Wet Base
Import Sales by Type of Activity by Arancia CPC, S.A. de C.V.
1996**

Industry	Jan-Jun	Jul-Dec	Jan-Jun/Jul-Dec (%)
Soft Drinks	1,1135,976	16,037,685	1,312
Other Industries	15,603,092	22,381,501	43
Food	4,657,252	5,388,009	16
Beverages (not soft drinks)	5,310,030	7,301,713	38
Marketing company	0	2,539	n/a
Pharmaceuticals	71,595	78,475	10
Milk products	1,626,080	2,670,490	64
Bread-making and biscuits	3,938,135	6,940,275	76
Total	16,739,068	38,419,186	130

Source: Reply by Arancia CPC, S.A. de C.V., in sheet 2803 of 15 August 1997 to investigating authority request UPCI.310.97.1325 of 28 July 1997 (includes changes as a result of *in situ* verification of the information on 23-26 September 1997).

2. There is no reference in paragraph 57 of the redetermination to the degree of technical substitutability of HFCS for sugar in bread-making. Nor is there any information on the proportionate use of HFCS and sugar in bread-making in exhibit MEXICO-20. Bread accounts for 86 per cent of the projected volume of sugar consumption in 1997 that SECOFI concludes could be substituted for by HFCS. Could Mexico point to any evidence in the record on the actual use of HFCS in bread-making in Mexico? Could Mexico indicate specifically where in the redetermination this information, if any, was considered?

First of all it is necessary to point out that exhibit MEXICO-20 does contain information on the use of HFCS and sugar in the bread-making industry. It includes, in particular, the data on the enterprises Marinela de Occidente, S.A. de C.V., Productos Marinela, S.A. de C.V., and Panificación Bimbo, S.A. de C.V. Secondly, as evidence of the actual use of HFCS in the bread-making industry in Mexico, the Panel is referred to the information contained in exhibit MEXICO-39 which shows imported HFCS sales in 1996 by the main importers mentioned in the reply to question 2. The information notes that, in 1996, enterprises in the bread-making industry that consumed HFCS in Mexico were, among others, the following:

**Sales of High Fructose Corn Syrup Originating in
the United States of America
1996**

Name of Client	Sales by Arancia kg.	Sales by Almex kg.
Bimbo de Baja California, S.A. de C.V.	189,420	-
Bimbo de Chihuahua, S.A. de C.V.	47,320	-
Bimbo de Occidente, S.A. de C.V.	78,685	-
Bimbo de Puebla S.A. de C.V.	24,080	-
Bimbo de San Luis Potosi S.A. de C.V.	17,640	-
Bimbo de Yucatan, S.A. de C.V.	92,960	-
Bimbo del Centro S.A. de C.V.	18,200	-
Bimbo del Norte, S.A. de C.V.	98,825	-
Bimbo del Pacifico, S.A. de C.V.	37,520	-
Bimbo del Golfo, S.A. de C.V.	-	41,630
Bimbo del Noroeste, S.A. de C.V.	-	56,500
Continental de Alimentos, S.A.	110,440	-
Complementos Alimenticios, S.A.	-	59,780
Marinela de Baja California S.A. de C.V.	632,320	-
Marinela de Occidente S.A. de C.	663,145	190,120
Marinela del Norte, S.A. de C.V.	409,488	220,545
Marinela del Sureste S.A. de C.V.	140,030	41,930
Panificacion Bimbo, S.A. de C.V.	421,480	-
Panificadora el Panque, S.A. de C.V.	1,680	-
Paniplus S.A. de C.V.	445,920	-
Paniplus de Occidente, S.A. de C.V.	-	28,290
Productos Lamar, S.A. de C.V.	-	71,030
Productos Marinela, S.A. de C.V.	2,124,905	223,906
Suandy Mexico, S.A. de C.V.	91,000	-
Tia Rosa, S.A. de C.V.	506,935	78,140
TOTAL	6,151,993	1,011,871

Source: Exhibit MEXICO-39, reply by Arancia CPC, S.A. de C.V., in sheet 2803 of 15 August 1997 to investigating authority request UPCI.310.97.1325 of 28 July 1997 and reply by Almidones Mexicanos, S.A. de C.V., in sheet 2770 of 13 August 1997 to investigating authority request UPCI.310.97.1193 of 16 July 1997.

Again, in relation to the last part of the question, it should be noted that, although paragraph 57 of the revised final resolution failed to mention the degree of substitution of HFCS for sugar in the bread-making industry, the explicit reference to that information is made in paragraphs 122 and 123 of the revised final resolution. It should also be noted that the information on the use of HFCS in the bread-making industry was considered in the analysis described in paragraph 53 of the resolution.

3. Could Mexico clarify what is meant, in paragraph 144 of the redetermination, by the net financial burden as a percentage of overall cost of financing? Specifically, could Mexico explain what elements make up the numerator, what is netted out of the numerator, and what elements make up the denominator.

Mexico wishes to clarify that in paragraph 144 of the revised final resolution SECOFI did not state that the net financial burden corresponds to a percentage of the overall cost of financing, but that the investigating authority said:

"144 What is more ... the industry's net financial burden viewed as a percentage of the overall cost of financing remained unchanged in 1996 compared to 1995"
(Emphasis added)

In this respect it is important to note that, in keeping with Mexican accountancy rules, the overall cost of financing⁴ is defined as the sum of: (1) the interest on an enterprise's loans; (2) the profit or loss from foreign exchange fluctuations⁵; and (3) the result of the monetary position known as *Repomo*.⁶

Since interest, foreign exchange fluctuations and the monetary position have a direct impact on the amounts paid for debt use, it is necessary to add them in accordance with the following formula

$$cif = i \pm gpc \pm repomo$$

Where **cif** is the overall cost of financing, **i** represents the net interest of the period, **gpc** is equal to the period's foreign exchange profits or losses and **repomo** is the difference between monetary assets and monetary liabilities, as multiplied by the period's rate of inflation⁷; as will be seen, the arithmetical sign \pm means in fact that the variables in the equation are net variables.

As for **i**, it is a net variable because it represents the balance of the financial revenue and expenses account⁸; **gpc** is a net variable because it involves the profits or losses from foreign currency operations and **repomo** represents the net inflationary profits or losses due to maintaining monetary positions of credits with creditors and debts with debtors, in Mexican pesos.

Because of this, SECOFI calculated the industry's net financial burden as the sum of the overall cost of financing of 48 sugar mills⁹ and not as a percentage, as can be seen from the following equation:

⁴ Paragraph 116 of Bulletin B-10 of the Generally Accepted Accountancy Principles (GAAP) MEXICO-22.

⁵ For further details see paragraphs 122 to 139 of GAAP Bulletin B-10. MEXICO-22.

⁶ For further details see paragraphs 140 to 155 of GAAP Bulletin B-10. MEXICO-22.

⁷ Monetary assets means cash, customers, accounts payable, amounts realisable, i.e., liquid assets. Monetary liabilities means suppliers, loans, creditors, the circulating part of long-term liabilities and similar accounts of a circulating nature.

⁸ Point 5.1 of the first updated document in GAAP Bulletin B-10. MEXICO-22.

⁹ See MEXICO-14.

$$cfn_{ind} = S \sum_{n=1} cfn_n$$

Where cfn_{ind} represents the sugar industry's net financial burden, cfn_n is the overall cost of financing each sugar mill_n, which is shown on the corresponding statement of interest, immediately after the operating profit or EBIT. Hence, the net financial burden is not a quotient or a percentage, for which reason there are no numerators or denominators in the calculations of any of the variables in the above equation.

4. It appears from paragraph 17 of Mexico's second submission that SECOFI chose to exclude production for export markets when considering changes in production volumes. The redetermination refers, at paragraph 129, to the fact that the production volume oriented toward the domestic market declined by 2 per cent in 1996 with respect to 1995, but does not refer to the absolute increase in production. Could Mexico explain why? How can consideration only of production oriented to the domestic market be justified in light of the fact that the productivity of the industry included production for both the domestic and export markets?

Mexico wishes to clarify that in paragraph 129 of the revised final resolution, SECOFI analysed the pattern of domestic sugar production oriented towards the domestic market in terms of volume (percentage variation) and in relation to apparent domestic consumption (ADC). In other words, it is the proportion of the domestic market that corresponded to domestic sugar production and not the part intended for the export market.¹⁰

Where:

The percentage share of domestic production oriented to the domestic market in apparent domestic consumption = [((domestic sugar production – sugar exports) / ADP)* 100]

ADP = (domestic sugar production + domestic HFCS production + sugar imports + HFCS imports – sugar exports)

If the share of domestic sugar production intended for the export market had been included, the factors making up apparent domestic consumption would not total 100 per cent, since sugar exports were deducted in calculating domestic consumption of sweeteners. Furthermore, Mexico considers that when a share of domestic production is intended for the export market, the market performance of the domestic industry will be shown by production oriented to the domestic market.

It is important to mention that SECOFI did not fail to evaluate domestic sugar exports, since the Ministry examined it as another of the factors with an impact on the situation of the domestic industry, so that paragraph 130 of the revised final resolution said that, in view of the loss of domestic sales, the industry was obliged to increase its exports of sugar.

Again, it is important to point out that SECOFI did not deny the increase in total domestic sugar production, nor did it deny the increased employment, resulting in increased productivity in the sugar industry.¹¹ However, the increased productivity is explained by the increase in domestic sugar

¹⁰ See paragraph 129 of the revised final resolution "... the share of apparent domestic consumption declined by 4 percentage points with respect to the level in 1995; this loss of market share for the sugar industry was not limited to the period under investigation, since it changed from a share of apparent domestic consumption of 98 per cent in 1994 to 93 per cent in 1996. In absolute terms as well, the production volume oriented to the domestic market declined by 2 per cent in 1996 with respect to 1995".

¹¹ See paragraphs 131 and 135 of the revised final resolution.

production as a result of dynamic exports, which does not detract from the loss of market share for domestic sugar.

5. Mexico's conclusion that the soft drink industry will supply the entirety of HFCS consumption allowed under the restraint agreement, 350,000 tons, from domestic production implies an increase of 128 per cent in HFCS use by soft drink bottlers. What is the evidence to support this projected level of HFCS use? This increase refers to domestically produced HFCS. Does this not suggest that the problem is not HFCS imports, but simply increasing use of HFCS *per se*?

First, it should be noted that the consideration that all of the consumption permitted under the alleged restraint agreement would be supplied by domestic production was not a conclusion reached by Mexico but a working hypothesis. Under this hypothesis, it could be established that, even if the alleged restraint agreement was not strictly complied with and the consumption level to which bottlers were allegedly confined was not supplied by imports (as had traditionally been the case) but by domestic production, an increase in imports would have proved necessary to satisfy the growing demand by industries other than bottlers.

In fact, as Mexico established in its second written submission with regard to the USA's assertions in its first submission, that hypothesis could be discarded. The information that Mexico considered in respect of the alleged agreement and supplied by the parties did not establish the source of supply nor did it indicate a requirement to comply strictly with the level of consumption or penalties in the event of non-compliance. Nevertheless, Mexico considered as a hypothesis, for the purpose of determining the existence of a likelihood of increased imports, that both conditions might exist, so as not to overestimate the demand for further imports.

Indeed, a consumption level limited to 350,000 tons for soft drink bottlers could be supplied by imports, whereas the demand from other industries would have to be met by domestic production. Actually, the decision as to which HFCS is to supply a particular industry or enterprise would depend on the importer-producer in terms of costs, prices and commercial agreements with his customers. The fact is that, regardless of the decision, domestic production, even if it worked at 100 per cent capacity, would not be enough to supply total demand. As an example, it should be noted that, from January to September 1997, imports stood at nearly 260,000 tons wet base, even though the anti-dumping investigation had been initiated in January 1997 and domestic HFCS production was operating to the full.

Again, with the information available to it, Mexico was able to estimate that annual domestic HFCS production for 1997 had not exceeded 250,000 tons, which in terms of the alleged restraint agreement alone left 100,000 tons to be supplied by imports, plus additional demand by industries other than soft drink bottlers. Nevertheless, Mexico made both of these restrictive assumptions so as not to overestimate the likelihood of increased imports, in other words, that the limit on consumption by bottlers would be strictly complied with and that consumption would be supplied by domestic production.

"131. ... the sugar industry's productivity, measured as the ratio of production to the number of workers employed, improved during the period under investigation by 6 percentage points compared to 1995."

"135. It is also significant that the behaviour of wages, inventory and productivity in the sugar industry can be explained by the condition in which the sugar industry was found during the period under investigation, since it needed to improve its production levels in order to meet internal demand, maintain a stock of inventory so as not to generate charges, and be able to export its surplus."

The increased use of HFCS by soft drink bottlers is to be seen in the growing trend in sales to such users during the period of investigation, namely January–December 1996¹², as well as in the information available in the investigation's administrative record on HFCS consumption forecasts for such users that are based on the estimated performance of soft drinks production and, hence, on demand for sweeteners, particularly HFCS. This is supported by two attached studies (MEXICO-23) by recognized specialists in the sweetener industry on the outlook for HFCS demand in Mexico by the soft drinks industry, and they form part of the administrative record of the anti-dumping investigation.

Mexico rejects the scenario estimated for 1997 which suggests that the problem lies in increased use of HFCS *per se* and not in imports. In fact, Mexico considered in its estimate that part of HFCS consumption would be met by domestic production and not only by imports. This does not imply that the increase in imports stemming from greater use can be qualified as negligible or that its adverse effects on the domestic industry can be minimized. It should be emphasized that greater use of HFCS supplied by domestic production, while it would gradually displace the use of the sugar, the effects would differ from those of dumped imports. Furthermore, domestic HFCS production and sugar would compete on a basis that was not distorted by unfair practices and, therefore, at higher prices, whereas the reason for the increase in imports is attractive dumping prices on the Mexican market, which may have the effect of speeding up substitution and increasing demand for further imports. The momentum of the substitution and the price effects of greater HFCS use differ significantly as between domestically produced HFCS and HFCS obtained from dumped imports.

6. In paragraph 162 of the redetermination, Mexico refers to the 4.6 times ratio of total liabilities to book capital as a negative indication of the condition of the industry. Could Mexico explain what the benchmark is against which it is concluded that this particular ratio is high?

In conducting its financial analysis, SECOFI considered that borrowing capacity relates to the additional debts an enterprise may contract without running the risk of failing to pay off a loan, in other words, lenders can recover their loans only when the borrower's repayment capacity is equivalent to or higher than the sum of repayments of principal and payment of interest.

In view of the above, it is important for every enterprise to maintain a suitable balance between debt and capital in order to ensure that the capital or the viability of the organization are not at risk, i.e. enterprises must make sure that they do not borrow beyond their payment capacity.

Broadly speaking, financial leverage ratios measure the protection of creditors against the probable insolvency of a borrowing enterprise, as well as the enterprise's ability to obtain financing for investment. In fact, leverage ratios show what is the enterprise's capital structure, and therefore allow us to understand the link between that capital structure and the operating risk associated with a leveraged enterprise.

If the leverage is significantly high, this means that to continue financing itself at similar levels, economic viability will depend on stable growth in expected income; otherwise, the enterprise is likely to become insolvent in repaying its commitments to creditors or perhaps it may incur net losses.

This reasoning is fully applicable to the ratio of total liabilities to book capital. However, this ratio reveals a further situation: the autonomy of shareholders over their investment depends on the level of borrowing; in other words, as this ratio rises, the shareholders' net investment value falls proportionately, which gradually leads to lost decision-making ability regarding the financing strategy to be followed.¹³

¹² See MEXICO-39.

¹³ This is because creditors will not want the enterprise to borrow more, for they must protect their interests.

In view of these considerations, in paragraph 162 of its revised final resolution, SECOFI stated that in 1996 the domestic industry showed a ratio of total liabilities to book capital of 4.6 times, in other words, the sugar industry's debt was at least 3.6 times higher than shareholders' investment in the industry. This reveals that shareholders technically lost their investments to creditors and lost autonomous decision-making powers.

In short, Mexico is of the view that the very significance of the leverage ratios obtained gives enough of an idea to appreciate when a debt level is unmistakably high. Mexico recognises that SECOFI did not compare the resulting debt to book capital ratio with the average in other industries. However, a ratio of 4.6 times (460 per cent) for the industry in 1996 showed a debt level that is excessive.

Further considerations

Mexico considers it of the utmost importance to expatiate on the significance, in terms of the present procedure, of the concepts of overall cost of financing and financial leverage, since they involve, on the one hand, net payments by the sugar industry for the use of debts in its operations, and on the other, the industry's capital structure and the risk it runs.

In this respect, it should be borne in mind that the debt level has a direct impact on the amount of the financial burden, for which reason, as already pointed out, the industry must in future be able to generate stable income and operating profits at least for an amount identical to its financing cost, so as not to incur losses. What is more, it must generate profits that can guarantee its economic viability.

In this connection, Mexico recognizes that an enterprise with low debt levels should increase the debt in order to back investment for higher profits. However, this means that it has to cope with greater payments for interest, foreign exchange fluctuations and a better monetary situation, which will increase its overall cost of financing. It can be deduced from this that the outstanding issues for deciding to increase borrowings and the overall cost of financing are: how risky is it to borrow more and how far can it be done?, and how is the risk of insolvency viewed in the light of the decision to change the existing capital structure for one that is more leveraged?¹⁴ From this it can be inferred that the decision to increase the debt is not a straight forward decision and involves a thorough-going analysis to define an enterprise's financial strategy.

7. Can Mexico reconcile the substitution rates provided in the Almex market survey and by the consultants GEA that are set out in exhibit MEXICO-20 with the substitution rates relied on by SECOFI in exhibit MEXICO-21? What is the evidence for the conclusion that manufacturers of products other than soft drinks who had not in the past used HFCS would do so in 1997 in the amounts implied by the figures in exhibit MEXICO-21, i.e., in the case of marmalade, 35 per cent of total predicted 1997 sugar consumption, or 6,900 tons. In particular, why would this occur when the price differential between sugar and HFCS was projected to lessen, slightly, as compared to 1996, a year in which such volumes of HFCS were not consumed by industries other than soft drink bottlers?

The substitution rates set out in exhibit MEXICO-21 derive in part from the substitution rates established in the Almex market survey and in part from the evidence available on the use of HFCS in products included in the sugar consuming sectors, as explained in the following table:

¹⁴ It should be borne in mind that capital structure is defined as a percentage mixture of own capital and total liabilities, because 100 per cent of the investment is accounted for by total assets.

Industry	Degree of substitution mentioned in exhibit MEXICO-21	Degree of substitution mentioned in the Almex survey	Comments
Bread	100%	100%	Nominally, it was decided to use the same percentage substitution for bread-making as indicated by Almex, although effectively a degree of substitution of 50% was relied upon.
Juices and concentrates	100%	100%	The Almex survey concerns non-carbonated beverages – i.e. beverage industries other than the soft drink bottlers.
Marmalades	70%	33%	In this case, the degree of substitution relied upon was the degree to which HFCS had already been used instead of sugar in accordance with the information supplied by the company Mermeladas Mago, S.A. de C.V. Reducing the 70% by half, a degree of substitution of 35% was in fact used, which is lower than the average degree of substitution of other producers of marmalades such as Frexport, S.A. de C.V.
Canned fruit	52%	3%	In this case, the degree of substitution relied upon was the degree to which HFCS had already been used instead of sugar in accordance with the information supplied by the company Confituras La Florida, S.A. de C.V. Reducing the 52% by half, the degree of substitution used in reality was 26%. It should be pointed out that in the case of Almex, it concerns the heading "Canned fruit". The reference in exhibit MEXICO-21, is to "fruit in syrup" from the food segment. This segment also contains products such as orange segments, grapefruit segments, pineapple cubes, papaya cubes, melon cubes and mango slices, which correspond generically to canned fruit, and already showed a rate of substitution of 100% according to the information supplied by the company Industrias Citrícolas de Montemorelos, S.A. de C.V.
Milk products	50%	0-50%	In the case of Almex, the milk products heading corresponds to yoghurt. In this case, the degree to which HFCS had already been substituted for sugar in accordance with the information supplied by the companies Chantilly, S.A. de C.V., Helados Bing, S.A. de C.V. and Helados Holanda, S.A. de C.V. was considered to provide evidence to suggest that the rate could average about 25%.

Industry	Degree of substitution mentioned in exhibit MEXICO-21	Degree of substitution mentioned in the Almex survey	Comments
Biscuits	10%	0-10%	The degree of substitution relied upon was the maximum that could be reached according to the Almex survey, since the information supplied by the companies Fabrica de Galletas La Moderna, S.A. de C.V. and Gamesa, S.A. de C.V. confirmed that that degree had already been attained.
Sweets	50%	0-5%	36. With respect to sweets, the information relied upon was that supplied by the company Anderson Clayton & Co., S.A. de C.V., which showed a degree of substitution of 100% for liquid caramel. However, in view of the wide range of products that could be considered in this industry, it was in fact decided to use a degree of substitution of 25%.

The elements supporting Mexico's conclusion that industries other than soft drink bottlers that had not used HFCS would do so in 1997 are as follows:

Imports of HFCS from the United States increased significantly during the second half of 1996 as compared to the first half of the year, spurred on by the growing margin of price undercutting by competitors on the Mexican market with respect to domestically produced sugar.

This increase in sales of imported HFCS took place in an economic context marked by the recovery of domestic demand. In other words, industrial users already using HFCS were taking advantage of the increase in demand by using a substitute supplied at a price significantly lower than that of sugar used by their competitors.

This meant that those already using HFCS benefited from a reduction in the cost of sweetener inputs, ranging from 43 to 56 per cent, on average, with respect to the sugar consumed by the other producers. This cost advantage inevitably meant that they were more competitive with their goods on the market than those that did not use HFCS or, alternatively, that they could increase their profits, or both.

Persistence of these conditions would clearly mean that eventually, the industrial producers that did not consume HFCS would lose their market share, or else suffer a loss of profitability. If dumped HFCS imports were to continue competing on the market, undercutting sugar prices, the expansion of the customer base resulting from the demonstration effect of users already utilizing HFCS would accelerate substitution of HFCS for sugar in production operations, even assuming that the rate of substitution of a given industry constituted a technical limitation.

This is corroborated by the behaviour of industrial users during 1996. Exhibit MEXICO-39 shows that during the second half of 1996, importers considerably expanded their customer base in practically all of the industries other than the soft drink bottling industry.

In other words, many companies which did not consume HFCS during the months from January to June 1996 began to use it in their production operations starting in July of that year. In the specific case of the HFCS import sales of Arancia CPC, S.A. de C.V., the number of industrial users

other than soft drink bottlers that began to use HFCS in the second half of 1996 rose to 48 enterprises. In fact, the increase in imported HFCS sales by that company in the above-mentioned sectors between the first half and the second half of the year was 43 per cent.

These facts, added to what was already said by Mexico in its first and second written submissions concerning the economic context foreseen for 1997, support the determination that the substitution of HFCS for sugar in industries other than the soft drink bottling industry would accelerate if competition from dumped imports continued. The repercussions of this substitution on sugar consumption were assessed by using an estimate, based on an accepted methodology, of what could reasonably be expected in the immediate future if the incentives to use HFCS in the different production operations remained unchanged.

The reason for the conclusion that in 1997 the increase in the use of HFCS would accelerate in this way considering the predicted evolution of prices, in addition to the considerations set forth in the reply to question 1, lies in the fact that for that year the pre-market phase could already be considered to have ended (i.e. a potential demand had already been created and the necessary conditions for market expansion had been met). It should be recalled that an embryonic market had already begun to form before 1994, but the process had been interrupted by the sharp fall in consumption in 1995, and it was only in the second half of 1996 that the market growth recovered its momentum. Thus, by the end of 1996 it was reasonable to expect a significant growth in demand for 1997, especially considering that the economic context was far more favourable for the industry than during the three preceding years.

Thus, in spite of the fact that the price forecasts for HFCS suggested that there would be a slight variation with respect to 1996, the margin of price undercutting by HFCS imports with respect to sugar would continue to be sufficiently high to constitute an economic incentive that would strengthen the increase in consumption by the enterprises using HFCS, and would hence increase the pressure on competitors that continued to consume sugar, obliging them in the short term to adjust to the conditions of competition imposed by their rivals. This in turn, would put pressure on the domestic sugar industry to reduce its prices for those users so as to make them competitive with HFCS prices. However, since the magnitude of the adjustment that would be needed to compete on an equal footing implied a significant decline in sugar prices, the only realistic option would be substitution, and the resulting displacement of sugar from the market.

8. Could Mexico please clarify what is meant by 'grados de sustitución' in the table "Consumo real de azúcar por sector" in exhibit MEXICO-21. Do those figures not indicate the proportions in which the surveyed companies actually used HFCS and sugar in their production operations in 1996? If so, on what basis can it be concluded that other companies both can and will, in 1997, switch from using sugar to using sugar and HFCS in the same proportions in their own production operations. It appears that the survey information in exhibit MEXICO-20 is from companies that already use HFCS in their production operations. How can conclusions about the likely rate of use of HFCS by companies that have not in the past used HFCS be justified on the basis of information provided by companies that already use HFCS.

The degrees of substitution (*grados de sustitución*) mentioned in exhibit MEXICO-21 refer, as explained in the reply to question 7, to the extent to which industrial users could substitute HFCS for sugar in their production operations, calculated on the basis of the percentage of substitution already used in certain sectors and the extent to which it was technically feasible to substitute sugar consumption for a given product or in a given sector.

Thus, we are not speaking of volumes of sugar actually displaced, but of potential sugar consumption likely to be substituted for by dumped imports; otherwise the situation of the domestic sugar industry would have been one of injury rather than threat of injury.

The basis for concluding that companies that had not used the imported product would in fact use it in the immediate future is the unquestionable economic benefit they would derive from using an input that was cheaper because it was imported at dumped prices, given that it had already proven to be commercially interchangeable with sugar.

The issue of whether the use of HFCS by the new companies entering the market would match the rate at which other companies use HFCS basically depends on the specific production operations and products concerned. Conditions can vary substantially from one sector or one product to another within a given industry. However, at the level of each consumer industry there are common conditions of competition which would imply that new HFCS users would try at least to equal the average rate of use prevailing in the market in order to maintain their competitive position.

Obviously, not all of the industrial users would substitute HFCS for sugar at the same time, at the same rate, or to the same extent. That is why Mexico estimated that the potential consumption of sugar under threat would amount to 33 per cent of estimated consumption for industries other than soft drink bottlers in 1997 (i.e. the proportion of potential consumption of other industries liable to substitution was 334.2 thousand tons in the subtotal covering other industries in the real sugar consumption table by sector: 1,015.1 thousand tons. However, according to the information in the investigation's administrative record, in 1996 HFCS consumption by industries other than soft drink bottlers (108,523 tons), including domestic production and imports already stood at 11 per cent of sugar consumption in those sectors in 1996 (974.9 thousand tons), so that the additional increase in the estimated share for Mexico for 1997 was 22 per cent.

9. The information in exhibit MEXICO-19 indicates that HFCS-55 is used predominantly in the soft drink bottling industry, while HFCS-42 is used predominantly in other industries, such as baking, beverages other than soft drinks, processed foods, and milk products. According to the data in paragraphs 39 and 44 of the redetermination, imports of HFCS-55 increased far more rapidly from 1995 to 1996 than did imports of HFCS-42 (increase of 179 per cent as compared with 5 per cent), and imports of HFCS-55 accounted for the vast majority of imports in 1996, 81 per cent. Does Mexico's predicted increase in usage by industries other than soft drink bottlers not imply that these trends and levels in the distribution of imports between HFCS-55 and HFCS-42 will be reversed in 1997? What is the evidence to suggest such a reversal is likely? Mexico's oral response to this question seemed to indicate that those companies that already use HFCS-55 to manufacture products other than soft-drinks would increase their purchases of HFCS-55. However, since these producers are only a subset of all manufacturers of products other than soft drinks, this would imply an even larger rate of increase in their purchases than the over 400 per cent calculated as the increase in HFCS consumption by all producers of products other than soft drinks. Could Mexico clarify? In addition, Mexico referred to the information in exhibit MEXICO-20 to support its statement that manufacturers of products other than soft drinks used HFCS-55 in their products. This seems to conflict with the information in exhibit MEXICO-19. Could Mexico reconcile this apparent conflict in the evidence?

The information contained in exhibit MEXICO-19 indicates that in the United States market, although HFCS-42 is used predominantly in industries other than soft drink bottlers, those industries also consume HFCS-55, although to a lesser degree. Similarly, while soft drink bottlers consume mainly HFCS-55, they also use HFCS-42.

This does not contradict the information contained in exhibit MEXICO-20 referred to in the oral reply, in which it was stated that industrial users other than soft drink bottlers also use HFCS-55. The point of what Mexico said in its oral response with respect to the performance of HFCS-42 imports in 1996 as indicated by the Panel was to stress that the predicted increase in HFCS consumption by industries other than bottlers would not be limited exclusively to HFCS-42, but

would also include HFCS-55. Nor does this mean that all of the increase in imports would be attributable to companies from industries other than the soft drink bottlers already using HFCS-55.

Similarly, the figures available to the investigating authority on HFCS consumption in Mexico for 1996 are consistent with the information contained in exhibit MEXICO-19. That exhibit shows that, of total HFCS consumption by industries other than soft drink bottlers, 61 per cent concerned HFCS-42 and 39 per cent concerned HFCS-55, while in the case of soft drink bottlers, 84 per cent of HFCS consumption concerned HFCS-55 and 16 per cent concerned HFCS-42.

At the same time, the slower growth and smaller share of HFCS-42 imports in the 1996 total was explained by the fact that the product was already manufactured domestically. In that year, sales of HFCS-42 produced domestically amounted to 54,207 tons while sales of locally produced HFCS-55 totalled 4,254 tons. This is because practically the only company to manufacture HFCS in Mexico in 1996 was Almex, which did not have the necessary facilities for producing HFCS-55, but only HFCS-42, while Arancia CPC did not begin its production until December of that year.

Distribution of HFCS Consumption in Mexico by Origin and Grade 1996

Industry	HFCS-42	HFCS-55	Total	42-Total (%)	55-Total (%)
		Domestic			
Soft drinks	12,200	1,002	13,202	92	8
Other industries	42,007	3,252	45,258	93	7
Total	54,207	3,252	45,258	93	7
		Imported			
Soft drinks	12,073	130,621	142,694	8	92
Other industries	23,995	39,269	63,264	38	62
Total	36,068	169,269	205,958	18	82
		Total			
Soft drinks	24,273	131,623	155,896	16	84
Other industries	66,002	42,521	108,522	61	39
Total	90,275	174,143	264,418	34	66

Source: Replies of Arancia CPC, S.A. de C.V., (in sheet 2627 of 5 August 1997 and sheet 2803 of 15 August 1997) to investigating authority requests UPCI.310.97.1194 and UPCI.310.97.1325 of 16 and 28 July 1997 respectively (with changes resulting from the *in situ* verification as from 23-26 September 1997); and letter from Almidones Mexicanos, S.A. de C.V., (in sheet 1654 of 28 May 1997) and reply of 13 August 1997 (folio 2770) to investigating authority request UPCI.310.97.1193 of 16 July 1997.

In fact, it is important to note that HFCS-42 is used as an input in manufacturing HFCS-55 either by using a chromatographic separation tower to enrich the HFCS-42 until the required grade

has been attained, or by physically mixing HFCS-42 with an enriched form of HFCS, generally HFCS-90, to obtain HFCS-55. In any case, the producer must determine which proportion of HFCS-42 production is intended for the market and which proportion to be consumed in the manufacturing of HFCS-55.

During 1996, 97 per cent of Almex's production of HFCS-42 went to domestic market sales, while 3 per cent was used to manufacture HFCS-55, which was produced only in the month of December of that year using the above-mentioned mixing process. Of its sales of domestically produced HFCS-42, 77 per cent went to other industries, while the remaining 23 per cent went to soft drink bottlers.

Bearing this in mind, the predicted increase in the use of HFCS by industries other than the soft drink bottlers would in fact imply an investment in the distribution of imports in 1997 as compared to 1996, assuming that the source of supply for the allegedly restrained consumption by the bottlers was domestic production, since local producers would not have enough HFCS-42 to meet the demands of the market (other industries and soft drink bottlers) and to produce, in addition, HFCS-55.

Thus, if all of the domestic HFCS production were distributed to the bottlers in the same proportions as the bottlers had consumed HFCS during 1996, 85 per cent of the 350,000 tons of the alleged restraint agreement would be HFCS-55 and 15 per cent would be HFCS-42. Likewise, according to this scenario, the potential sugar consumption liable to substitution with HFCS in 1997 corresponding to industries other than the bottling industry, i.e. 334.2 thousand tons according to exhibit MEXICO-21, would have to be supplied by imports and, if distributed in line with HFCS consumption by those industries in 1996, 39 per cent of the imports would be HFCS-55 and 61 per cent would be HFCS-42.

However, as Mexico stated in its reply to question 5, the hypothesis that the consumption limited by the alleged restraint agreement would be supplied through domestic production alone could be dropped in a less stringent scenario, thereby possibly balancing the distribution of imports as between HFCS-42 and HFCS-55.

10. If one adds together the share of the market accounted for by imports of HFCS from the United States and Mexican production of sugar in 1994 and 1996, the total is not 100 per cent. For 1994, it is 99.7 per cent, while for 1996, it is 98 per cent. Could Mexico answer the following:

- (a) **What makes up the remainder of the 100 per cent? Sugar imports? Imports of HFCS from other sources? Domestic production of HFCS? What per cent of the market was accounted for in 1994 and 1996 by each of these elements?**

The market is made up 100 per cent of domestic production for the domestic sugar market, domestic production of HFCS, sugar imports and HFCS imports, based on the calculation of apparent domestic consumption.

$ADC = (\text{domestic sugar production} + \text{domestic HFCS production} + \text{sugar imports} + \text{HFCS imports} - \text{sugar exports})$

The percentages of each one of these elements are set forth in the annexed table entitled "Apparent Domestic Consumption" (MEXICO-24), which shows that the different shares add up to 100 per cent of the market.

- (b) **Does the remainder of the 100 per cent consist of the same elements in 1994 as in 1996?**

Apparent domestic consumption was calculated on the basis of the same factors. However, it should be noted that in 1994-1995, no HFCS was produced in Mexico, which is why it does not form part of domestic consumption for those years.

- (c) **If domestic production of HFCS is included in the total market, could Mexico explain why, given that all Mexican producers of HFCS were excluded from the industry as related parties?**

For the purposes of defining the relevant domestic industry, Mexico excluded Arancia and Almidones Mexicanos, since these companies were the main importers of HFCS from the United States and had benefited directly from the dumped HFCS imports. However, since domestic production of HFCS formed part of the demand, SECOFI included it in its calculation of apparent domestic consumption so as not to overestimate the relative shares of imports and of the domestic production of sugar.

- (d) **Regardless of what makes up the remainder of the market, the share of the market attributable to these other elements increased from 1994 to 1996, from 0.3 per cent to 2 per cent, an increase almost equal to the increase in HFCS imports from the United States. Did Mexico take this into account in its analysis?**

The share of the market attributable to the remaining elements making up apparent domestic consumption other than imports of HFCS from the United States and production for the domestic sugar market grew from 0.74 per cent in 1994 to 2.21 per cent in 1996. However, it should be noted that, although the remaining elements (sugar imports, HFCS imports from countries other than the United States and domestic HFCS production) increased their market shares, the share of dumped HFCS imports in domestic consumption increased to a greater extent, rising from 1.68 per cent in 1994 to 4.44 per cent in 1996.¹⁵

Similarly, while the market share of production for the domestic market fell by 4.22 per cent in 1996 as compared with 1994, the share of HFCS imports from the United States increased by 2.76 per cent and the share of the remaining elements gained 1.47 per cent during the same period.

On the basis of the above, the Panel will be able to confirm that Mexico took account of all the factors making up 100 per cent of the market for sweeteners, and that while the market share of the other elements (sugar imports, HFCS imports from sources other than the United States and domestic HFCS production) increased, the increase in the share of HFCS imports from the United States was greater; in other words, the loss in market share suffered by domestically produced sugar is attributable more to the investigated imports than to the other elements making up consumption.

11. Could Mexico please explain how it derived the 50 per cent figure by which it discounted the projected volume of sugar consumption in 1997 and 1998 that could be substituted for by HFCS? A simple average of the substitution rates set out in exhibit MEXICO-20 yields a result of approximately 30. A simple average of the substitution rates used in exhibit MEXICO-21 yields a result of approximately 62. What is the basis for the 50 per cent discount rate?

In estimating the likelihood of an increase in imports considering the effects of the alleged restraint agreement, Mexico took account of the information available in the administrative record of

¹⁵ See MEXICO-24.

the investigation concerning the use of HFCS in various sectors, supplied by the industrial users, as well as the degrees of substitution provided by the main HFCS importer for the period investigated. However, the information supplied both by the users and the importer was either limited to very specific products or, in some cases, covered very broad sectors, so that it was decided to calculate a simple average of the percentage of utilization of the products contained in each group for which data had been provided by the industrial users, and then to calculate an average of the different groups.

The percentage obtained through this procedure was 52.31 per cent, which it was decided to round off to 50 per cent. It was thought that this 50 per cent discounting of the percentages used in the calculation of potential consumption would reflect the variations within each sector and between sectors.

Rate of Utilization of HFCS by industrial users other than soft drink bottlers in 1996

No.	Product	Segment	HFCS (%)	Average
1	<i>Jumex</i> (can)	Juices	63.00	
2	<i>Jumex</i> (bottle)	Juices	56.00	
3	<i>Jumex</i> (minibrik)	Juices	53.00	
4	<i>Jumex</i> (tetrabrik)	Juices	58.00	
5	<i>Ami</i>	Juices	68.00	
6	<i>Sonrisa</i> juice	Juices	100.00	
7	<i>Confruta</i> juice	Juices	100.00	
8	<i>Nectars</i>	Juices	100.00	
9	Uncarbonated beverages	Juices	100.00	77.56%
10	<i>Caribe Cooler</i> (peach)	Wines	50.00	
11	<i>Caribe Cooler</i> (lemon)	Wines	50.00	
12	<i>Caribe Cooler</i> (mandarin)	Wines	50.00	
13	<i>Caribe Cooler</i> (grapefruit)	Wines	50.00	
14	<i>Caribe Cooler</i> (strawberry)	Wines	50.00	
15	<i>Caribe Cooler</i> (tropical)	Wines	50.00	
16	<i>Presidencola</i>	Wines	50.00	
17	<i>Cubaraima</i>	Wines	50.00	
18	<i>Sidra Valle Redondo</i>	Wines	50.00	
19	<i>Sidra Campanario</i>	Wines	50.00	50.00%
20	Uncarbonated beverages	Other beverages	25.00	
21	Pau-pau	Other beverages	64.00	
22	<i>Chupifruit</i>	Other beverages	68.00	
23	<i>Chocoloco</i>	Other beverages	97.00	
24	Natural syrup	Other beverages	50.00	60.80%
25	Marmalades	Food	41.00	
26	Ketchup	Food	96.00	
27	Liquid caramel	Food	100.00	
28	Marmalades	Food	8.03	
29	Fruit jellies	Food	16.10	
30	Canned fruit	Food	52.00	
31	Topping	Food	100.00	
32	Glazes	Food	100.00	
33	<i>Cajeta DIF c/nut</i>	Food	29.75	
34	<i>Babar</i> pastry cream	Food	27.79	
35	Grape jelly 51	Food	44.69	
36	Raspberry marmalade 340	Food	53.26	
37	Blueberry marmalade 340	Food	51.30	

No.	Product	Segment	HFCS (%)	Average
38	Cherry marmalade 340	Food	40.93	
39	Peach marmalade 340	Food	53.30	
40	Peach marmalade 510 gr.	Food	46.99	
41	Raspberry marmalade 142	Food	36.80	
42	Raspberry marmalade 510 gr.	Food	49.05	
43	Strawberry marmalade 340	Food	38.58	
44	Strawberry marmalade 40 gr.	Food	40.67	
45	Blueberry marmalade	Food	35.48	
46	Apricot marmalade 340	Food	46.70	
47	Apricot marmalade 510 gr.	Food	50.27	
48	Peach marmalade 142 gr.	Food	35.07	
49	Strawberry marmalade 440 gr.	Food	14.90	
50	Orange marmalade 142 gr.	Food	39.28	
51	Pineapple marmalade 340 gr.	Food	48.44	
52	Blackberry marmalade 142 gr.	Food	36.46	
53	Strawberry marmalade 142 gr.	Food	26.73	
54	Strawberry marmalade 510	Food	38.33	
55	Orange marmalade 440	Food	27.94	
56	Orange marmalade 510 gr.	Food	50.65	
57	Pineapple marmalade 142	Food	35.38	
58	Blackberry marmalade 510 gr.	Food	48.75	
59	Strawberry pie filling	Food	20.61	
60	Pineapple pie filling	Food	27.83	
61	Nut pie filling	Food	11.02	
62	<i>Multistrawberry</i> filling	Food	20.61	
63	Tamarind for drinks 52 kg.	Food	21.73	
64	Marmalade	Food	43.70	
65	Orange segments	Food	100.00	
66	Grapefruit segments	Food	100.00	
67	Pineapple cubes	Food	100.00	
68	Papaya cubes	Food	100.00	
69	Melon cubes	Food	100.00	
70	Mango slices	Food	100.00	
71	Salads	Food	100.00	
72	Crystallized fruit	Confectionery	9.32	
73	Marmalades	Food	70.00	
74	Glaze	Food	46.00	
75	Sweet syrup	Food	99.00	51.73%
76	<i>Trompadita</i>	Bakery products	1.75	
77	<i>Trompada (long) Marve</i>	Bakery products	2.63	
78	<i>Huesito (vanilla flavour)</i>	Bakery products	2.63	
79	<i>Huesito (special)</i>	Bakery products	10.13	
80	<i>Base betunada (strawberry)</i>	Bakery products	6.86	
81	<i>Base betunada (lemon)</i>	Bakery products	6.86	
82	<i>Base bombom</i>	Bakery products	5.40	
83	<i>Base betunada (export)</i>	Bakery products	6.86	
84	<i>Base chicolina</i>	Bakery products	5.37	
85	<i>Base (chocolate)</i>	Bakery products	5.49	
86	<i>Base deportigrillo</i>	Bakery products	7.14	
87	<i>Base Garrillas</i>	Bakery products	7.03	

No.	Product	Segment	HFCS (%)	Average
88	<i>Base Glorias</i>	Bakery products	7.88	
89	<i>Base Laura Castellanos</i>	Bakery products	5.38	
90	<i>Base Laura</i> (chocolate)	Bakery products	5.39	
91	<i>Base Marcela</i> (chocolate)	Bakery products	6.86	
92	<i>Base Magdalenas</i>	Bakery products	7.87	
93	<i>Base Malvavisco</i>	Bakery products	5.40	
94	<i>Base Rosalia Dif.</i>	Bakery products	5.27	
95	<i>Base Sandwich</i> (lemon)	Bakery products	7.86	
96	<i>Base</i> (vanilla)	Bakery products	7.63	
97	<i>Base Wond</i> (vanilla)	Bakery products	7.63	
98	<i>Base Wond</i> (export)	Bakery products	7.63	
99	<i>Granel Azucena</i>	Bakery products	8.25	
100	<i>Granel Animalitos</i>	Bakery products	5.51	
101	<i>Granel Alejandrinás</i>	Bakery products	4.67	
102	<i>Granel Azucena Lyconsa</i>	Bakery products	8.38	
103	<i>Granel Animalitos</i>	Bakery products	10.12	
104	<i>Granel Barra de Coco</i>	Bakery products	5.64	
105	<i>Granel Bing</i> (chocolate)	Bakery products	5.56	
106	<i>Granel Club Crema</i>	Bakery products	2.51	
107	<i>Granel Esmeraldas</i>	Bakery products	5.60	
108	<i>Granel Grageas</i> (chocolate)	Bakery products	4.94	
109	<i>Granel Grageas</i> (vanilla)	Bakery products	7.89	
110	<i>Granel Jarochas</i>	Bakery products	5.61	
111	<i>Granel María</i>	Bakery products	8.76	
112	<i>Granel Mordisko</i>	Bakery products	2.10	
113	<i>Granel Minigalleta</i> (chocolate)	Bakery products	3.85	
114	<i>Granel Marianitas</i>	Bakery products	5.52	
115	<i>Granel Pescaditos</i>	Bakery products	2.77	
116	<i>Granel Rikis Ajonjolí</i>	Bakery products	5.85	
117	<i>Granel Rikis</i>	Bakery products	2.40	
118	<i>Granel Rikis</i> (butter)	Bakery products	1.99	
119	<i>Granel Tostada</i>	Bakery products	9.29	
120	<i>Mariás</i>	Bakery products	8.63	
121	<i>Animalitos</i>	Bakery products	6.31	
122	<i>Sabrosas</i>	Bakery products	2.53	
123	<i>Sw. Emperador ch.</i>	Bakery products	11.03	
124	<i>Sw. Emperador v.</i>	Bakery products	8.15	
125	<i>Sw. Emperador n.</i>	Bakery products	7.47	
126	<i>Populares</i>	Bakery products	10.00	
127	<i>Ricanelas</i>	Bakery products	14.83	
128	<i>Pancrema</i>	Bakery products	3.91	
129	<i>Arco Iris</i>	Bakery products	5.27	
130	<i>Maravillas</i>	Bakery products	3.83	
131	<i>Frutana</i>	Bakery products	10.00	
132	<i>Mamut</i>	Bakery products	6.93	
133	<i>Ovaladas</i>	Bakery products	6.11	
134	<i>Flipy</i>	Bakery products	6.63	
135	<i>Delicias</i>	Bakery products	4.75	
136	<i>Marinas betunadas</i>	Bakery products	4.83	
137	<i>Grageitas</i>	Bakery products	3.89	

No.	Product	Segment	HFCS (%)	Average
138	<i>Barra de coco</i>	Bakery products	9.15	
139	<i>Sw. de merengue</i>	Bakery products	8.39	
140	<i>Roscas de canela</i>	Bakery products	4.52	
141	<i>Chokis</i>	Bakery products	2.45	
142	<i>Hawaiianas</i> (pineapple)	Bakery products	4.09	
143	<i>Dóro</i>	Bakery products	6.08	
144	<i>Chocolatines</i>	Bakery products	9.69	
145	<i>Zoo</i>	Bakery products	14.00	
146	<i>Flups v.</i>	Bakery products	6.44	
147	<i>Flups ch.</i>	Bakery products	6.38	
148	<i>Flor de naranja</i>	Bakery products	7.00	
149	<i>Mariás</i> (chocolate)	Bakery products	8.51	
150	<i>Gansito</i>	Bakery products	22.05	
151	<i>Submarino</i> (strawberry)	Bakery products	52.15	
152	<i>Submarino</i> (vanilla)	Bakery products	52.14	
153	<i>Pingüinos</i>	Bakery products	35.69	
154	<i>Chocorroles</i> (2)	Bakery products	36.56	
155	Strawberry roll	Bakery products	41.23	
156	<i>Napolitano</i>	Bakery products	2.73	
157	<i>Triki trakes</i>	Bakery products	33.96	
158	<i>Plativolos</i>	Bakery products	7.40	
159	<i>Pipucho</i>	Bakery products	6.59	
160	<i>Minipríncipe</i>	Bakery products	6.25	
161	Toffee rolls	Bakery products	13.37	
162	<i>KG</i>	Bakery products	15.20	
163	<i>Polvoron</i> (chocolate)	Bakery products	22.63	
164	<i>Shok</i> (vanilla)	Bakery products	8.80	
165	<i>Shok</i> (chocolate)	Bakery products	6.61	
166	Pancakes with raisins	Bakery products	0.88	
167	Pancakes with nuts	Bakery products	0.91	
168	<i>Mantecadas</i> (4)	Bakery products	0.74	
169	Cinnamon rolls (6)	Bakery products	3.50	
170	<i>Glass rolls</i> (6)	Bakery products	3.27	
171	Cinnamon rolls (2)	Bakery products	3.51	
172	<i>Glass rolls</i> (2)	Bakery products	3.26	
173	<i>Panquecitos</i> (2)	Bakery products	2.29	
174	<i>Triki trakes</i>	Bakery products	16.20	
175	<i>Príncipe</i>	Bakery products	6.30	
176	<i>Plativolos</i>	Bakery products	10.20	
177	<i>Chocorroles</i> (2)	Bakery products	30.30	
178	Strawberry rolls	Bakery products	31.10	
179	Toffee rolls	Bakery products	13.40	
180	<i>KG</i>	Bakery products	14.90	
181	<i>Rocko</i>	Bakery products	5.20	
182	<i>Hit</i>	Bakery products	15.30	
183	<i>Sponch</i>	Bakery products	19.00	
184	<i>Pingüinos</i>	Bakery products	22.10	
185	<i>Submarinos</i>	Bakery products	52.50	
186	<i>Napolitano</i>	Bakery products	1.70	
187	<i>Gansito</i>	Bakery products	11.20	

No.	Product	Segment	HFCS (%)	Average
188	<i>Pipucho</i>	Bakery products	41.50	
189	<i>Dalmata</i>	Bakery products	2.10	
190	Cakes	Bakery products	17.00	
191	Cake "8"	Bakery products	19.15	
192	<i>Rosca de reyes</i>	Bakery products	21.77	10.30%
193	Whipped cream	Milk products	100.00	
194	<i>Media crema</i>	Milk products	100.00	
195	<i>Helado</i>	Milk products	17.90	
196	Yoghurt <i>helado</i>	Milk products	36.00	63.48%
TOTAL				52.31%

12. The information in exhibit MEXICO-20 for 1997 shows almost no increases in the rate of usage of HFCS over that reported by the same companies for 1996. Could Mexico reconcile this with its projection of a significant increase in the use of HFCS in 1997?

Indeed, the information contained in exhibit MEXICO-20 for 1997 as compared to 1996 does not show any increases in the rate of usage of HFCS. This can be explained by the fact that during the period concerned, the anti-dumping investigation initiated in January 1997 was still under way, and this made consumers more cautious and prevented substitution from taking place or at least slowed it down. However, the fact that the rate of usage remained the same does not mean that a greater quantity of HFCS was not being used in absolute terms to the detriment of domestically produced sugar, since imports had already increased.

At the same time, Mexico's estimate as to the probability of an increase in imports was not supported by the real performance of the market in 1997 alone, but also by the fact that based on the information available for the period under analysis it was reasonable to predict that such increase would take place in the near future if the circumstances remained the same. Thus, one cannot compare what actually happened in reality with what was likely to happen, since each situation involved different factors. Obviously, any estimate of what is likely to happen in the future, seen with the benefit of hindsight in the light of what happened in reality, particularly when there are a number of elements which significantly alter the course of events, could turn out to be erroneous and even meaningless.

ANSWERS OF THE UNITED STATES TO QUESTIONS FROM THE PANEL

13. Could the United States please specify the portions of the original panel determination referred to in paragraph 9 of the United States' oral submission?

1. Paragraph 9 of the Oral Statement of the United States was based on paragraphs 24-27 of the First Written Submission of the United States. In that discussion, the United States cited paragraphs 7.177 and 7.178 of the original Panel Report in support of the proposition that the Panel found that SECOFI's original determination did not provide any analysis to support the conclusion that there was a likelihood that users other than soft drink bottlers would substantially increase their importation of HFCS.

14. In paragraph 5 of its oral statement, the United States seems to express concern that SECOFI failed to focus on 1997 data in its analysis. Does the United States contend that SECOFI was obligated to base its determination on 1997 data? If so, on what basis in the AD Agreement does the United States make this contention?

2. The concern that the United States expressed in paragraph 5 of its Oral Statement simply repeats a concern that the Panel expressed in its original report. In its original determination, as in its redetermination, SECOFI relied on the fact that HFCS imports were higher in January-September 1997 than in January-September 1996 in finding that there was a likelihood of increased importation. Because the January-September 1997 data do not reflect the operation of the restraint agreement – which was not announced until September 1997 – the Panel concluded that this data did not support SECOFI's conclusion, under Article 3.7(i) of the AD Agreement, that substantial increases in HFCS imports were likely after September 1997. As the Panel stated in paragraph 7.176 of its original report:

"Mexico's references to the increasing trend of HFCS imports suggest that somehow SECOFI concluded that such imports would have continued increasing by inertia, given the significant increases recorded during the period of investigation and through September 1997, even if they were not demanded in significantly increased quantities by soft-drink bottlers, the leading consumers of imported HFCS. Mexico points out that the alleged restraint agreement was made after the period of investigation, and thus any limitation on imports started from the already significantly increased levels that had been reached. However, the question for purposes of analysis is not the level of imports already reached, but the likelihood of **increased** imports."(Emphasis in original).

3. As the United States indicated in paragraphs 5 and 6 of its Oral Statement and paragraph 29 of its First Written Submission, one reason that the analysis of the restraint agreement in SECOFI's redetermination is inadequate is because it fails to address these concerns of the Panel. As the Panel previously recognized, the fact that imports of HFCS increased prior to September 1997, predominantly because of increased purchases by soft drink bottlers, cannot serve as a basis for finding that purchasers other than soft drink bottlers are likely to substantially increase imports after September 1997.

15. Based on the reported 75 per cent increase of imports in January-September 1997 as compared to the same period in 1996, it might be extrapolated that total imports for 1997 would increase by 75 per cent over total imports for 1996, to a level of 338,000 tons. This is approximately the same level of imports predicted by SECOFI for 1997. Similarly, it appears that under the alleged restraint agreement, soft-drink bottlers could purchase 350,000 tons of HFCS, presumably all from imports, which would again be an increase of about 74 per cent

from 1996 levels. Putting aside the question of who would purchase these imports, does the United States maintain that the level of 1997 imports *per se* would not support a conclusion that there was a likelihood of substantially increased imports? That is, is the United States' objection to SECOFI's conclusion of substantially increased imports based on the projected level of imports or on the methodology used on the projection?

4. The United States has not made any arguments, either in the original Panel proceedings or the current proceedings, that any particular increase in import level or penetration can or cannot be substantial *per se*. The United States argues that SECOFI's methodology is not fact-based and, hence, could not serve as the basis for SECOFI's conclusion that substantially increased imports are likely. As the United States argued in paragraph 7 of its First Written Submission, the facts found by SECOFI sufficiently contradict its conclusions on redetermination so as to suggest that SECOFI cannot on its record provide a basis for finding a threat of material injury.

5. The original Panel decision, as well as Article 3.7(i) of the AD Agreement, obligated SECOFI to examine whether substantial increases in HFCS imports were likely notwithstanding the restraint agreement. SECOFI attempted to satisfy the Panel's concern by focusing on users other than soft drink bottlers. SECOFI projected that soft drink bottlers would obtain from Mexican production all quantities of HFCS that they were permitted to use under the restraint agreement, and that all Mexican HFCS production capacity would be used to supply soft drink bottlers. Redetermination, para. 58.

6. SECOFI projected that imports of HFCS by purchasers other than soft drink bottlers would increase from approximately 62,000 tons in 1996 to 350,000 tons in 1998. As the United States indicated at paragraphs 11 through 24 of its Oral Statement, as well as in responses to questions the Panel asked orally at the Meeting on February 20 and February 21, the methodology that SECOFI used to project this increase must be rejected because it is not based on data reflecting either actual HFCS purchases by users other than soft drink bottlers or the actual rates at which these users substituted HFCS for sugar during SECOFI's period of investigation and because it is not consistent with historical trends.

16. Does the United States consider its arguments under Article 12 to constitute an independent claim of violation of the AD Agreement? In this regard, could the United States please comment on the findings of the Panel in *European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R, circulated 30 October 2000 (appeal on other issues pending) at paragraphs 6.257 and 6.259.

7. The United States considers its arguments under Article 12 to constitute an independent claim of violation of the AD Agreement. We note that in its original decision, this Panel concluded that Mexico acted inconsistently with the substantive requirements of Article 10.2, when it applied dumping duties retroactively, and with the notice requirements of Articles 12.2 and 12.2.2. See Panel Report, paras. 7.194 - 7.198. Nevertheless, we believe it is within a Panel's discretion to decide, as a matter of judicial economy, not to reach the question of whether there has been an Article 12 violation when it has found a violation of a related substantive obligation. This appears to have been the basis for the *Bed Linen* decision. However, we would disagree with the *Bed Linen* Panel to the extent that it was suggesting that Article 12 is not an independent obligation under the AD Agreement or that there will always be an overlap between a Member's substantive obligations and its obligations under Article 12. The United States considers the transparency obligations created by Article 12 to be critical to the effective operation of the AD Agreement.

**COMMENTS BY THE UNITED STATES ON NEW FACTUAL INFORMATION
SUBMITTED BY MEXICO**

1. Mexico 39

1. At several points in its responses to the Panel's questions, Mexico refers to material from exhibit MEXICO-39 in the original Panel proceedings. Because Mexico had never previously referred to this information during the current proceeding, MEXICO-39 is "new information" for purposes of this Article 21.5 proceeding.

2. The MEXICO-39 material concerns import sales data from Arancia CPC, S.A. de C.V., one of two importers of HFCS from the United States during SECOFI's period of investigation. Mexico contends that this material shows that Arancia's sales of HFCS to users other than soft drink bottlers were increasing throughout SECOFI's period of investigation, particularly during 1996.

3. It is noteworthy that Mexico never referenced the MEXICO-39 material in either of its two written submissions or during the meeting with the Panel. Instead, in all of its previous submissions, Mexico has attempted to demonstrate the accuracy of SECOFI's projections of likely purchases of HFCS by users other than soft drink bottlers. Indeed, SECOFI's redetermination clearly relied on these projections, rather than any material concerning actual purchasing patterns, in finding that the restraint agreement "would not eliminate the likelihood" of further increased imports of HFCS. *See* SECOFI Redetermination, paras. 55-59. Consequently, Mexico's current reliance on MEXICO-39 is another example of Mexico attempting to defend SECOFI's redetermination on the basis of reasoning not discernible from, or even consistent with, the determination itself.

4. In any event, Mexico's characterization of the material from MEXICO-39 is inaccurate.

5. The MEXICO-39 material does not show, as SECOFI contends, that Arancia's sales to purchasers other than soft drink bottlers increased sharply during 1996. The monthly sales data included after paragraph 4(viii) of Mexico's response do not show steadily increasing sales during the course of the year to non-soft drink bottlers. Instead, these data indicate sharp fluctuations in sales volumes from month to month. Thus, Arancia's sales to purchasers other than soft drink bottlers during June 1996 were greater than its monthly sales to such purchasers for four of the six subsequent months.

6. Although MEXICO-39 reflects that Arancia increased its sales to purchasers other than soft drink bottlers from 1994 to 1996, the rate of increase in such sales is far smaller than the 2188 per cent increase in sales to soft drink bottlers during the same period. Additionally, this increase is from a small base: Arancia's 1994 sales to HFCS users other than soft drink bottlers were under 20,000 tons. By contrast, SECOFI projected that these users would purchase 350,000 tons of HFCS in 1998. The 1994 to 1996 increase is also far smaller than the over 400 per cent increase in sales to purchasers other than soft drink bottlers SECOFI projected from 1996 to 1998 in an effort to show that overall imports would increase notwithstanding the restraint agreement.

7. Finally, Arancia was neither the sole nor even the principal importer of HFCS from the United States. The MEXICO-39 material included in Mexico's response indicates that the other importer, Almex, was responsible for 67.5 per cent of all HFCS imports in 1996. Almex's sales were much more heavily oriented to soft drink bottlers than Arancia's. There is consequently no basis for concluding that Arancia's data are representative of all HFCS importers.

2. "Rate Of Utilization" Chart

8. After its response to question 11, Mexico has submitted a chart purporting to demonstrate how it derived the 50 per cent figure by which it discounted the amount of projected sugar consumption in 1997 and 1998 that could be substituted for HFCS. Because Mexico has never previously disclosed this material, this chart is also new factual information.

9. Mexico claims that the chart demonstrates that SECOFI derived the 50 per cent figure by taking a simple (not weighted) average of actual utilization rates in various sectors. Absent data -- which Mexico does not provide -- concerning the volume of HFCS used by the each of the industries listed in the chart, there is no basis for concluding that Mexico's technique of computing a simple average of utilization rates provides reliable information concerning the actual average rate of utilization. In this regard, it is noteworthy that the chart contains no information showing actual HFCS usage in the production of bread, which SECOFI predicts will account for 86 per cent of the consumption of HFCS in the near term.

10. Although Mexico maintains, at least for purposes of its answer to question 11, that the 50 per cent rate reflects the rate that HFCS was actually substituted for sugar, the redetermination and its answer to question 6 suggest that SECOFI viewed the 50 per cent figure differently. The redetermination and Mexico's answer to question 6 suggests that the 50 per cent figure was simply a figure SECOFI arbitrarily chose to reduce theoretical substitution rates that were unrealistically high. We maintain that the redetermination and the answer to question 6, rather than the answer to question 11, indicate the true derivation and purpose of the 50 per cent figure.
