



703 Doing Business in Latin America Under a Changing Economic Environment

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Neal A. Bieker

Neal A. Bieker is international counsel for Nike, Inc. Mr. Bieker's responsibilities include advising on Nike's legal, regulatory, and contractual issues and disputes, and assisting in contractual negotiations, in the Asia Pacific and Latin American regions, including Nike's sports marketing activities.

Prior to joining Nike in his current capacity, he was a partner in the Jakarta & Singapore offices of international law firm Baker & McKenzie.

Mr. Bieker has lived in seven countries, five in which he practiced as a lawyer/foreign legal consultant. He also played professional basketball in Europe and Australia for approximately ten years.

Mr. Bieker received a BA from Simon Fraser University in Burnaby, British Columbia and his law degree from Monash University in Melbourne, Australia.

José P. Ceppi

José P. Ceppi is international counsel for the DaimlerChrysler Group for Latin-America and the Caribbean, based in Auburn Hills, MI. His responsibilities include oversight and coordination of DaimlerChrysler Group companies' legal activities in this region, including the operations of subsidiaries in Argentina, Brazil, Chile, Colombia, Puerto Rico, and Venezuela.

Prior to joining DaimlerChrysler, Mr. Ceppi was of counsel to the Phoenix law firm of Snell & Wilmer, concentrating on international commercial transactions. Prior to that, he worked in various positions with the Federal Deposit Insurance Corporation (FDIC), in Washington, DC, the last of which was as assistant general counsel. Mr. Ceppi was formerly in private practice in Baltimore, Washington, DC, and Houston, and as senior trial attorney with the Federal Home Loan Bank Board, in Washington, DC. He was a law clerk to U.S. District Court Judge Marvin H. Shoob, in Atlanta.

Mr. Ceppi is a member of the National Hispanic Bar Association and the Michigan Hispanic Bar Association, where he cochairs a task force to increase the admission of Hispanic students to Michigan law schools.

Mr. Ceppi received his BA from Towson State University. He received his law degree from Georgetown University Law Center, where he served as editor of *Law & Policy in International Business*.

Hugo Chaviano

Hugo Chaviano chairs Cozen O'Connor's Latin America Practice Group in Chicago. He has served as counsel for insurers, re-insurers, underwriting managers, and Fortune 500 companies. Mr.

Chaviano focuses his practice on complex business and legal issues related to due diligence, insurance, and re-insurance business, nationally and internationally. His practice has been characterized by distinguished service to the legal profession and Hispanic communities in the United States and abroad.

Mr. Chaviano is a past president of the Hispanic National Bar Association, which represents over 25,000 Hispanic attorneys in the United States and Puerto Rico. He is a past member of the ABA House of Delegates and currently serves as Ambassador to the Business Law Section. He has served as a member of the Chicago Bar Association Board of Managers and chaired its Judicial Evaluation Appellate Review and Insurance Law committees. He has also served on several Blue Ribbon committees, including the Judicial Merit Selection Panel of the United States District Court for the Seventh Circuit, Committee on Ethnic and Racial Diversity in the Workplace, and Judicial Election Campaign Reform. Mr. Chaviano is an adjunct professor of law in trial advocacy at Northwestern University School of Law and has taught at the National Institute of Trial Advocacy. He is also a member of various boards, including the Northwestern University School of Law and Metropolitan Family Services. He is a certified mediator and arbitrator.

Mr. Chaviano received his BA from Rutgers University and his law degree from Northwestern University School of Law. He has been recognized as one of the 100 most influential Hispanics in the United States by *Hispanic Business Magazine*.

Raul R. Herrera

As the general counsel of the Inter-American Investment Corporation (the "IIC"), Raul R. Herrera is a member of senior management and legal advisor to its Board of Executive Directors and Board of Governors (comprising the Finance Ministers of the IIC Member Countries). Prior to his appointment as general counsel, Mr. Herrera served the company as project attorney and senior counsel. Mr. Herrera joined the IIC in its first complete year of operations.

Prior to joining the IIC, Mr. Herrera served as a senior counsel at the FDIC legal department and the Federal Home Loan Bank Board legal department. While attending GWU, Mr. Herrera served as a Congressional Aide at the U.S. Senate Committee on the Judiciary and as a Junior Intelligence Analyst Intern at the U.S. Department of State's Intelligence and Research Department, Politico-Military Affairs (INR/PMA: Top Secret Clearance).

Mr. Herrera is a member of the District of Columbia Bar, the Board of Directors of the Inter-American Bar Association (IABA), the International Council of GWU's Elliott School of International Affairs, the International Bar Association, the ABA, and the American Society of International Law. He has served as a member of the Board of Directors of the International Development Conference, as treasurer and member of the Board of Directors of Inter-American Bar Foundation, and as vice chair of IABA's Corporate Counsel Committee. Mr. Herrera is a member of the ABA's Advisory Committee on the Latin American Legal Initiatives Council, the External Review Group of the Latin American Studies Program of GWU's Elliott School of International Affairs, and the Board of Directors of the DC Chapter of the Federal Bar Association. He is chair of the Investment and Finance Committee of International Law Section of DC Bar Association and a member of the Steering Committee of Choral Arts Society of Washington, DC's Martin Luther King Annual Tribute.

Mr. Herrera is a graduate of the George Washington University Law School and its Elliott School of International Affairs (Latin American Studies Program). He has completed numerous continuing professional development courses, among others, at the University of Pennsylvania (Negotiating Real Estate Transactions), University of Virginia's Darden Business School (Individual and Organizational Change), Harvard University (Negotiations Workshop), and University of Maryland (Leadership Development).

Francisco Velazquez

Francisco Velazquez Osuna is senior partner of the Mexican full-service law firm Goodrich, Riquelme y Asociados. He has extensive experience in the international corporate and business transactions and international trade areas, advising clients including large and medium-sized multinational companies.

He is a licensed attorney in Mexico and has written several articles and lectured in the United States and Mexico on doing business in Mexico, strategic alliances, foreign investment, competition law, product liability, NAFTA, and cross border legal issues. Mr. Velazquez taught the legal aspects of NAFTA at the Universidad Iberoamericana in Mexico City and Family and Estates, Obligations Civil Procedure, Economic Law, and Consular Law at the Universidad Nacional Autónoma de México, Acatlán Campus.

Mr. Velazquez was the chair of the National Association of Corporate Attorneys in Mexico, Asociación Nacional de Abogados de Empresa (ANADE.) He has been a board member of ANADE for 12 years. He is also the coordinator of the NAFTA Dispute-Settlement Committee of the Mexican Business Coordinating Council during NAFTA negotiations. He is a member of the Mexican Bar Association, the Mexican Law Committee of the American Chamber of Commerce of Mexico, and the Section of International Law and Practice of the ABA.

Mr. Velazquez graduated from the Universidad Nacional Autónoma de México and received a Master of Laws degree from American University. He served as an intern at the U.S. International Trade Commission.

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**PRESENTATION BEFORE
AMERICAN CORPORATE COUNSEL ASSOCIATION MEETING
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**SESSION 703
DOING BUSINESS IN LATIN-AMERICA
UNDER A CHANGING ECONOMIC ENVIRONMENT**

CROSS-BORDER DISTRIBUTION & JOINT VENTURE AGREEMENTS

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Below is an outline of the major legal issues that a U.S. business planning to engage in cross-boarder commercial transactions in Latin-America should consider before initiating such activities.

1. Partnering with a Local Business. Partnering with a local individual or entity offers assistance in the following areas:
 - a. Compliance with local laws, customs, tastes and market peculiarities;
 - b. In-place distribution network (Consider working with an existing distributor for similar products who has an established dealer network);
 - c. Obtaining necessary governmental approvals for the new venture; and
 - d. Staffing local office with competent and knowledgeable staff.

2. Determining Ownership Structure of a Foreign Joint Venture. In determining this structure, special consideration should be placed on the following items:
 - a. Super – majority voting requirements for extraordinary corporate actions;
 - b. Clarify which partner will have control over day-to-day management of venture;
 - c. Consider use of foreign limited liability company versus other corporate vehicles due to potential U.S. tax advantages;
 - d. Local ownership or participation requirements should be reviewed; and

¹ The views and opinions expressed in this presentation are those of the author and do not necessarily reflect the views or opinions of DaimlerChrysler Corporation.

- e. Consider U.S. tax and legal implications of foreign entity's legal structure.

3. Management of Venture.

- a. Who will occupy senior management positions for venture;
- b. How may local managers be removed by U.S. entity;
- c. Management by committee should be avoided; and
- d. Require U.S. Company's approval for local management changes.

4. Sales Area for Venture.

- a. If possible, exclusive sales areas should be avoided;
- b. Some countries, particularly in Central America, require registration of venture with government agency (form of de facto exclusivity);
- c. Some countries' laws treat non-exclusive distribution agreements as exclusive if, in practice, distributor is sole distributor for country for a long period of time;
- d. If planning to issue exclusive distribution agreement, consideration should be given to:
 - i. Financial resources of local entity;
 - ii. Adverse impact on existing distribution channels in sales area (i.e. multi-country distributors in place);
 - iii. Exclude direct sales by U.S. company in sales area to certain designated entities, such as local governments, U.S. foreign service personnel, and U.S. ex-patriates, etc.;
 - iv. Require minimum sales volume (MSV) for each year of exclusivity (include formula for determining MSV for future years if parties cannot agree on same);
and

- v. Failure to meet MSV should permit U.S. company to terminate agreement or make it non-exclusive.
5. Restrictions on Transfer of Interest in Venture.
- a. Require U.S. company's approval for transfer of interest in venture or distributor to third party;
 - b. Require same approval for transfer of interest in local partner; and
 - c. Provide for option to purchase local partner's interest in venture or in distributor in the event of proposed sale to third party.
6. Dispute Resolution Mechanisms.
- a. Mediation by a thirty-party (non-binding) chosen by the parties;
 - b. Binding Arbitration:
 - i. Define entity that is to conduct arbitration. Consider the following alternatives
 - (1) International Chamber of Commerce;
 - (2) AAA – Less used in international arbitration; and
 - (3) Local chamber of commerce.
 - ii. Rules to govern arbitration (Arbitrator – provided rules or others);
 - iii. Substantive law to be applied in arbitration (look for whether chosen arbitrator has experience or capability to interpret governing law);
 - iv. Language of arbitration;
 - v. Place of arbitration; and
 - vi. How parties will pay for arbitration (loser pays or even split).

- c. Arbitration awards may be easier to enforce in certain Latin-American countries than foreign judicial judgments because these countries have executed the Pan American Convention on Enforceability of Arbitration Awards;
 - d. Judicial proceedings:
 - i. Exclusive jurisdiction in the courts of country where entity is located;
 - ii. Exclusive jurisdiction in U.S. courts;
 - iii. Dual jurisdiction; and
 - iv. Preservation of U.S. entity's right to seek injunctive relief in appropriate courts to prevent infringements of its trademarks.
7. U.S. Legal Considerations.
- a. Require distributor or venture partner to comply with U.S. laws applicable to its activities, such as Foreign Corrupt Practices Act;
 - b. Foreign Corrupt Practice Act:
 - i. Prohibits payments to foreign officials or candidates for public office, with intention to obtain, direct or preserve business;
 - ii. Facilitating payments are permitted to expedite granting of visas, work permits, mail or telephone services;
 - iii. Covers activities of agents of U.S. companies;
 - iv. Look out for red flags, such as last minute request by local agent to increase previously set sales commission;
 - c. Export Administration Act – Regulations re export of certain commodities with military or other applications (see Prohibited Country List); and

- d. Helms – Burton Act (Applies to entities and individuals who deal with property confiscated by the Cuban Government from private parties).

8. Terms and Conditions of Venture

- a. Avoid “evergreen” agreement, i.e. perpetual self renewal of agreement;
- b. Definitive term of venture or distributorship should be provided to avoid uncertainty as to expiration date;
- c. Avoid requiring advance notice of intent not to renew or extend venture or distribution agreement;
- d. Research local law regarding advance notice requirements and indemnification requirements for termination or non-renewal of distribution agreement; and
- e. Provide for termination rights in event certain events occur, such as the following:
 - i. Failure to meet MSV;
 - ii. Default on payment of amounts due to U.S. Company;
 - iii. Nationalization or expropriation of venture or its assets;
 - iv. Imposition of price or currency controls in local country; and
 - v. Insolvency or bankruptcy of a local partner or distributor.

9. U.S. Tax Consequences of Venture

Use of a foreign LLC in some instances has favorable tax consequences to U.S. entity in its U.S. tax return.

10. Protection of Intellectual Property Rights and Trade Secrets.

- a. Protect patents, trademarks, trade names, trade secrets and confidential information;
- b. Provide for limited license to use trade names and marks with prior approval of U.S. company;

- c. U.S. company should register its trade names and marks in countries where it will conduct business through distributor or venture;
- d. Look out for intellectual property (IP) pirates who pre-register a trade name and seek ransom from U.S. company (difference in IP laws, some countries have no requirement of “use in commerce,” unlike U.S.);
- e. Provide for right to seek injunctive relief in local court for misuse of IP rights (exception to binding arbitration requirements);
- f. Require joint venture or distributor to agree to:
 - i. Never challenge the IP of U.S. company or take any action to impair these rights; and
 - ii. Never register IP rights of U.S. company in local jurisdiction.
- g. Upon termination of joint venture or distributor agreement, distributor must be required to cease doing business with trade name or trademark of U.S. company, even if it is required to change its company name.

11. Relationship of the Parties to Venture.

- a. Relationship of parties to venture or distributor agreement should be clearly specified in the operative documents;
- b. Parties’ course of dealing must be consistent with the operative documents;
- c. Many foreign jurisdictions will treat foreign individuals, acting as agent of U.S. entity, as employees of same for tax and employment termination purposes; and
- d. Avoid establishing a partnership between distributor or venture and U.S. entity because of potential joint and several liability and for other purposes, i.e., foreign taxation of U.S. company.

12. Pricing, Payment and Shipping Issues.

- a. Specify the currency to be used for payments to U.S. entity;
- b. If payments are in local currency, should provide for mechanisms to account for currency fluctuation (i.e. who will bear exchange rate risk);
- c. If payments are not in cash at delivery, what type of credit terms will be used (e.g. letters of credit issued by U.S. bank in favor of U.S. company), including interest rate to be used (LIBOR or other). Consider using higher default interest rate;
- d. Include collection rights of U.S. company such as offset rights, canceling pending orders, diverting shipments in transit, etc.;
- e. If goods are to be in consignment, specify who will retain title to goods and when will title pass (need to consider local law);
- f. How will price be determined, e.g. by U.S. company at time product leaves factory, etc.; and
- g. Should specify delivery terms such as FOB U.S. company manufacturing plant or foreign country (i.e. who bears transportation cost and risk of loss in transit).

13. Governing Law, Legalization and Language of Agreement

- a. U.S. law should govern if U.S. company executes agreement in U.S. and ships products from U.S. to foreign country;
- b. Local law should be considered if operative agreement was executed in foreign country by local subsidiary of U.S. company with other local entity or there is a need for quick enforcement in local courts;
- c. Should specify which version of operative agreement will control in the event of a dispute concerning versions of the agreement in more than one language;

- d. Legalize executed copy of operative agreement through pertinent U.S. consulate or embassy of foreign country for use in foreign country; and
 - e. Inquire whether agreement needs to be registered with government in foreign country.
14. Agreement Should Specify Obligations of Parties.
- a. Venture or distributor responsible for:
 - i. Promotion of products (to be approved by U.S. company);
 - i. Marketing;
 - ii. Sales; and
 - iii. Refer leads outside territory to U.S. company.
 - b. U.S. company to provide product free of manufacturing defects (right to modify product or substitute new products);
 - c. Specify warranty obligations of U.S. company, such as the following:
 - i. Prohibit distributor or venture from extending or modifying this warranty; and
 - iii. Reimbursement to distributor for warranty service.
 - d. Provide for U.S. company's right to inspect books and records of distributor or local company;
 - e. Specify procedure for distributor's appointment of dealers (Pre-approval by U.S. company should be required);
 - f. Include Product Liability provisions, such as the following:
 - i. Limit U.S. company's liability to manufacturing or assembly defects, which cause bodily injury or property damage and which distributor or dealer could not have reasonably discovered during its handling and servicing of product;
 - ii. Review local law for limitations on product liability exclusions and disclaimers;

- iii. Indemnification provision for product liability claims;
 - (1) Prompt notice requirement to U.S. company;
 - (2) Obligation to cooperate; and
 - (3) Pre-approval to settle or compromise claims.
 - g. Include buy-back option for U.S. company to acquire distribution rights with payment of fair market value of distributor's inventory, assets and good will; and
 - h. Notice provisions – Take into account slow or unreliable mail/fax notice.
15. Non Competition Clauses and Antitrust Considerations
- a. Restriction on distributor or venture from distributing competing products should be narrowly drafted; and
 - b. Review local law prior to requiring distributor to obtain manufacturer's approval for retail prices.
16. Review Laws, Regulations and Enforcement Practices in Foreign Country
- Areas of particular concern:
- a. Environmental laws and regulations;
 - b. Tax laws;
 - c. Custom laws/Immigration;
 - d. Employment laws – (local employment contracts may be required); and
 - e. Hire the best local counsel you can identify.
17. Be Patient and Gain Familiarity with Local Customs
- a. Study how business is transacted in the foreign country; and
 - b. Develop flexible time-table which accounts for unexpected delays in obtaining foreign regulatory or legal approvals.

The Inter-American Investment Corporation RAUL R. HERRERA, GENERAL COUNSEL, IIC

I. Introduction

The Inter-American Investment Corporation (“IIC” or “Corporation”) is a legally autonomous treaty organization, member of the Inter-American Development Bank Group, and dedicated to support the development of the private sector in Latin America and the Caribbean, especially small and medium-sized enterprises. The Corporation started operating in late 1989 and pursues its mandate providing debt, equity investments and advisory services through two main areas of activity: first, directly through project financing or merchant banking operations, and second, indirectly through financial intermediaries such as commercial banks, venture capital investment funds, and capital market operations. The IIC’s US\$700 million, paid-in capital base is owned by 42 member countries, of which 26 are from the region, and the remaining 16 comprise Japan, Israel, the United States and 13 from Europe.

The IIC’s projects must be commercially viable for which traditional financing would otherwise not be available under adequate terms. The impact of the IIC’s participation in a project is substantial through the level of comfort it provides to other lenders and investors in the project or private equity fund, which far exceeds the level of its direct financial investment. Investments are customized to meet the particular needs of the IIC target market and the market constraints of an individual economy.

A. Financing Terms

All sectors within the region’s member countries are generally eligible for IIC investments. For a new enterprise, the Corporation can finance up to 33 percent of project costs; and for expansion projects, the Corporation can finance up to 50% of the capital costs of the expansion, provided that its participation in the project does not exceed 33% of the value of project assets. The maximum IIC exposure to any project is US\$16 million, however, the average direct investment is US\$6.5 million.

B. Long-term Loans

Senior term-loans made by the Corporation are priced at market rates based on LIBOR plus a spread of between three to five percent. Our investment guidelines allow terms of up to 12 years including up to a five-year grace period. In our investments, government guarantees are neither sought nor required. Depending on the needs of the project company, the IIC may also provide subordinated loans with higher interest rates corresponding to the increased risks.

C. Debt Mobilization

A key factor in the future economic development of Latin America and the Caribbean will be the enhancement of the region's attractiveness to international investors. Given the Corporation's limited capital base in light of the broad scope of its mandate, an important measure of the Corporation's success will be its ability to mobilize third-party resources to the region. Since

initiating its co-financing activities, the IIC has been increasingly catalytic in raising extra-regional resources for its regional small and medium-sized clients. When a project requires funding in excess of the IIC's direct lending commitment, additional sums may be arranged for the borrower through participations in the IIC loan.

As a regionally specialized multilateral, the IIC is recognized by commercial financial institutions as having a familiarity with the business and economic conditions of Latin America and the Caribbean and its ability to identify and structure promising investment opportunities. In addition, the regulatory authorities of several countries have acknowledged that commercial banks under their jurisdiction which participate in IIC co-financings will be exempt from mandatory provisioning requirements relating to country risks for loans to countries which are considered "value impaired" All tolled, within the hierarchy of international financial institutions, the IIC as a multilateral organization occupies a privileged position by virtue of the immunities granted to it by the member countries as well as by custom and practice insofar as exemptions from rescheduling and moratoria which have affected other classes of international lenders.

The structure of the IIC co-financing is to divide the IIC loan to a borrower in two portions, the A loan for IIC's account and the B loan for account of commercial bank participants which ranks pari passu with the IIC's portion. The IIC is the lender of record for the total loan of both A and B portions, coordinates all disbursements and collections, and distributes payments pro rata amongst itself and the participants as received from the borrower. The projects with debt co-financing components can be divided into two areas: co-financings for financial institutions and for productive or industrial projects. In addition, the Corporation has teaming arrangements with other bilateral and multilateral organizations aimed at providing access to IIC's target market with investors and industry associations of other regions. This global approach to financing enhances opportunities for investors in Latin America.

D. Direct Equity Investments

In its equity investment transactions, the Corporation will exit the project to revolve its funds once a project in which it has an investment has ripened. The exit strategies considered are to sell its shareholding interests either through the exercise of a put option to the original shareholders or, preferably, a strategic sale to a third party, thereby expanding the project company's ownership base. A third party sale of its minority shareholding interests or taking a company public has proven to be difficult with the Corporation's target market of small and medium-sized enterprises which generally comprise family-owned or "group-owned" operations. The Corporation generally requires a seat on the board of directors, that the principal sponsor of the company to retain its shares through the period of the IIC's investment, and that the IIC be given "piggy back" or "tag along" rights in the event the sponsor sells. The IIC does not grant a call option or a right of first refusal on its shares to the original shareholders of the company. Because of the difficulties in managing a minority interest in a small and medium-scale company, in which the IIC by Charter cannot undertake management responsibilities, the IIC's equity investments are made generally through private equity funds.

E. Financial Intermediary Program

The Corporation has a highly catalytic role in the fulfillment of its Charter mandate through the financing it provides indirectly through financial intermediaries to the small and medium-scale enterprises located in its regional developing member countries. The financing available to financial intermediaries includes loans in the form of credit or agency lines to commercial banks, lease companies, and other financial institutions for further on-lending in the local market, and equity investments in private equity funds for further investing of scarce capital in eligible enterprises. The importance of the role of private equity funds in the region is widely recognized.

Moreover, the financial intermediary program allows the Corporation to reach a smaller target market in an effective and efficient manner that it could not otherwise reach directly. For instance, since the Corporation commenced operations in late 1989 through December 31, 2001, the Board of Executive Directors has approved 264 operations, of which 137 were direct financing to its target market and 127 were indirect financing through financial intermediaries. Through these 127 financial intermediary operations, the Corporation has reached approximately 2,600 small and medium scale enterprises.

F. Private Equity Funds

To enhance the availability of private equity capital for promising small and medium-sized companies in the region, from its inception in 1989 the IIC has invested capital in regional private equity funds. For the IIC, investing in private equity funds is an efficient and cost-effective manner to achieve its strategic objectives: first, leveraging private capital to reach the IIC's target market; second, providing scarce equity resources to private Latin companies while diversifying risks and maximizing returns; third, participating directly in specific strategic sectors of an economy; fourth, influencing the distribution of scarce capital resources to enhance best practices in critical areas of corporate governance, environmental and labor standards; and fifth, obtaining co-financing rights to provide long-term debt to the fund's equity investments. Indeed, the first transaction approved at the IIC was an equity investment in a small venture capital fund in Brazil.

As of December 31, 2001, the IIC's private equity fund portfolio consists of commitments in 25 funds, representing approximately US\$150 million (of which US\$95 million or 65% has been disbursed), with total fund capitalization of US\$2.25 billion, or a mobilization factor of 1:15 (between IIC capital and total fund capitalization). Estimates may differ, but assuming that the total capitalization of private equity funds targeting the region is approximately US\$14 billion, then the IIC's funds portfolio represents about 15% of this sector. The IIC's average fund size is US\$80 million; and the portfolio's average life is 3.1 years.

The IIC's portfolio is widely distributed amongst regional funds (six funds with about US\$50 million of IIC capital and total capitalization of US\$1 billion); sub-regional funds (two targeting Central America, one in the Andean Region, and two others for the Caribbean (about which I will discuss further below), with about US\$25.5 million of IIC capital and total capitalization of US\$360 million); sectorally diversified funds, in country funds (four targeting Mexico, four for Brazil, and one each for Uruguay and Chile, with about US\$45.5 million of IIC capital and total capitalization

of US\$407 million); and sector specific funds (two targeting the energy sector, and one each for infrastructure generally, health care and telecommunications sectors, with about US\$29 million of IIC capital and total capitalization of US\$461 million).

The IIC's private equity funds have made downstream investments in 151 investee companies, with only four exits achieved. When considering an investment in a private equity fund, the IIC generally analyzes the structural features and performance history of the fund and its manager. The analysis focuses on the sponsor, the target or anchor investor, the fund manager and the investment team, the investment strategies and objectives, the corporate governance structure, the fund's economics, and the track record, including the experience in divesting investments and the integrity of the investment process.

G. Development Criteria

The Corporation's development criteria are important factors in considering whether or not to invest in a project. In evaluating a project's developmental impact, the following criteria are considered:

- the development of material and human resources;
- the creation of new jobs;
- foreign exchange generation;
- technology transfer and the development of managerial skills;
- the impact on saving and investment rates;
- the democratization of ownership; and
- the project's environmental and labor standards impact.

H. Additionality

As a multilateral development organization, the Corporation is committed to continue evaluating project proposals on the basis of their developmental impact, measured specifically in terms of economic rate of return (ERR), value added to the local economy per US dollar invested as a net contribution to GDP, net generation of foreign exchange per US dollar invested as a contribution to the host country's balance of payments, and employment creation as investment cost per new job created.

Moreover, the Corporation is also committed to continue paying particular attention to innovative projects and/or replicable operations that introduce new techniques or products in order to fill gaps in its regional developing member countries' sectoral structure, transferring new technology, introducing or enhancing existing environmental and labor standards and sound corporate governance best practices, and/or opening or deepening new export markets. Hence, for the IIC, fostering and augmenting "additionality," both financial and developmental, in its projects are at the core of the institution's Charter mandate and strategic orientation. This commitment of the Corporation is intended to enhance the quality of its portfolio, applicable to both its direct corporate projects and the financing extended to small and medium scale enterprises through financial intermediaries, private equity funds, and capital market operations. Indeed, since its establishment, the IIC has been committed to being a "value-added financier"

for the region's small and medium-scale enterprises to ensure that all of its projects contribute directly and verifiably to the region's sustainable economic development.

In operational terms, for the IIC the measurement of "additionality" in its projects is quantified through the development and implementation of a standard matrix that is applied in all project-financing proposals. By using a common framework for its projects, the matrix serves to highlight the key additionality factors or variables appraised ex-ante in each (direct or indirect) project. Specifically, in practice each additionality variable selected in the matrix is given a performance rating at the time of project preparation to judge the main "additionality" of the IIC's involvement in financing a project and the associated trade-off with the risk profile. Hence, each variable in a project is rated as having an expected impact ranging from "Superior" to a "Low" expected impact. Indeed, it is also possible to have cases where the respective factor of rating is "Not Applicable."

I. Comparative Advantages

By its very nature, the Corporation has characteristics which uniquely position it to undertake projects which private international financial institutions and investors may not consider attractive: its Charter, close affiliation with the IDB, and long-term investment horizon.

Charter Immunities and Privileges: Based upon the Agreement Establishing the Inter-American Investment Corporation, an international treaty, the IIC is granted immunities from expropriation, moratoria and taxation with regard to its assets and operations in member countries. In addition, the Corporation's advance notification to the host government of a project the Corporation intends to undertake serves to confirm that the government has no objection to the proposed financing.

Close Affiliation with the IDB: The Bank's decades of experience in regional development, strong research and economic analyses, as well as its network of offices in each country of the region, have proven invaluable for the Corporation, as a member of the IDB Group, and have permitted synergies in further developing the private sector of the region.

Investment Horizon: Another distinguishing characteristic of the Corporation is the length of its investment horizon. Rather than a short-term investment common to most financial institutions, the Corporation's debt financings are for up to 12 years and its equity investments are in place until its presence is deemed to be no longer required, which in private equity funds often means an investment commitment of up to 12 years or whenever the fund is wound up.

II. Summary of the Economics of the Region

A. Economic Reforms

Since the 1990s, Latin American countries have been undergoing an economic renaissance after the economic slowdown during the so-called lost decade of the 1980s as a key result of their economic development strategies, which have been recently tested and are proving to be resilient in certain countries. The economic landscape of the region has changed dramatically, and continues to change. For the long run, these elements have created the foundation for an "enabling environment" for

long-term investment, without which it would be difficult to talk about structuring transactions and doing business in Latin America and the Caribbean.

Almost all of the countries in the region have undertaken major economic policy reforms establishing the foundations for open, private sector-led economies. In many countries, state intervention is being substantially reduced, responsible fiscal policies have been adopted, private investment is acknowledged as having a crucial economic role, foreign investment is now welcomed, domestic capital markets are being developed, and to a large extent and until recently debt problems had been resolved.

The renewed access for certain countries to international capital and financial markets, which had a promising start, has stumbled recently for different reasons. Complaints abound that as certain sectors of a country's economy opens up, institutional and individual investors do not always find clear ground rules, as legislation may be outdated and regulatory agencies may be guided by political rather than technical criteria, or worse yet, the established rules of the road have changed by government fiat. With that said, the long-term prospects for improvement have received a boost from the early results from reforms in modernization of regulatory frameworks and an increased professionalism in the public sector, both critical factors for providing long-term financing to the region. And all of these changes have been undertaken under democratically elected regimes, thus allowing for better prospects for stability, transparency, and fairness, essential elements of a positive business environment, particularly for long-term investment projects.

B. Growth of GDP

In general terms, the economic forecasts for Latin America remain uncertain for the rest of this decade. While GDP annual growth rates between 1980-1990 averaged 1.1% in the region, in the 1990s the annual growth rates were significantly better (3.2%). For differing reasons, certain countries in the region are projected to record better than the average GDP growth rates over the next few years. Indeed, the recent investment grade rating for Mexico from Standard & Poor's bodes well for these projections.

C. Asset Values

Within this economic framework, large multinational corporates can still find that assets in many countries can still be bought at a fraction of their perceived international value, and if the policy reforms that were underway continue, then over the longer-term such asset acquisitions will unleash their full earnings potential. The international corporate community is increasingly aware of the immense potential offered by these developments into the future.

D. Inflation

Inflation throughout the region has been reduced generally with the exception of certain laggards. It should be noted that where progress has been made in the battle against inflation, such progress appears to be based on sound bases: first, fiscal discipline derived from structural fiscal reforms dealing with expenditure reductions, increased privatizations, greater tax collections, and monetary

autonomy; second, private sector-driven economies which allow import competition thereby containing local prices and sedating expectations; and lastly, exchange rates which do not vary dramatically.

E. Capital Flows

Similarly, although capital inflows have slowed significantly lately, they grew dramatically in the last decade beginning in 1991, which was the first year in a decade in which Latin America registered net capital inflows and effectively reversed the capital flight tradition for the region was well known. These inflows are, to a large extent, from the repatriation of funds and reflect the confidence of Latin Americans in their own markets, especially true when considering the remittances from the Central American countries. These inflows dramatically triggered the growth of domestic capital markets, and to lesser extent local stock exchanges, and it was the reason for the establishment and capitalization of numerous private equity funds dedicated to investing in Latin America.

It should be noted that in sharp contrast with the 1980's, these capital inflows are mostly absorbed by the region's private sector and not by its governments. Furthermore, a substantial portion of such capital inflows increasingly consists of equity investments that, although initially linked to privatizations, are now also oriented toward a broader segment of the market and to new project financings.

F. Economic Outlook

Looking to the future, we recognize that efforts by the countries of the region to establish private sector-led economies will, more than at any time in the recent past, subject them to the vulnerability and uncertainty of the global marketplace, especially due to declining prices of principal commodities, increasing obstacles to trade, industrial countries' recession and sluggish growth, continued instability and uncertainty in the global financial and capital markets, as well as existing domestic social pressures. Yet, alongside such hazards, over the longer term, the external environment holds out extraordinary opportunities. To take advantage of these opportunities, the countries in the region must continue to undertake deeper internal and regional structural changes that will, in turn, enable them to create globally competitive production systems. Having expressed certain caution, clearly this trend is marked by a private sector-led upsurge in growth and investment.

G. Role of the Private Sector

The most significant factor associated with the positive environment that developed in the 1990s, but which is constrained at this time, is that investment resources were being directed primarily to the private sector rather than to the public sector, the traditional recipient of funds in the region. Although the scenario for the region could be optimistic, the economic renaissance of Latin America and the Caribbean is still in incipient stages. To date and when available, only the larger, well-established companies have been able to obtain financing from the traditional capital market sources as institutional and individual investors cautiously consider retesting investment waters.

From a long-term investor's perspective, the most important event - aside from last September's terrorists' attacks, is that the recent crises in certain countries of the region have not been contained, with spill over effects to neighboring states. Hence, although in some countries investors have shown greater resilience and a degree of sophistication that allows them to differentiate among countries and investment targets to more precisely determine risks, the general macro-economic environment still poses uncertain risks. As such, long-term investors throughout the region have had to realign potential financing targets and expected investment returns to compensate for the higher perceived risks in the region from which to project future financial performance. Given the early stage of development of regional capital markets and the long-term nature of the transformation process, the committed long-term investors in regional projects must understand the challenges in investing in an emerging market while appreciating the potential opportunities which are available over the longer term.

III. IIC: Value-Added Financier providing Debt Financing for Infrastructure Projects

In 2001, the IIC approved a US\$10mm equity investment for an innovative debt-financing vehicle to support private small and medium-sized infrastructure projects throughout Latin America and the Caribbean. The Inter-American Corporation for Infrastructure Financing ("ICIF" or "CIFI" in Spanish) is incorporated in Costa Rica and licensed by its Superintendent of Banks as a non-bank financial institution; its headquarters is in Washington, D.C. ICIF is sponsored by the IIC and the Caja de Madrid, amongst other financial institutions, with initial committed capital of US\$50mm. The products it offers are long-term senior loans, subordinated debt, guarantees, lease financing, and advisory services (including acting as financing arranger). The ICIF sources projects from multilateral institutions (including participating in A/B loan co-financing transactions), shareholder club deals, strategic partners, direct origination, commercial bank asset purchases and international developers.

Within the first five years of operations, ICIF projects doubling its initial capital base to US\$100mm with leverage capacity of up to seven times equity, thereby providing debt financing to approximately 110 small and medium size infrastructure projects in order to alleviating unmet needs for this sector generally. The types of project eligible for financing include energy (such as hydro, thermo, wind and geo), transportation and logistics (such as rail, toll roads, bridges, terminals and ports), environmental, telecommunications, petrochemicals, oil and gas, water and sanitation, social infrastructure (such as private housing, health and educational facilities), and tourism infrastructure (such as hotels). In general terms, for greenfield projects the ICIF can finance up to 25% of total project costs, and for expansions it can finance up to 40% of total project costs. With only months in operations, the ICIF has approved financing for four debt transactions, including the Caucedo Terminal Port project in the Dominican Republic. In its current project pipeline, the ICIF has several infrastructure projects it is currently evaluating in the transportation and energy sectors.

Through ICIF, the economic development of the IIC's regional developing member countries will be deepened and additional resources from private non-region investors will be channeled to this critical sector in the region. The IIC's active involvement in this public-private initiative helped to attract the participation of leading financial institutions, including Caixa Geral de Depositos (Portugal), Republic Finance and Merchant Bank (Trinidad and Tobago), Banco del Pichincha

(Ecuador), UNIBANCO (Brazil), Banco del Istmo (Panama), the Caribbean Development Bank, and the Central American Bank for Economic Integration. By agreement, its shareholding structure will be at least 60% held by private commercial banks and 40% by multilateral institutions. In addition to having materials which further describe the activities of the IIC, such as its 2001 Annual Report and the "How to do Business with the IIC" brochure, I would indulge you to learn more about ICIF on its website at <http://www.cifidc.com>).

In conclusion, through its financing transactions the IIC continues to provide the requisite leadership in structuring and financing promising business opportunities to leverage the IIC's resources to support the region's private small and medium-size companies, to catalyze financing to the strategic industries of the region to deepen the region's nascent financial and capital markets, and to further the economic development of its regional developing member countries. In other words, the developmental and catalytic impact (or "additionality") of the IIC's financings far exceeds the value of the sum of its investments. Hence, the IIC continues to fulfill its commitment to be a "value-added financier" to the region's small and medium size companies operating in the private sector. Its record to date demonstrates this: in its 12 years in business, the IIC has approved US\$1.5bb in project financings, which represents over US\$8bb in total project costs. But as I said earlier, we are fully committed to the region, and there is much more to be done. Hence, the IIC continues to fulfill its commitment to be a "value-added financier" to the region's small and medium size companies operating in the private sector.

DOING BUSINESS IN MEXICO
ACCA, WASHINGTON, D.C. OCT. 2002
PROGRAM 703

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DOING BUSINESS “WITH” OR “IN”
MEXICO

DOING BUSINESS “IN”

- DIRECT PHYSICAL PRESENCE
- PERMANENT ESTABLISHMENT FOR TAXES
- AN AGENT MIGHT TRIGGER PERMANENT ESTABLISHMENT IF INSTRUCTED BY NON-RESIDENT TO (i) EXECUTE CONTRACTS, (ii) UNDERTAKE RISKS, (iii) RECEIVE FIXED COMPENSATION OR (iv) CARRY OUT ACTIVITIES TO BE PERFORMED BY NON-RESIDENT

DOING BUSINESS “WITH”

- NO PHYSICAL PRESENCE
- NO PERMANENT ESTABLISHMENT FOR TAXES

FOREIGN DIRECT INVESTMENT IN MEXICO

- 1973 LAW PROMOTED MEX INVESTMENT & REGULATED FOREIGN INVESTMENT
- 1989 REGULATIONS RELAXED RESTRICTIONS BY: ELIMINATING PERFORMANCE REQUIREMENTS AND ESTABLISHING AN AUTHOMATIC APPROVAL MECHANISM
- CURRENT 1993 LAW ALMOST CONFORMING WITH NAFTA INVESTMENT RESERVATIONS
- BESIDES NAFTA CH. 11, MEXICO HAS SEVERAL BILATERAL INVESTMENT TREATIES

FDI RESTRICTIONS UNDER 1993 LAW

- ACTIVITIES RESERVED TO THE MEX GOVERNMENT
- ACTIVITIES RESERVED TO MEXICANS OR MEX CO. WITH FOREIGNER-EXCLUSIONARY CLAUSES
- ACTIVITIES IN WHICH FDI CAN NOT EXCEED 10%, 25% OR 49%
- ACTIVITIES IN WHICH FDI COULD EXCEED 49% AFTER APPROVAL
- APPROVAL REQUIRED FOR ACQUIRING GOING CONCERNS HAVING AN AGGREGGATE ASSET VALUE MEX \$712,395,000 (US\$71.2 MILLION) AND US\$150 MILLION ON JUNE 1, 2003 FOR NAFTA INVESTORS.

FDI CASES BROUGHT AGAINST MEXICO BY US
INVESTORS UNDER NAFTA CH. 11

- AZINIAN ET AL v. MEXICO
- MARVIN ROY FELDMAN KARPA (CEMSA) v. MEXICO
- METALCLAD CORP. v. MEXICO
- WASTE MANAGEMENT, INC. v. MEXICO (2 CASES)
- FIREMAN'S FUND v. MEXICO
- TECNICAS MEDIOAMBIENTALES TECMED, S.A. v. MEXICO
- GAMI INVESTMENT INC. v. MEXICO

AZINIAN ET AL V. UNITED
MEXICAN STATES

- 3 US INVESTORS OF A MEX. CO. NAMED DESONA CLAIMED AGAINST MEXICO THE TERMINATION OF A CONCESSION CONTRACT OF A WASTE COLLECTION AND DISPOSAL SITE IN NAUCALPAN (STATE OF MEXICO)
- ARBITRAL TRIBUNAL FOUND THAT AZINIAN WAS ON BREACH OF CONTRACT AND THAT IT WAS LEGALLY TERMINATED BY NAUCALPAN
- US\$14 MILLION IN DAMAGES WERE DENIED.

MARVIN ROY FELDMAN KARPA (CEMSA) V. MEXICO

- FELDMAN, A US CITIZEN ON BEHALF OF A MEX. CO. NAMED CEMSA (A CIGARETTE EXPORTER) CLAIMED THAT THE REFUSAL TO HONOR A NATIONAL SUPREME COURT ORDER REFUNDING TAXES WAS AGAINST ART. 1110 (EXPROPRIATION) AND CLAIMED US \$40 MILLION IN DAMAGES.
- PRIOR TO CEMSA'S CLAIM BEING SUBMITTED TO ARBITRATION, THE US AND MEXICO AGREED THAT CLAIMS BASED ON CERTAIN MEX. TAX LEGISLATION COULD NOT BE PURSUED UNDER NAFTA CH. 11
- THE ARBITRATION TRIBUNAL HAS NOT DECIDED ON THE MERITS.

METALCLAD CORP. V. MEXICO

- A US CORP. PURCHASED MEX CO. OWNING A HAZARDOUS WASTE FACILITY IN GUADALCAZAR (STATE OF SAN LUIS POTOSI).
- MUNICIPAL LICENSE TO BUILD A WASTE CLASS FACILITY WAS DENIED AND A DECREE FOR A NATURAL PROTECTED AREA WAS ISSUED.
- CLAIM BROUGHT FOR US\$43 MILLION PLUS "DAMAGES FOR THE VALUE OF THE ENTERPRISE TAKEN", BUT US\$16.7 MILLION WERE AWARDED TO METALCLAD.
- MEXICO CHALLENGED AWARD ON THE GROUNDS THAT THE METALCLAD TRIBUNAL EXCEEDED ITS JURISDICTION ON INTERPRETING MEXICO'S DUTY OF TRANSPARENCY BY APPLYING NON-CH. 11 PROVISIONS.
- THE BRITISH COLUMBIA SUPREME COURT SET ASIDE THE AWARD IN PART (TAKING MEXICO'S ARGUMENT) AND ORDERED MEXICO TO PAY,

WASTE MANAGEMENT, INC. V. MEXICO

- A US WASTE DISPOSAL CO. OWNER OF A MEX. CO. NAMED ACAVERDE WHICH FAILED TO COMPLY WITH ITS CONTRACTUAL OBLIGATIONS WITH THE MUNICIPALITY OF ACAPULCO BROUGHT A CLAIM (US\$60 MILLION IN DAMAGES).
- THE ARBITRAL TRIBUNAL DISMISSED THE CASE IN JUNE 2000 FOR LACK OF JURISDICTION SINCE CLAIMANT FAILED TO SUBMIT A VALID WAIVER AND THAT THE CASE WAS IMPROPERLY BEFORE THE TRIBUNAL
- WASTE MANAGEMENT RESUBMITTED THE CASE AND THE TRIBUNAL IN FEB. 2002 REJECTED MEXICO'S OBJECTION TO THE TRIBUNAL'S JURISDICTION OVER WASTE MANAGEMENT'S RESUBMITTING THE CASE.

FIREMAN'S FUND V. MEXICO

- A US INSURANCE CO. WHICH PURCHASED DEBENTURES DENOMINATED IN US DOLLARS, CLAIMING A LOSS OF US\$50 BROUGHT A CASE.
- MEXICO ALLEGEDLY VIOLATED ARTS. 1102 (NATIONAL TREATMENT), 1105 (MINIMUM STANDARD OF TREATMENT), 1110 (EXPROPRIATION & COMPENSATION) AND 1405 (FINANCIAL SERVICES/NATIONAL TREATMENT) BY FACILITATING THE PURCHASE OF DEBENTURES DENOMINATED IN MEX. PESOS AND OWNED BY MEXICAN INVESTORS, BUT NOT FACILITATING THE PURCHASE OF DEBENTURES DENOMINATED IN US DOLLARS.
- BOTH SERIES WERE ISSUED AT THE SAME TIME AND BY THE SAME FINANCIAL CORP.
- PENDING RESOLUTION.

TECNICAS MEDIOAMBIENTALES TECMED, S.A. V. MEXICO

- A WASTE DISPOSAL ENTERPRISE REQUESTED IN AUG. 2000 THE CONSTITUTION OF A TRIBUNAL.
- TRIBUNAL WAS SET UP IN MARCH 2001 AND THE FIRST MEXICAN-ELECTED ARBITRATOR RESIGNED.
- A MEXICAN REPLACEMENT WAS ELECTED AND THE TRIBUNAL HELD A HEARING IN MAY 2002 ON THE MARSHALLING OF EVIDENCE.
- NO FURTHER INFORMATION IS AVAILABLE YET.

GAMI INVESTMENT INC. V. MEXICO

- GAMI HOLDS 14% IN GRUPO AZUCARERO MEXICO WHICH IN TURN OWNS SEVERAL MEX SUBSIDIARIES ENGAGED IN THE SUGAR INDUSTRY.
- IN SEPTEMBER 2001 THE MEXICAN GOV. EXPROPRIATED SUGAR MILLS OWNED BY GRUPO AZUCARERO MEXICO
- GAMI CLAIMS DENIAL OF NATIONAL TREATMENT AND IN ACCORDANCE WITH INTERNATIONAL LAW WHEN SUGAR MILLS WERE EXPROPRIATED WITHOUT COMPESATING AS REQUIRED BY NAFTA
- GAMI CLAIMS OVER \$55 MILLION DAMAGES
- CONSTITUTION OF TRIBUNAL IS PENDING

LESSONS FOR NAFTA PARTIES UNDER NAFTA CH. 11

- ALTHOUGH MEXICO IS NOT A PARTY TO THE ICSID CONVENTION, IT HAS ACCEPTED INTERNATIONAL ARBITRATION AS AN ALTERNATIVE MEANS TO RESOLVE FOREIGN INVESTMENT DISPUTES.
- MEXICO IS IN FULL COMPLIANCE WITH THE DISPUTE-SETTLEMENT MECHANISM PROVIDED IN NAFTA CH. 11 BECAUSE IT HAS WILLINGLY PARTICIPATED IN ARBITRATIONS AND HONORED AWARDS.
- MEXICO HAS SIGNED SEVERAL BITs WITH OTHER COUNTRIES.
- CLEARLY THE ARBITRAL TRIBUNAL IN THE METALCLAD CASE WENT BEYOND CH. 11, AS RULED BY THE BRITISH COLUMBIA SUPREME COURT.
- NAFTA COMMISSION RULED THAT ARBITRAL TRIBUNALS CAN NOT RESORT TO ANY OTHER NAFTA PROVISION, EXCEPT TO THOSE IN CH. 11.

OPERATING TO A BRANCH OR A MEXICAN SUBSIDIARY

- A BRANCH KEEPS PARENT CO. LIABILITY ALIVE.
- SUBSIDIARIES BASICALLY ADOPT (i) LIMITED LIABILITY PARTNERSHIP (SOCIEDAD DE RESPONSABILIDAD LIMITADA) OR (ii) LIMITED LIABILITY STOCK CORPORATION (SOCIEDAD ANONIMA).
- BOTH CORPORATE FORMS COULD ADOPT A CAPITAL VARIATION REGIME.
- BRANCHES REQUIRE FOREIGN INVESTMENT APPROVAL BESIDES NAME APPROVAL (BY FOREIGN OFFICE)
- CORPORATE ENTITIES REQUIRE NAME APPROVAL ONLY.
- TAXWISE BRANCHES OR CORPORATE ENTITIES ARE TREATED THE SAME.

INCORPORATION PROCEDURE

- SHAREHOLDER APPROVE CHARTER AND BY-LAWS.
- POWERS OF ATTORNEY TO REPRESENT SHAREHOLDERS GRANTED BEFORE FOREIGN NOTARY AND APOSTILLED BY SECRETARY OF THE STATE ARE REQUIRED.
- CORPORATE NAME PERMIT.
- PROTOCOLIZATION OF ALL 3 DOCUMENTS BY MEXICAN NOTARY PUBLIC.
- REGISTRATION OF CHARTER AND BY-LAWS WITH REGISTRY OF COMMERCE.
- REGISTRATION WITH MEXICAN IRS.
- OBTAINING IMPORT-EXPORT REGISTRATION

JOINT VENTURES

- CERTAIN CORPORATE RESTRICTIONS ARE ADVISABLE WHEN PARTNERING WITH THIRD PARTIES (MEXICAN OR FOREIGN).
- FOR INSTANCE, RESTRICTING THE MAJORITY-VOTE RULE THROUGH NEGATIVE CONTROLS AND/OR VETOES.
- KEY J/V PROVISIONS SHOULD BE INCORPORATED INTO THE CHARTER AND BY-LAWS TO THE EXTENT POSSIBLE.
- FORMAL SHAREHOLDERS AND BOARD MEETINGS ARE NECESSARY.
- CLEAR J/V EXIT RULES SHOULD BE WRITTEN DOWN AS WELL AS BUYING OUT PROCEDURES.

SALES AGENTS AND DISTRIBUTORS

I. FOREIGN SALES AGENTS.

- IMMIGRATION RESTRICTIONS.
- BUSINESS VISA DOES NOT WORK.
- CLOSING DEALS IN MEXICO LAND WILL TRIGGER "PERMANENT ESTABLISHMENT".

II. USING MEXICAN SALES AGENTS.

- MAKE SURE HE/SHE DOES NOT REPRESENTS OTHER COMPETING BUSINESS.
- WHEN HIRING NATURAL PERSONS FAMILIARIZE YOURSELF WITH LABOR LAW & MANDATORY BENEFITS.
- PREFER COMPANIES INSTEAD OF NATURAL PERSONS.
- EVALUATE GRANTING EXCLUSIVITY AND OR THE WHOLE MEXICAN TERRITORY

BASIC CONTRACTS RULES

- MEXICO IS A CIVIL LAW COUNTRY & COURT PRECEDENTS ARE NOT AUTOMATICALLY APPLIED.
- THE LAW COVERS LEGAL LOOPHOLES.
- ISSUES TO TAKE CARE OF: (i) TERMS AND PLACE OF DELIVERY, (ii) PLACE AND CURRENCY OF PAYMENT, (iii) FORUM AND CHOICE OF LAW, (iv) CONFLICTS OF LAWS, (v) RULES FOR DETERMINING VIOLATIONS AND ANTICIPATED TERMINATION, (vi) DAMAGES AND LOOSES, (vii) TERRITORY, (viii) EXPIRATION OF THE AGREEMENT, (ix) STRICT AND PRODUCT LIABILITY, (x) FORCE MAJEURE AND ACTS OF GOOD, (xi) NOTICES, (xii) CONTRACT PERFECTION, (xiii) RISKS OF LOSS, (xiv) TITLE TRANSFER, (xv) SECURITY DEVICES, (xvi) TITLE RETENTION SALES, ETC.

SECURITY DEVICES IN MEXICO

- LETTER OF CREDIT.
- MORTGAGES ON REAL ESTATE AND CORPORATIONS.
- PROMISSORY NOTES ARE PREFERRED OVER BILLS OF EXCHANGE.
- PLEDGE REQUIRING POSSESSION.
- PLEDGE WITHOUT POSSESSION.
- A THIRD PARTY GUARANTOR OR "AVAL".
- TITLE RETENTION SALES.
- BONDS ISSUED BY MEXICAN BONDING COMPANY.
- ALWAYS AVOID SELLING ON OPEN ACCOUNTS.
- PROBLEMS, COSTS AND SACRAMENTAL FORMALITIES FOR PERFECTING SECURITY DEVICES.
- BANKRUPTCY AND PREFERRED CREDITORS.

LABOR MATTERS

- STRICT REGULATION OF EMPLOYER/EMPLOYEE RELATIONSHIPS.
- 10% MANDATORY PROFIT SHARING AND CORPORATE SCHEMES TO MANAGE IT.
- 10% CEILING FOR FOREIGN EMPLOYEES.
- 25% VACATION PREMIUM.
- 15-DAY SALARY CHRISTMAS BONUS.
- HIRING IS ALWAYS PERMANENT.
- DISMISSAL SHALL BE BY REAL CAUSE.
- LEGAL SEVERANCE FOR UNJUSTIFIED DISMISSAL: (i) 3 MONTH-FULL-SALARY; (ii) 20 FULL-DAY-SALARY PER YEAR OF WORK (UNLESS WORKER IS REINSTALLED), (iii) 12 DAYS CAPPED-SALARY PER YEAR AS SENIORITY PREMIUM (2X DAILY MINIMUM WAGE= US\$8.5 PER DAY APPROX.), (iv) BACK OR LOST WAGES (SALARIOS CAIDOS) FROM DISMISSAL UNTIL PAYMENT, AND (v) OTHER UNPAID MONIES.

IMMIGRATION ISSUES

- TOURIST AND BUSINESS VISA ARE GRANTED AT PORT OF ENTRY (FMT, FMN).
- WORKING VISAS ARE GRANTED BY IMM. INST.
- CONSULATES CAN ONLY GRANT NON-IMMIGRANT VISITOR VISAS (FM3).
- RESTRICTED NATIONALITIES REQUIRE PRIOR APPROVAL FROM CENTRAL IMM. INST.
- FMN BUSINESS VISA APPLICANTS SHALL PROVIDE PROOF OF RESIDENCY AT PORT OF ENTRY.

MONOPOLY PRACTICES

- ***ABSOLUTE OR HORIZONTAL***
AGREEMENTS BETWEEN COMPETITORS WITH THE PURPOSE OF: (i) FIXING PRICES, (ii) LIMITING PRODUCTION OR DISTRIBUTION; (iii) DIVIDING UP MARKETS. ARE PER SE UNLAWFUL.
- ***RELATIVE OR VERTICAL***
AGREEMENTS WHOSE PURPOSE IS TO UNDULY IMPEDE MARKET ACCESS TO THIRD PARTIES OR GIVE EXCLUSIVE ADVANTAGES. ARE SUBJECT TO THE RULE OF REASON.

RELATIVE MONOPOLY PRACTICES

- EXCLUSIVE DISTRIBUTION AGREEMENTS.
- CUSTOMERS' ALLOCATION.
- NON-COMPETITION AGREEMENTS.
- PRICE RESALE MAINTENANCE.
- TYING ARRANGEMENTS.
- CONDITIONAL SALES.
- REFUSAL TO DEAL.
- BOYCOTT.
- PREDATORY PRICING.
- CROSS SUBSIDIES

PREMERGER NOTIFICATION

- TRANSACTION OR SERIES OF TRANSACTIONS EXCEEDING US\$48.4 MILLION (US\$1 TO MEX \$10).
- ACCUMULATION OF ASSETS OR SHARES OVER 35% OF AN ECONOMIC AGENT WHOSE ASSETS OR SALES EXCEED US\$48.4 MILLION.
- TRANSACTIONS INVOLVING: (a) AGENTS WHOSE COMBINED ASSETS OR YEARLY SALES EXCEED US\$193.6 MILLION AND (b) AN ACCUMULATION OF ASSETS OR CAPITAL EXCEEDING US\$19.3 MILLION.

NAFTA WORKS

for Foreign Direct Investment in Mexico and the US



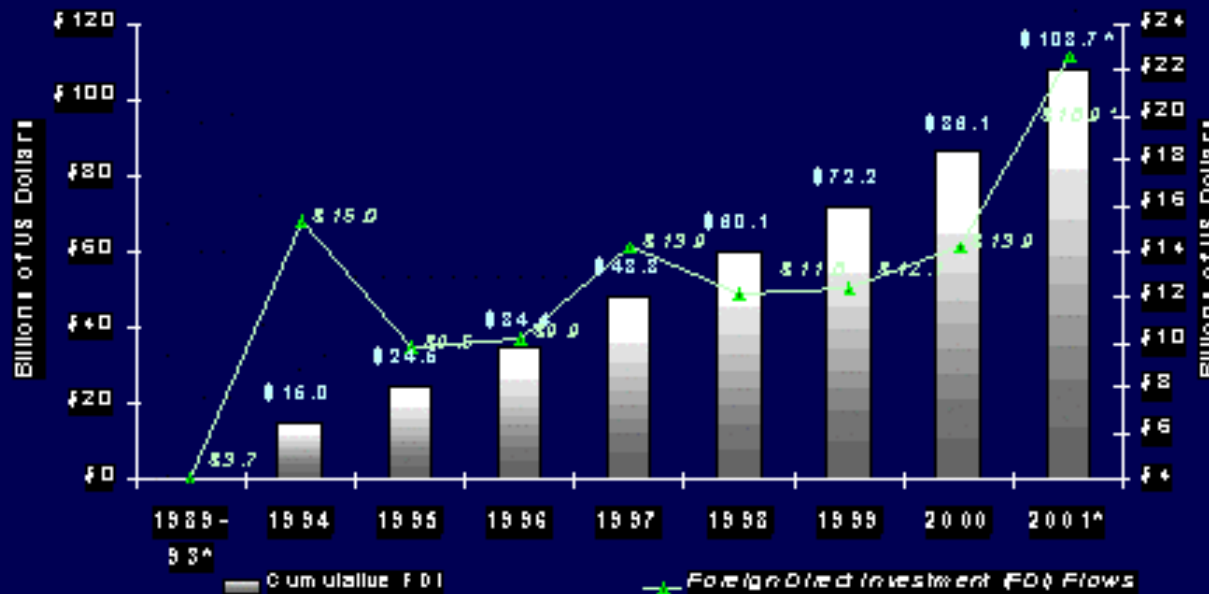
February 2002



NAFTA promotes investment in Mexico

- ➔ Growing foreign direct investment (FDI) is both a sign of partnerships among NAFTA members and a reflection of investors' confidence in Mexico
- ➔ 67% of Mexico's FDI originates in the U.S.

Mexico: Foreign Direct Investment Flows and Cumulative FDI, 1989-2001*



**1994 - 2000
annual average
FDI: US\$12.3
Billion (vs.
US\$3.7bn from
89-93)**

**Accumulated
FDI:
1994 - 2001*
108.7 Billions of
US Dollars**

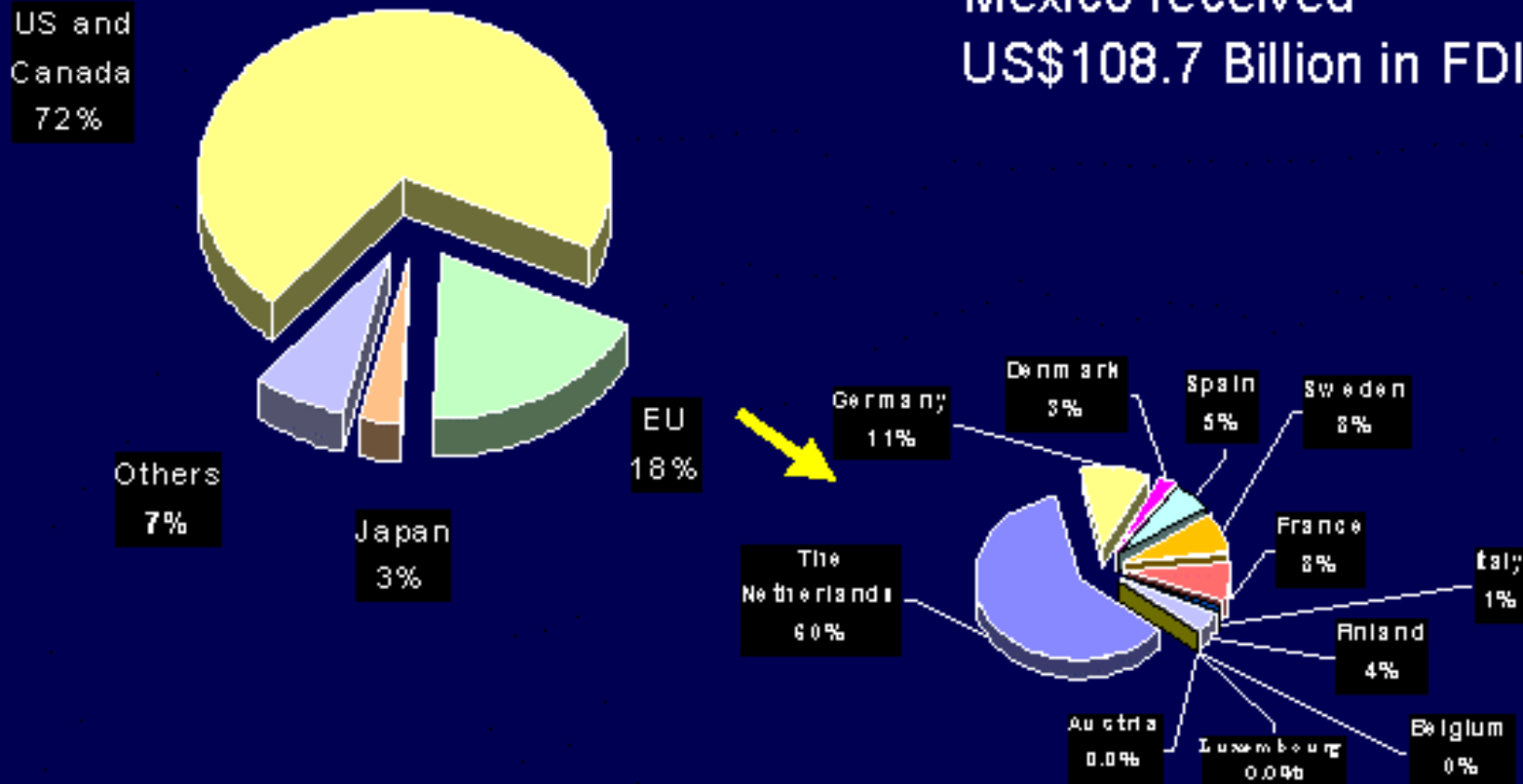
* Annual Average
* January-September



NAFTA Promotes Investment in Mexico

Mexico: FDI by Origin
1994 - 2001*

→ From 1994 to 2001*, Mexico received US\$108.7 Billion in FDI



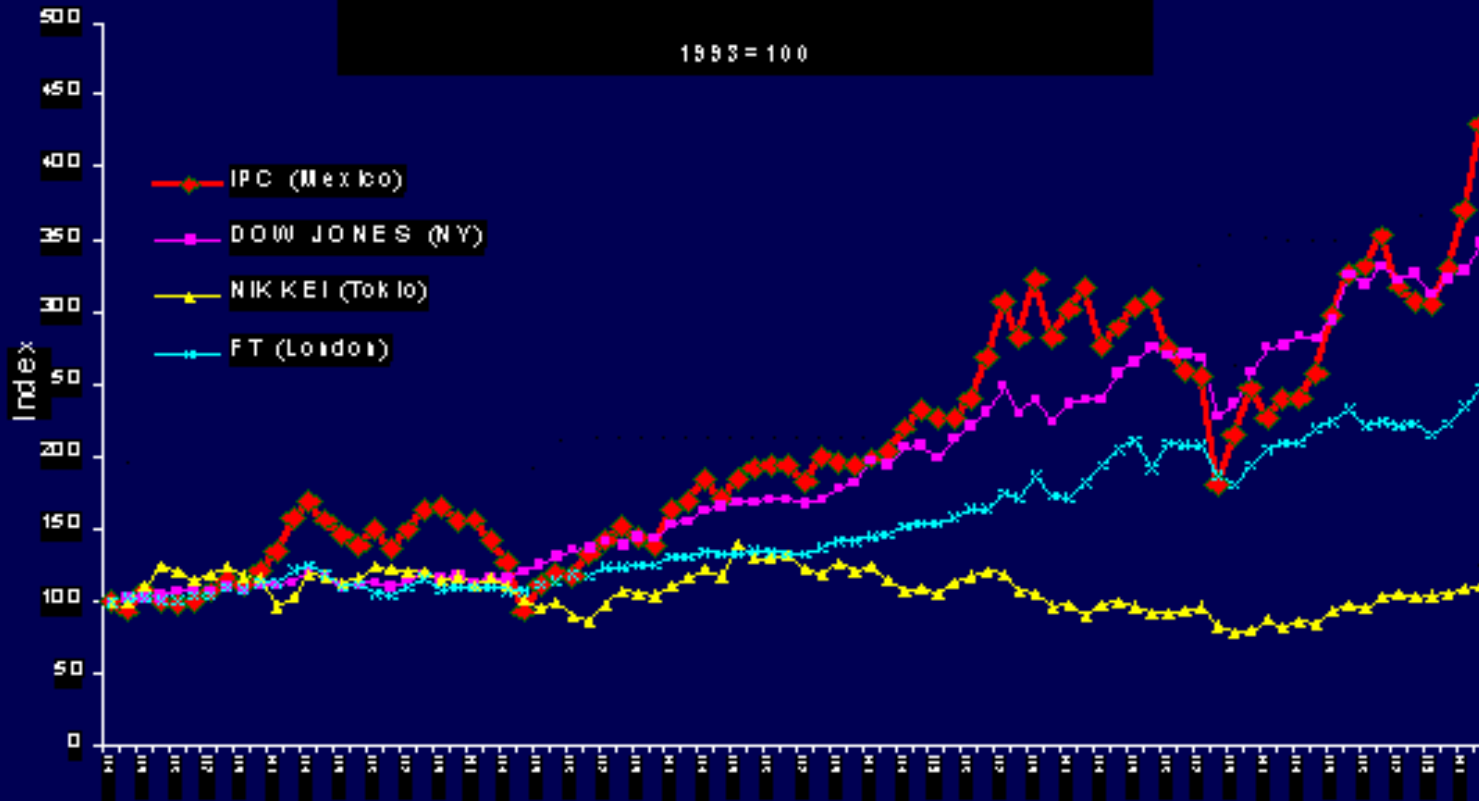
Source: Ministry of the Economy
FDI = Foreign Direct Investment
*January - September



Investing in Mexico yields high returns

World's Main Stock Exchange Market Indexes

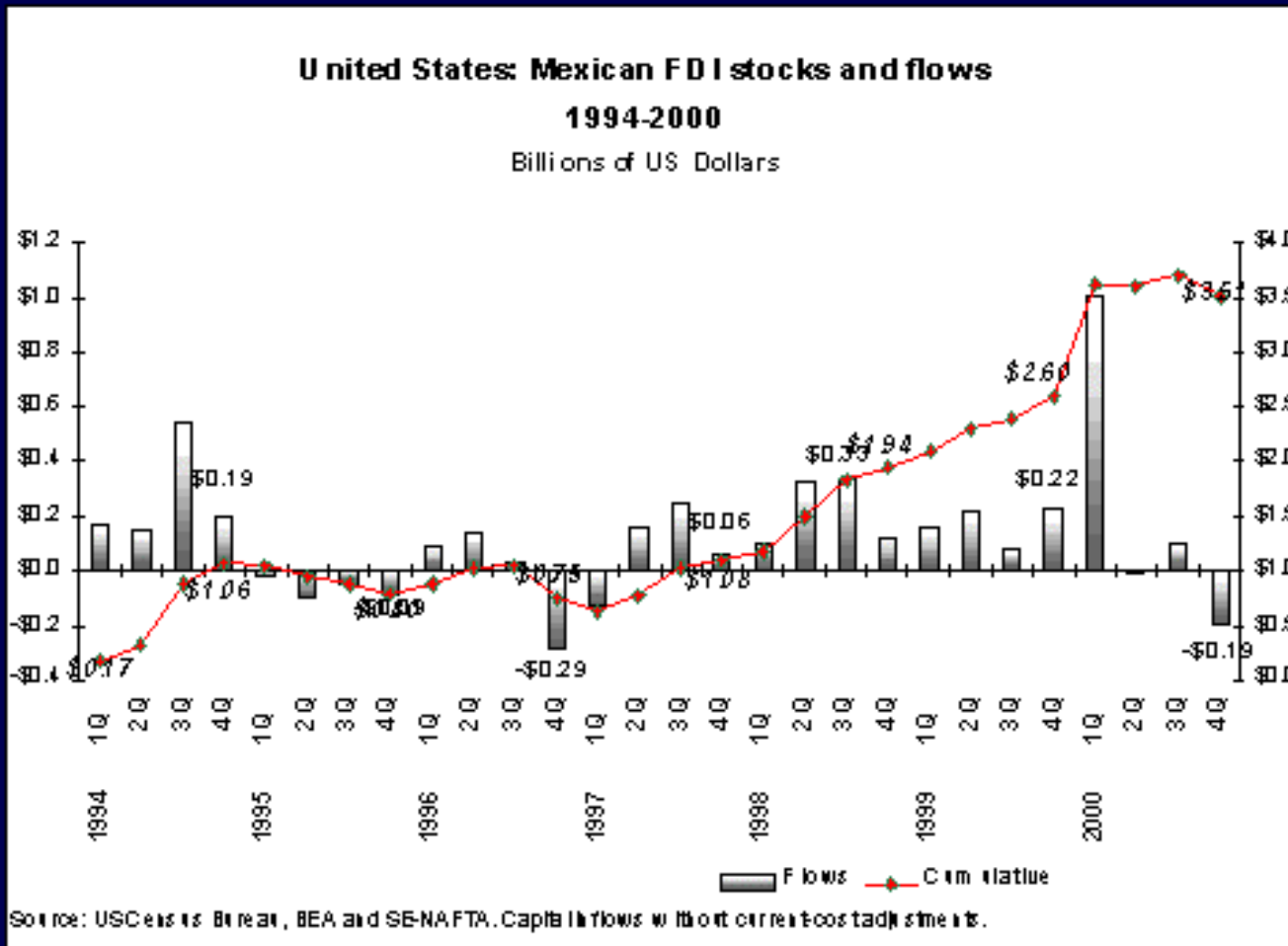
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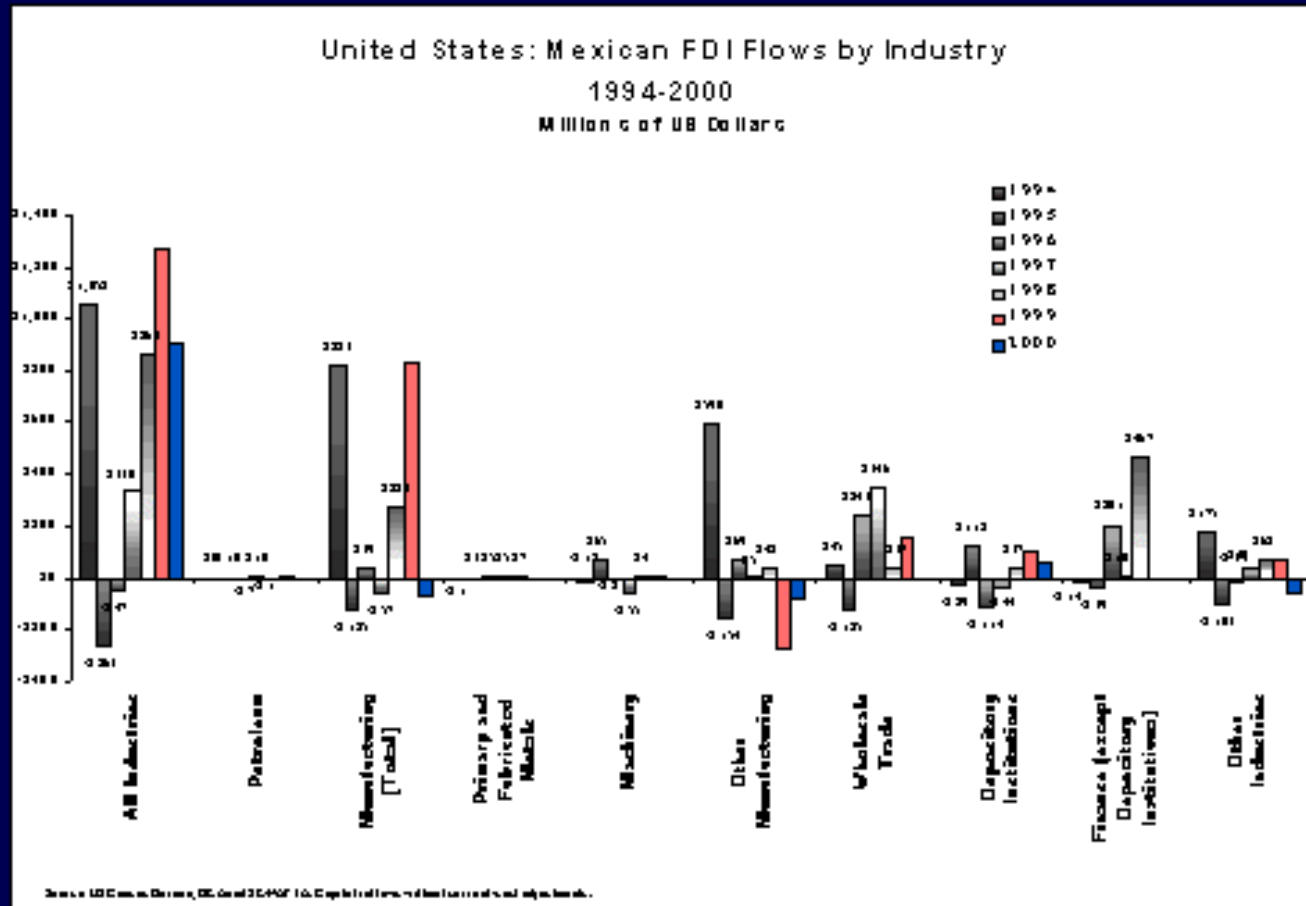
Source: BMV, MEXDER, INEGI and SE-NAFTA



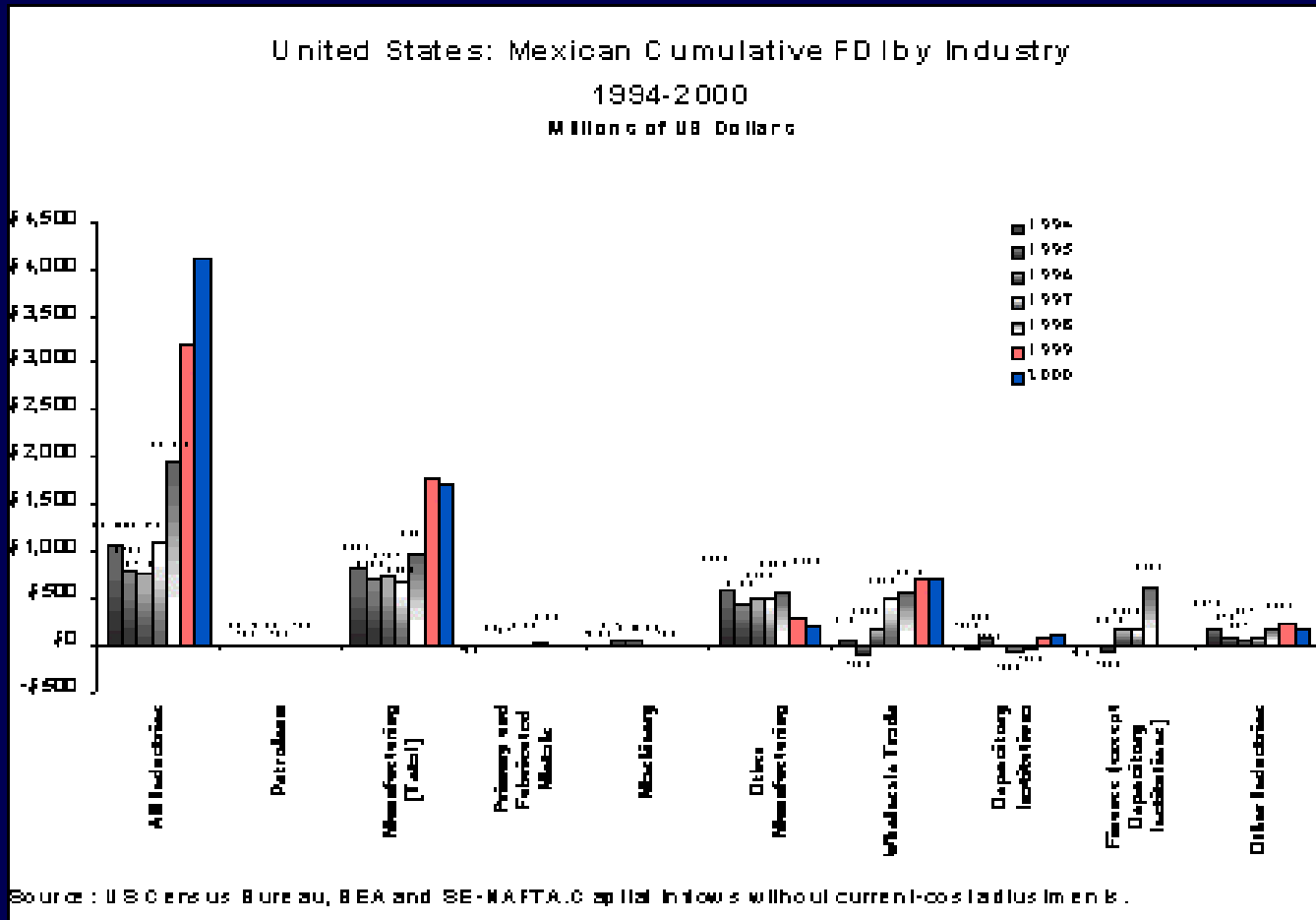
NAFTA Promotes Investment in the U.S.



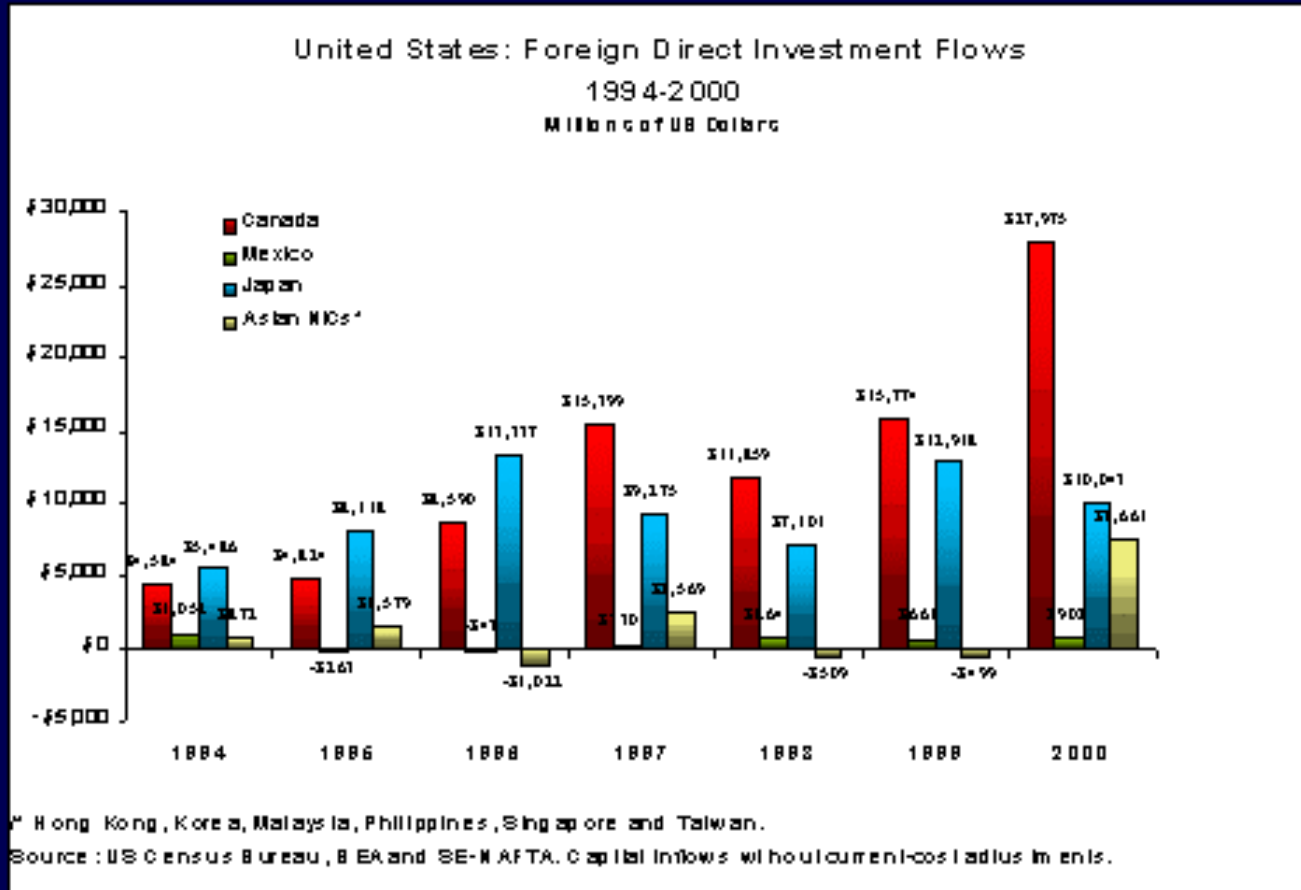
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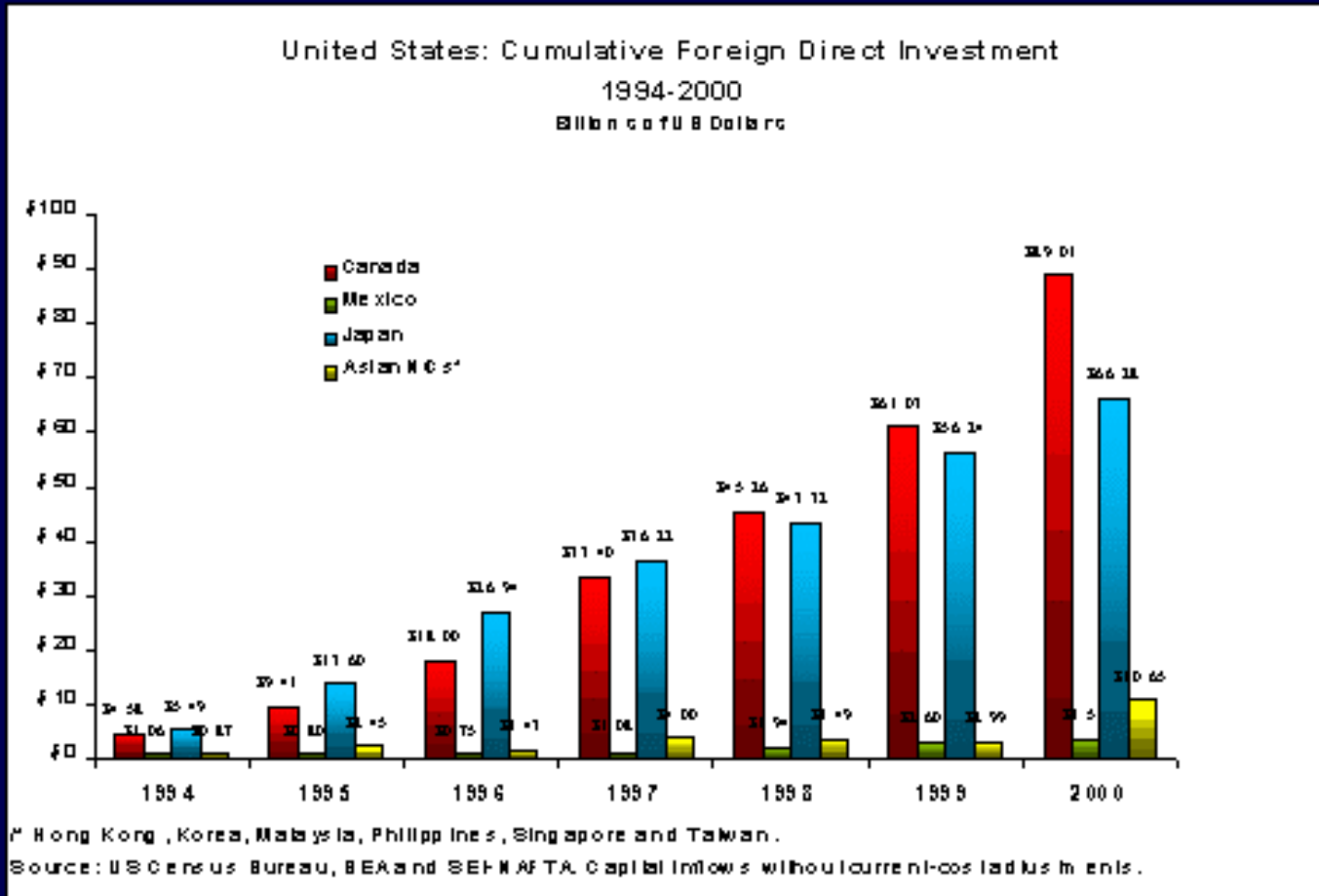
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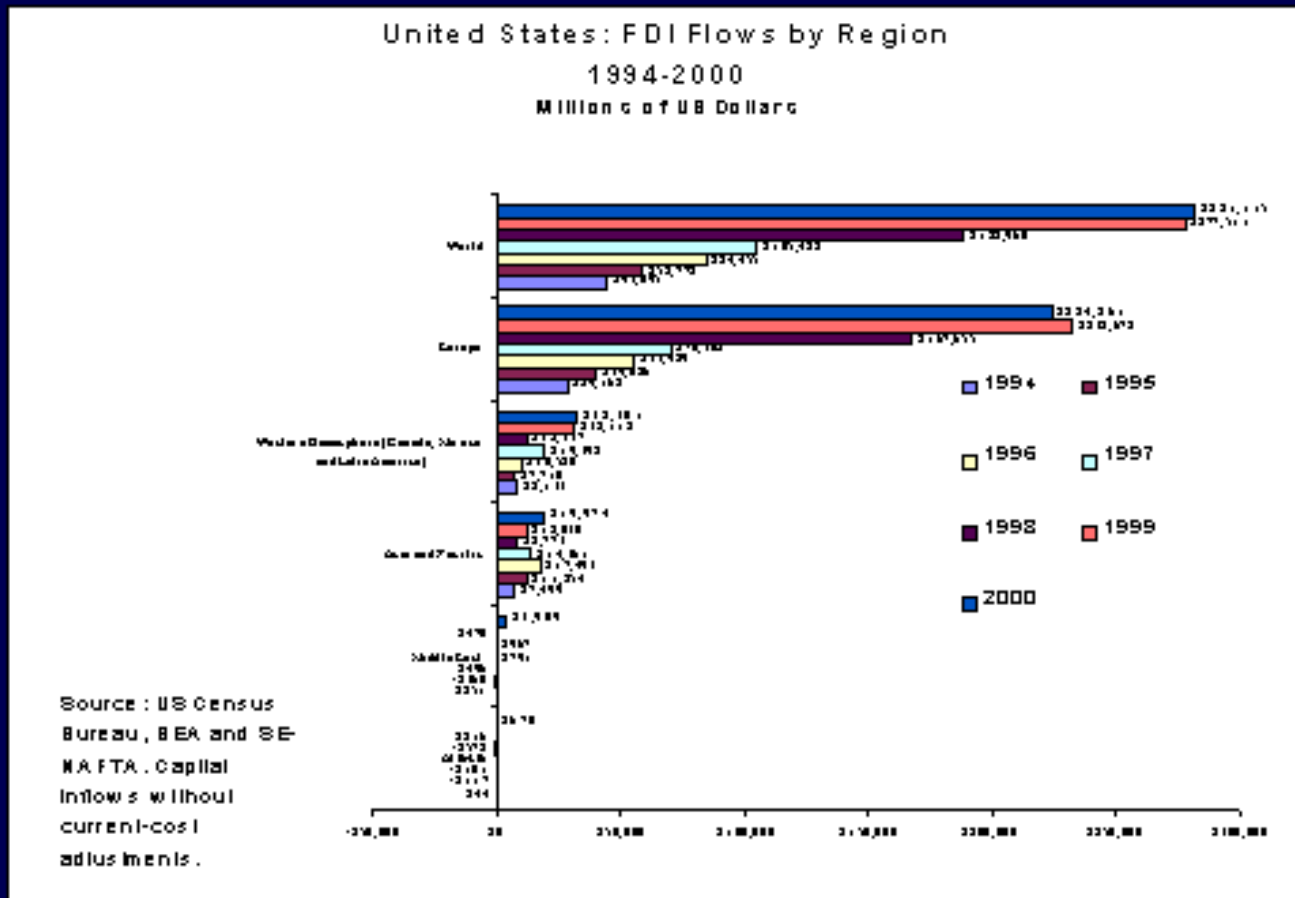
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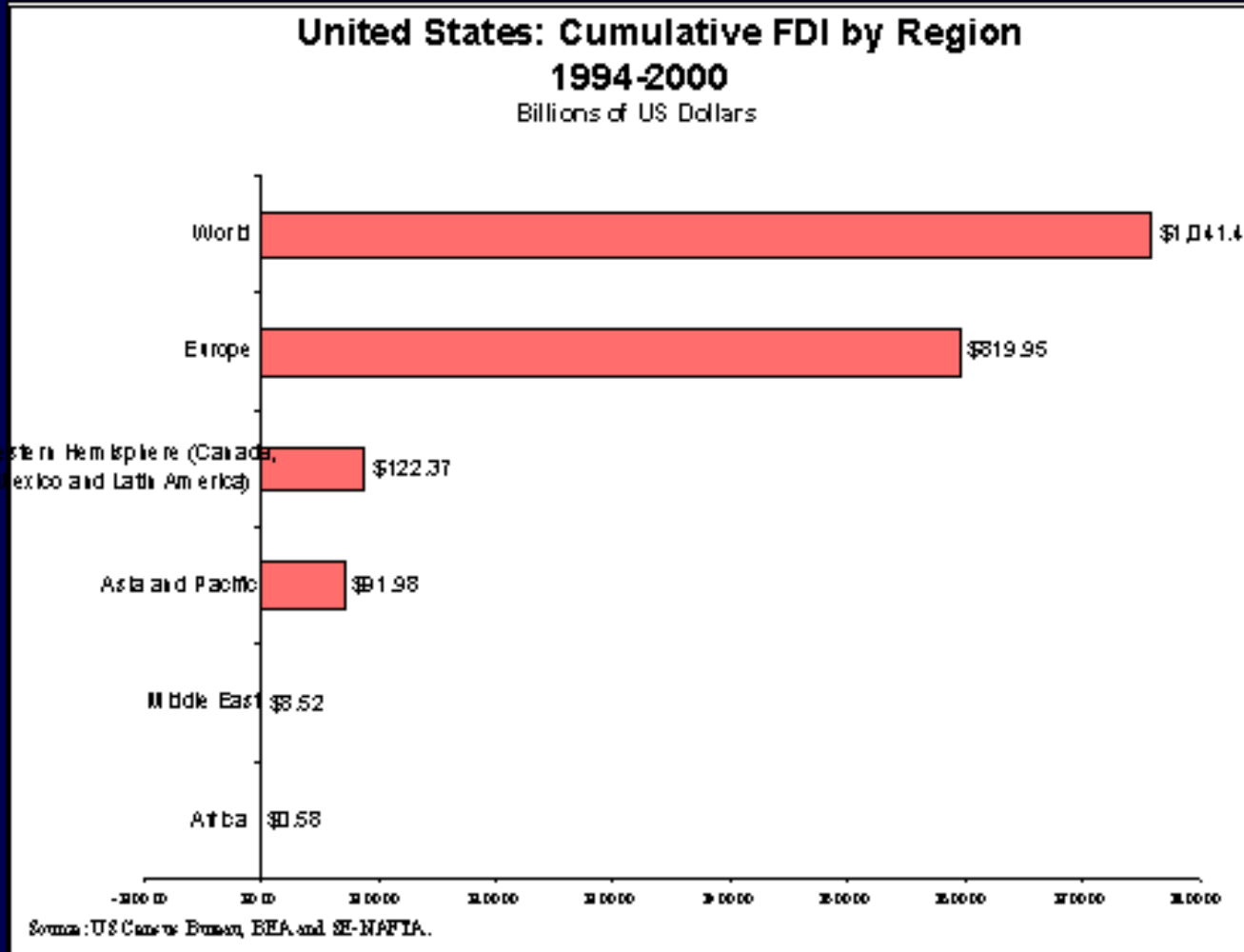
NAFTA Promotes Investment in the U.S.



NAFTA Promotes Investment in the U.S.



NAFTA Promotes Investment in the U.S.



NAFTA Promotes Investment in the U.S.

- From 1994 to 2000, cumulative Mexican Direct Investment in the US reached US\$4.2 billion
- During the same period, cumulative Mexican Direct Investment in the US almost reached that of the Asian NICs together*
- Only in 2000, Mexico invested almost US\$1 billion in the United States

* NICs are Hong Kong, Korea, Malaysia, Philippines, Singapore and Taiwan.

Source: US Census Bureau, BEA and SE-NAFTA.





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NAFTA TODAY AND TOMORROW



February 2002

Trade & NAFTA Office
Embassy of Mexico in the US



Introduction: What is NAFTA?

- ✓ **NAFTA is a long-term agreement. It's benefits will be felt for many years to come:**
 - Due to the asymmetries of the partners --Mexico's economy is c.a. 5% of the US-- the Agreement provides 10-year transition period, after which all tariffs will be phased out.


- ✓ **NAFTA is a comprehensive agreement:**
 - Based on principles of equality and full reciprocity, NAFTA went beyond the traditional areas of trade in goods to include liberalization of services and investment. It even has a framework to protect intellectual property rights.



Introduction: What is NAFTA?

- ✓ NAFTA contains a dispute settlement mechanism to solve conflicts among investors and the state, private companies, and between member states.
- ✓ NAFTA is not a customs union, therefore it does not involve the harmonization of tariffs for imports from third countries.





NAFTA's Evaluation: Eight Years of US- Mexico-Canada Trade



NAFTA trade volumes are increasingly large

- ✓ Trade among NAFTA partners grew 128% from US\$289 billion in 1993 to US\$659 billion in 2000. The annual average rate of this trade growth is 13%.
- ✓ Each day, NAFTA members exchange US\$1.8 billion in goods. Of them, US\$720 million are traded between Mexico and the US.

NAFTA Trilateral Trade
1993-2001*



Source: US D.O.C., Statistics Canada, Barwick and SE NAFTA, with import data.

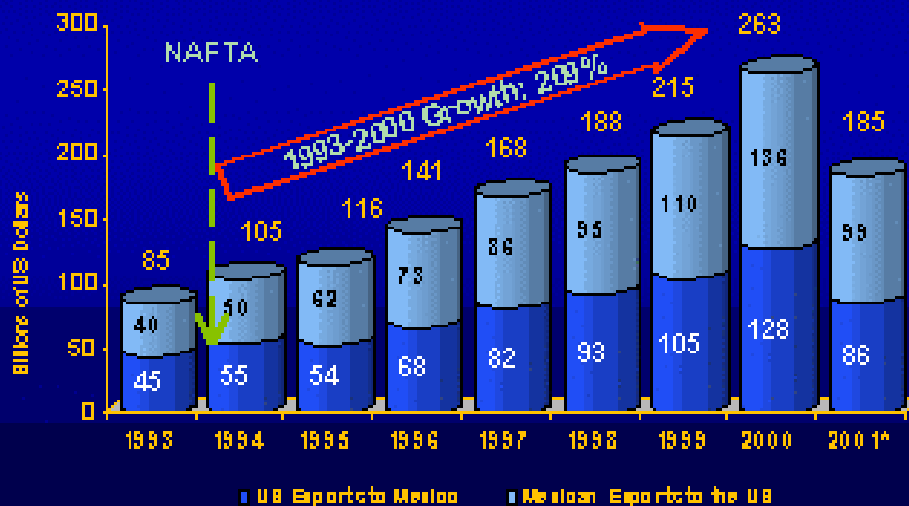
* Jan-Sep



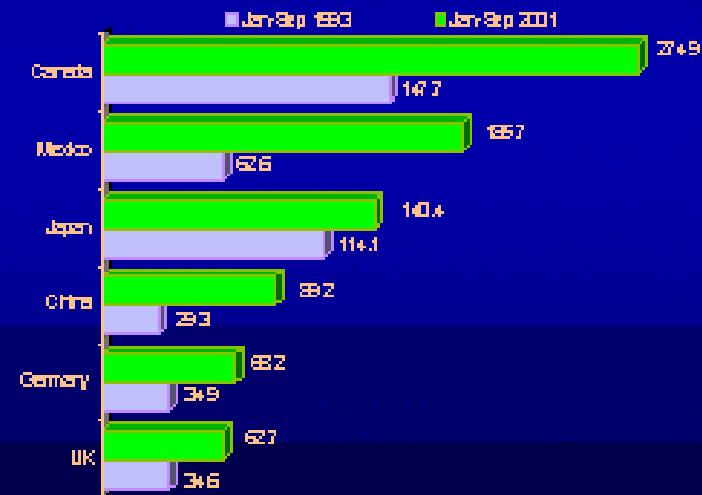
Mexico-US Trade has more than tripled

- ➔ Mexico has displaced Japan as the US' second largest trading partner accounting for 12.4% share of total US trade and only surpassed by Canada with 20.4% share
- ➔ US-Mexico trade has grown on average 17.5% per year

US-Mexico Trade, 1993-2001*



United States: Total Trade and Main Trading Partners
US billion dollars



Source: US DOC, Baitubo and SE-NAFTA, with import data.

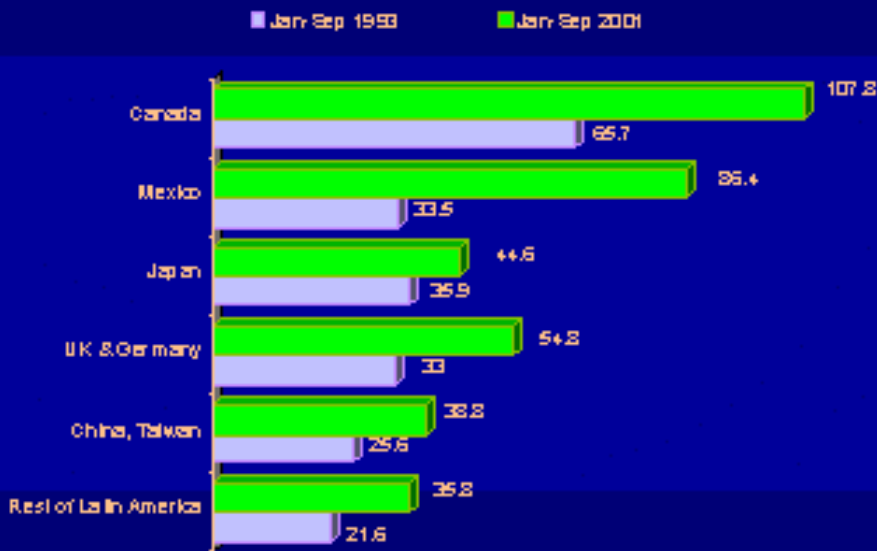
* Jan-Sep

Source: Import data for Canada and Mexico from USDOC, Baitubo, Statistics Canada and SE-NAFTA. For the rest is USDOC.

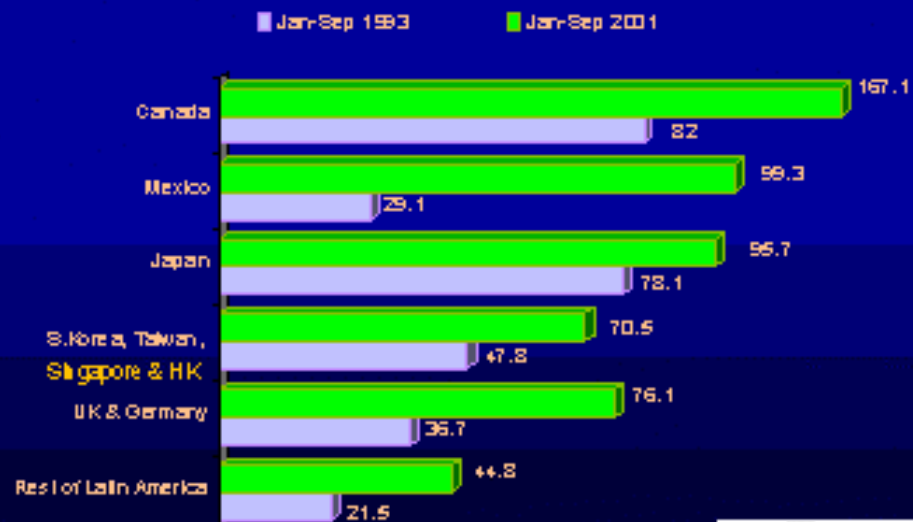


NAFTA made Mexico the US' second largest customer and third largest supplier

United States Main Export Markets
US billion dollars



United States Main Suppliers
US billion dollars

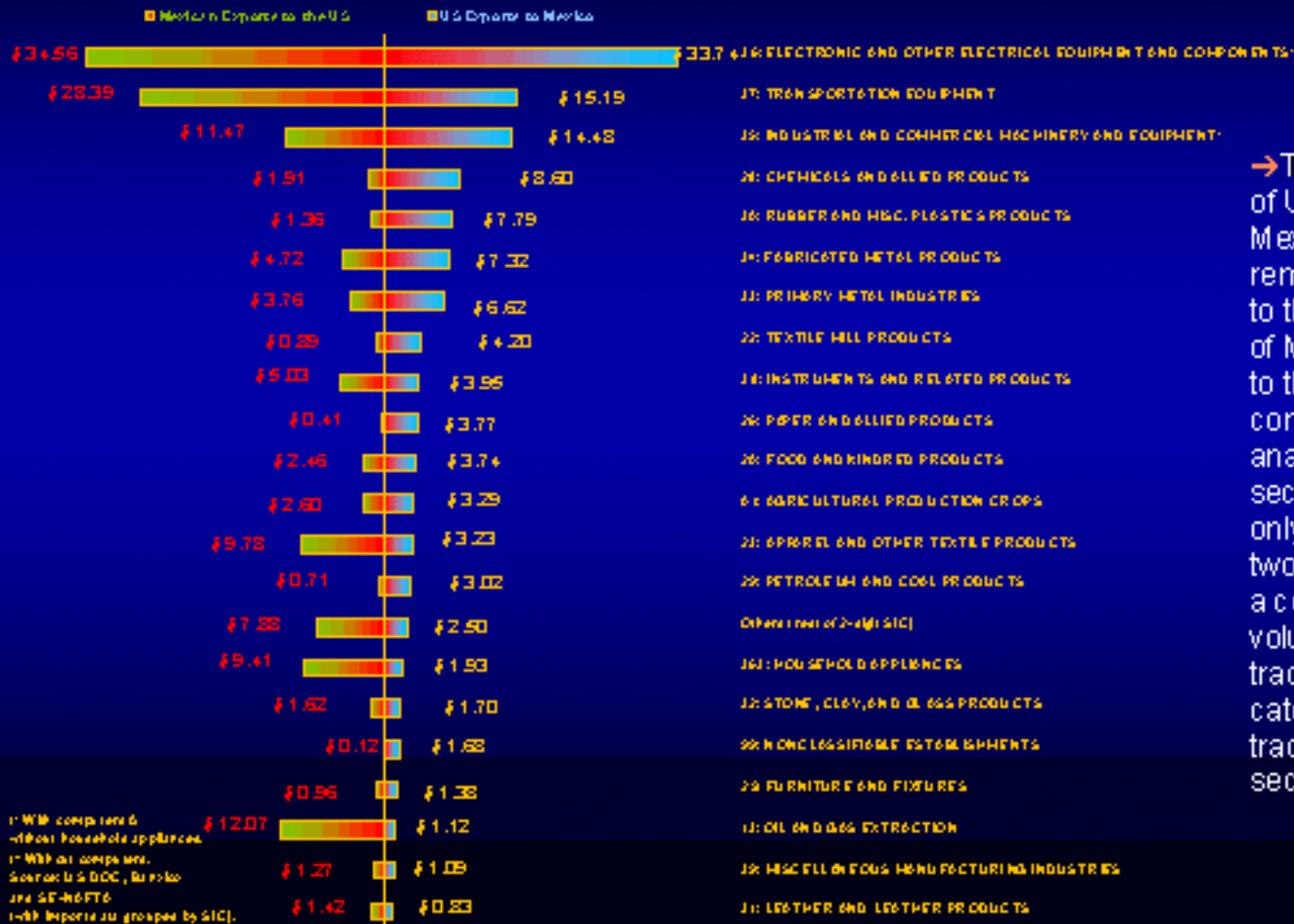


Source: Import data for Canada and Mexico from US DOC, Banxico, Statistics Canada and SEMARPA. For the rest US DOC.



Trade in NAFTA is not only large, but balanced

2000 U.S.-Mexico Trade by Sector



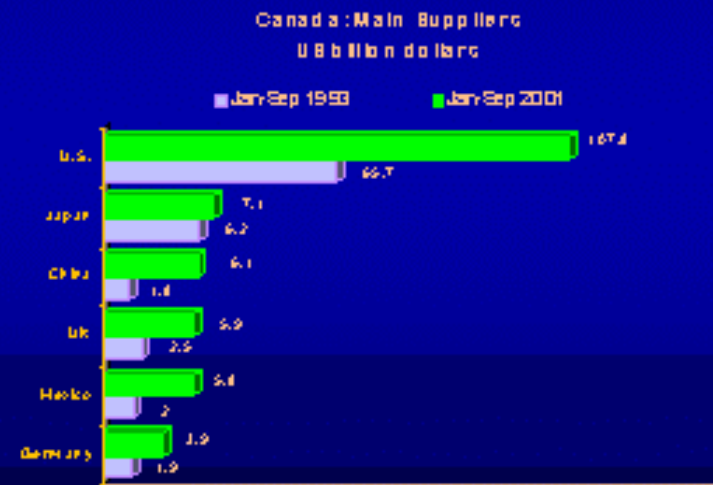
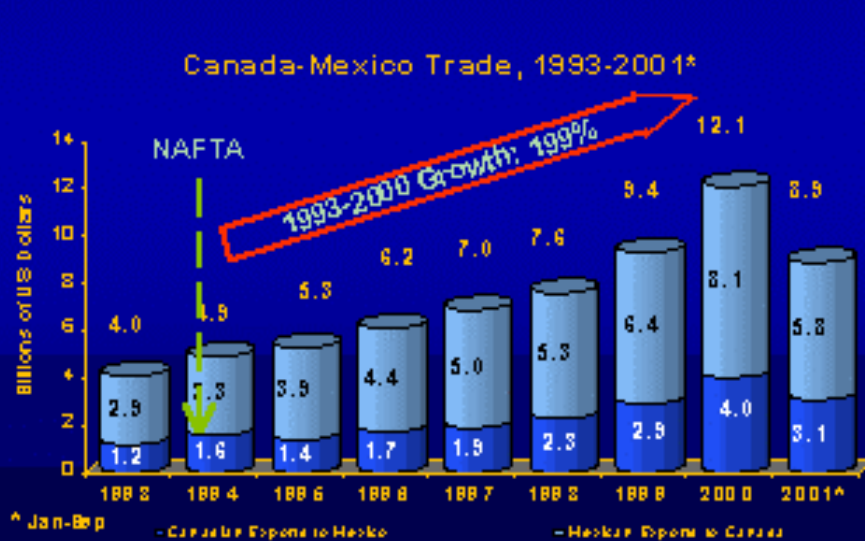
→ The composition of US exports to Mexico is remarkably similar to the composition of Mexican exports to the US. A comparative analysis of exports sector by sector not only shows that the two countries share a considerable volume of two-way trade in these categories, but that trade in these sectors is balanced



* With computers & other household appliances.
 * With all computers.
 Source: U.S. DOC, Bureau for Economic Analysis
 * 2000 SE-NAFTA
 * All imports are grouped by SIC.

Canada-Mexico trade has also flourished with NAFTA

- With NAFTA Mexico became Canada's fourth supplier
- Mexico is also Canada's main trading partner in Latin America, and Canada is the second-largest market for Mexican goods
- Canada-Mexico trade has grown on average 15% per year



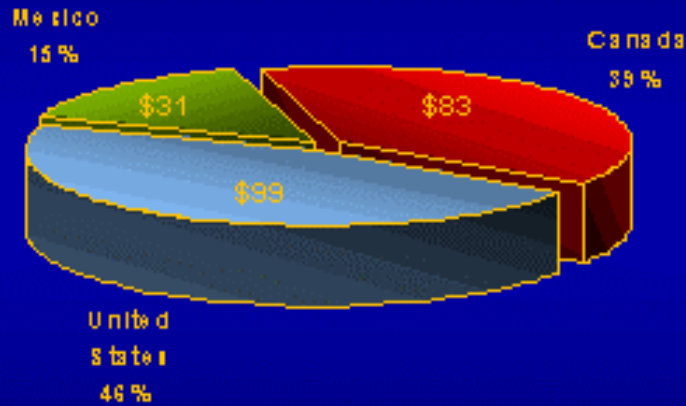
Source: Statistics Canada, Banxico and SE-NAFTA, with import data.

Source: Import data for the US and Mexico from US DOC, Banxico, Statistics Canada and SE-NAFTA. For the rest is Statistics Canada.



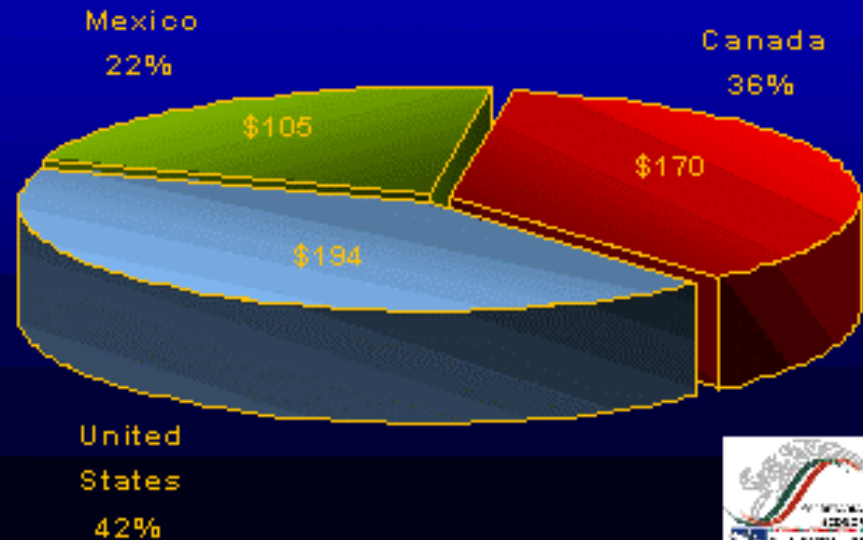
NAFTA promotes industrial integration

North-American intra-regional exports
Jan-Sep 1993 (US \$bn)



Approximately one third of North American trade is intra-regional

NAFTA intra-regional exports
Jan-Sep 2001 (US \$bn)

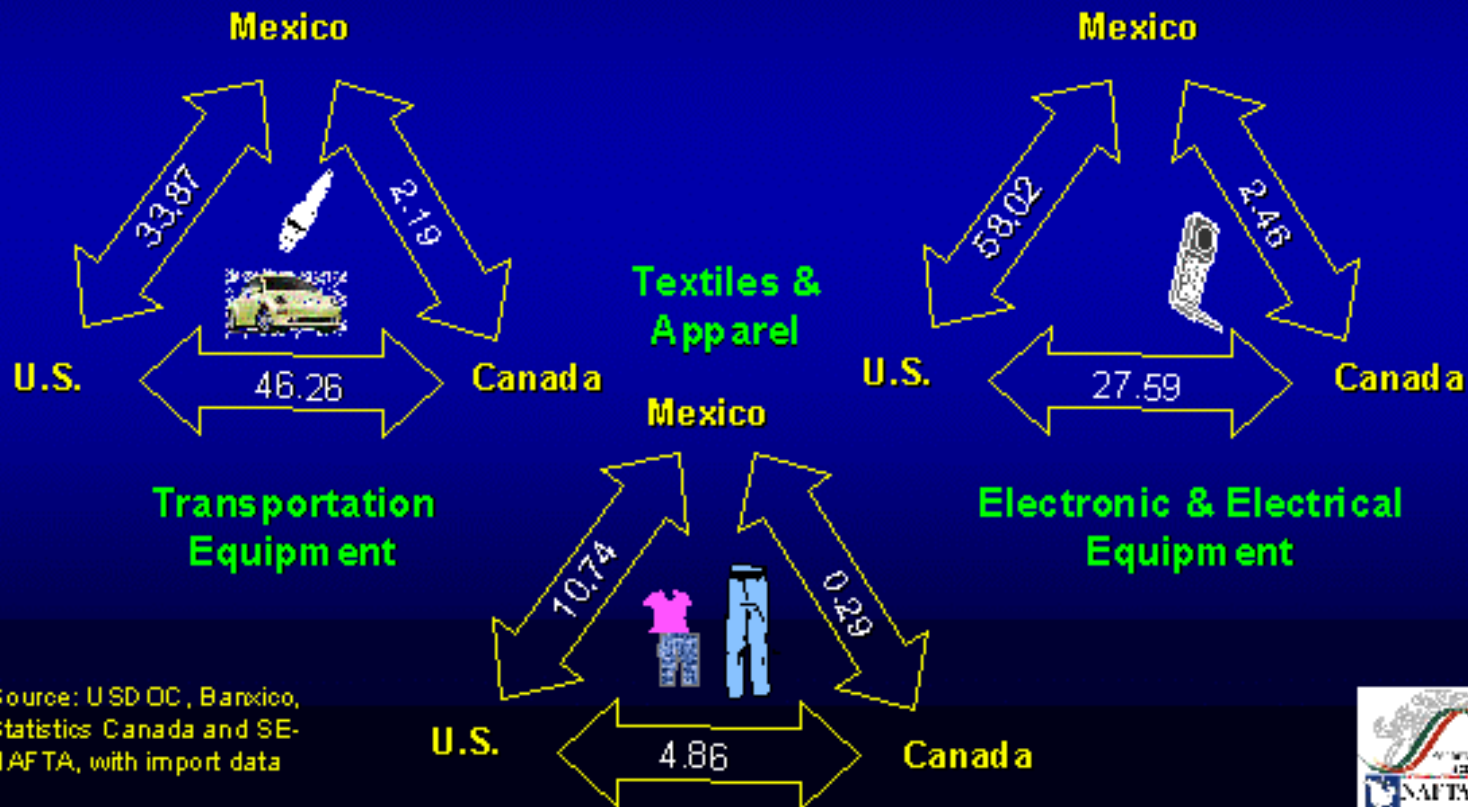


Source: US DOC, Statistics Canada, Banxico and SE-NAFTA, with import data.



NAFTA promotes strategic industrial alliances

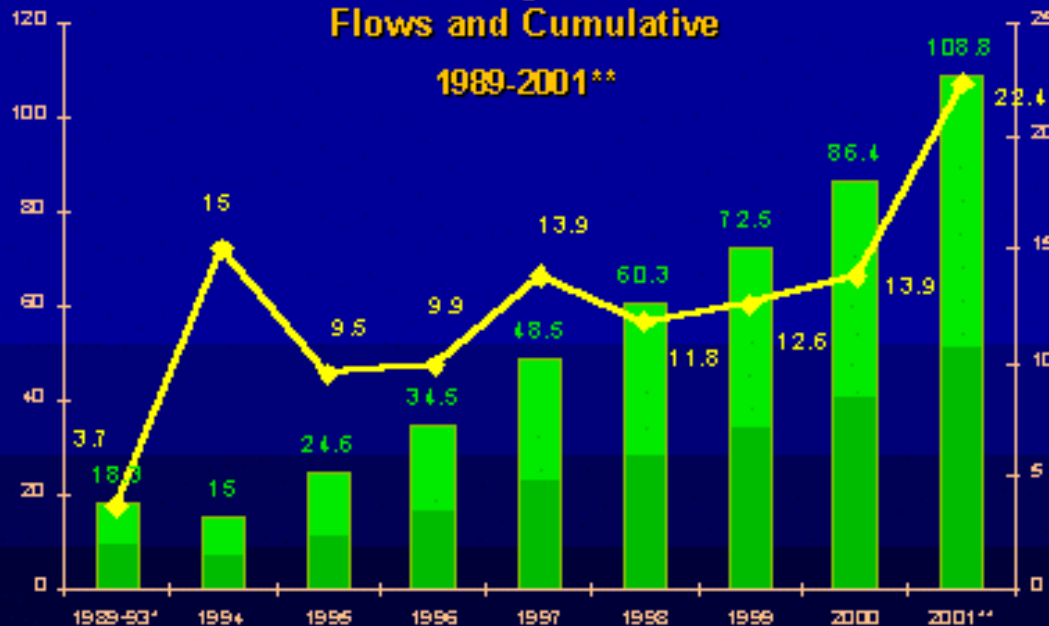
Bilateral Trade Between NAFTA Partners in Key Sectors Jan-Sep 2001, U.S. billion dollars



Besides trade, NAFTA liberalized investment

- ✓ Growing foreign direct investment (FDI) is both a sign of partnerships among NAFTA members and a reflection of investors' confidence in Mexico
- ✓ Since NAFTA was implemented, more than 71% of FDI in Mexico comes from Canada and the US since NAFTA

Mexico: Foreign Investment Flows and Cumulative
1989-2001**



From 1994 to 2000, NAFTA partners have invested US\$890 billion in one another's economies

Total FDI in NAFTA countries between 1994-2000 reached US\$1.28 trillion

Cumulative FDI

FDI Flows

* Annual Average

** Jan-Sep

Source: SE-NAFTA with data from DGIE



NAFTA promotes regional development

U.S. Exports to Mexico by State



States Exporting More than US\$1 Billion to Mexico

Rank	State	1995	2000
1.	Texas	\$22.30	\$51.32
2.	California	\$2.02	\$10.03
3.	Arizona	\$1.41	\$5.10
4.	Michigan	\$1.33	\$4.21
5.	Illinois	\$1.15	\$2.61
6.	Florida	\$1.14	\$2.25
7.	North Carolina	\$1.01	\$2.18
8.	Dallas	\$0.75	\$2.14
9.	New York	\$0.62	\$2.24
10.	Tennessee	\$0.47	\$1.20
11.	Indiana	\$1.14	\$2.41
12.	Washington	\$1.10	\$2.21
13.	Mississippi	\$1.10	\$2.10
14.	Georgia	\$2.11	\$2.21
15.	New Jersey	\$2.21	\$2.12

States with Most Export Jobs to Mexico

Rank	State	(% of Total, 2000)
1.	California	14.8%
2.	Arizona	10.2%
3.	Illinois	9.5%
4.	Michigan	8.9%
5.	Indiana	8.2%
6.	North Carolina	7.5%
7.	Texas	6.8%
8.	Mississippi	5.7%
9.	South Carolina	5.2%
10.	Georgia	5.1%

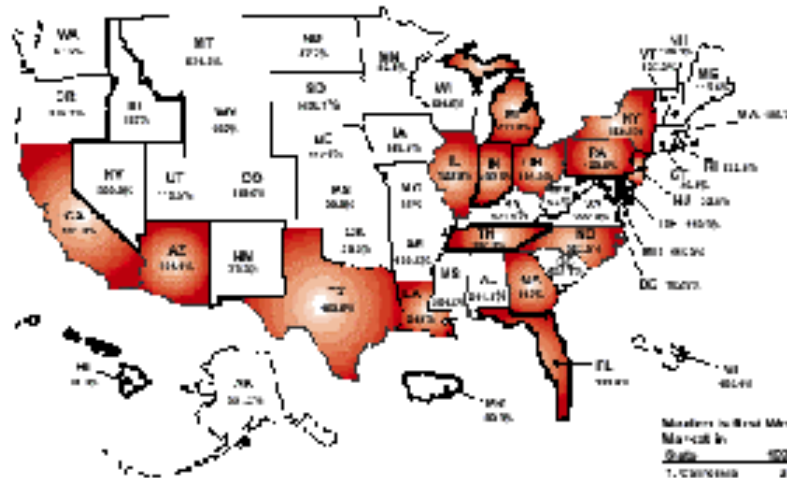
States with Most Exports to Mexico

Rank	State	(% of Total, 2000)
1.	Indiana	17%
2.	New Mexico	11%
3.	Nebraska	9%
4.	Utah	9%
5.	Dallas	8%
6.	Michigan	8%
7.	Tennessee	6%
8.	Puerto Rico	6%
9.	Florida	5%
10.	Maryland	3%

Rank of the states in terms of Exports

State	1995	2000
1.	Canada	1
2.	Mexico	2
3.	Japan	3

Percentage Growth Rates 1993-2000



States Exporting More than \$1 Billion
Most Dynamic Programs to Mexico

States in First Market With Program

State	1995	2000
1. California	2	1
2. Arizona	1	1
3. Texas	1	1

Index's Rank as a Worldwide Export Market (largest to smallest index)

Rank	State	1995	2000	# of firms exp.
1.	Wyoming	14	2	72
2.	Maryland	20	10	70
3.	Virginia	15	5	18
4.	North Carolina	11	4	8
5.	Alaska	14	7	7
6.	District of Columbia	20	14	6
7.	New York	17	6	6
8.	Rhode Island	6	2	6
9.	South Dakota	9	4	6
10.	North Carolina	7	3	5

Source: US Census Bureau, MIBER and BE-NAFTA. The District of Columbia, Puerto Rico and the US Virgin Island are counted for ranking purposes.

✓ 44 out of 50 US States registered export growth to Mexico in 2000 (88% of the US). Of them, 16 export more than US\$1 billion to Mexico annually



Likewise, NAFTA promotes regional development in Mexico

Mexico's network of Maquiladoras

Latest update: November 2001



✓ A network of c.a. 3,527 Maquiladoras develops Mexico's export capacity throughout the country, spurring thereby economic development not only in the border, but also in almost every region

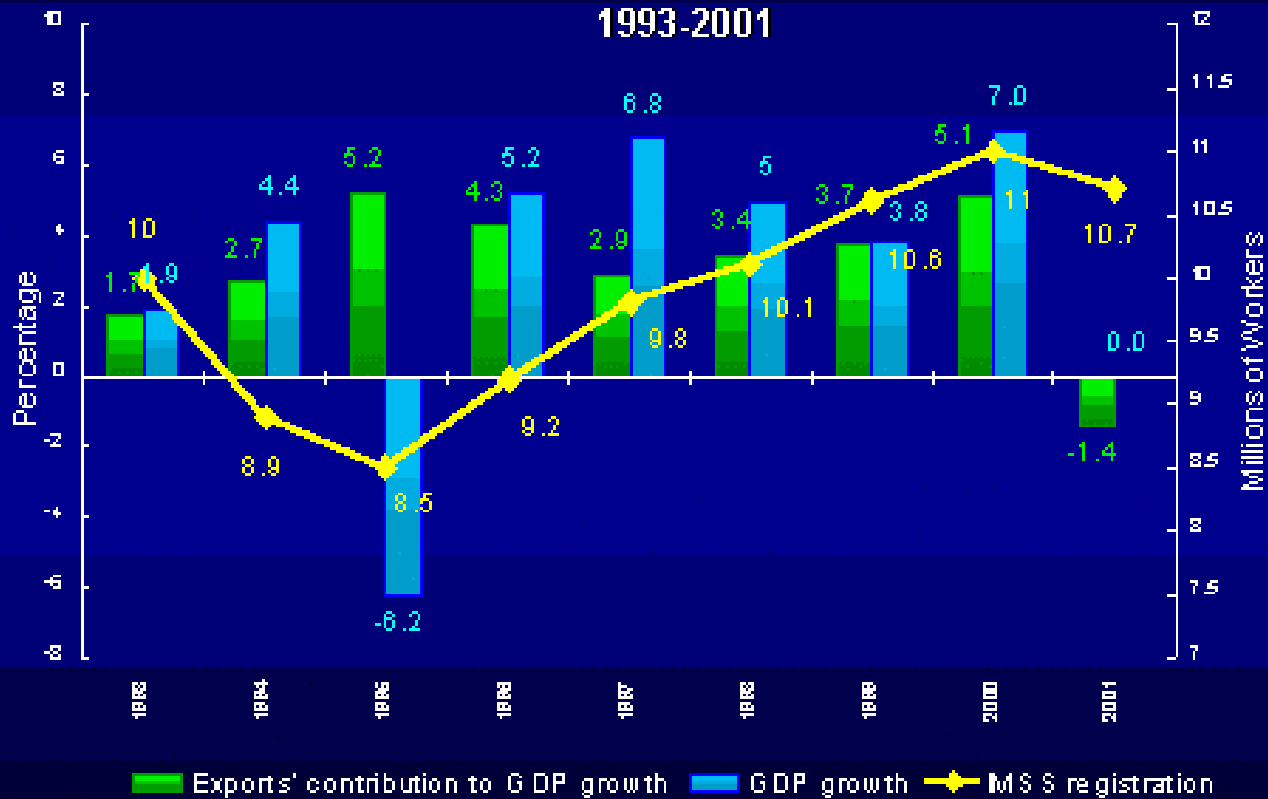
✓ 77 Maquiladoras are localized in the rest of the country

Source: INEGI



Exports and Trade under NAFTA have been a powerful engine for economic growth and job creation in Mexico

Mexico: Contribution of Exports to GDP Growth and Permanent Worker Registration in the Mexican Social Security Institute
1993-2001

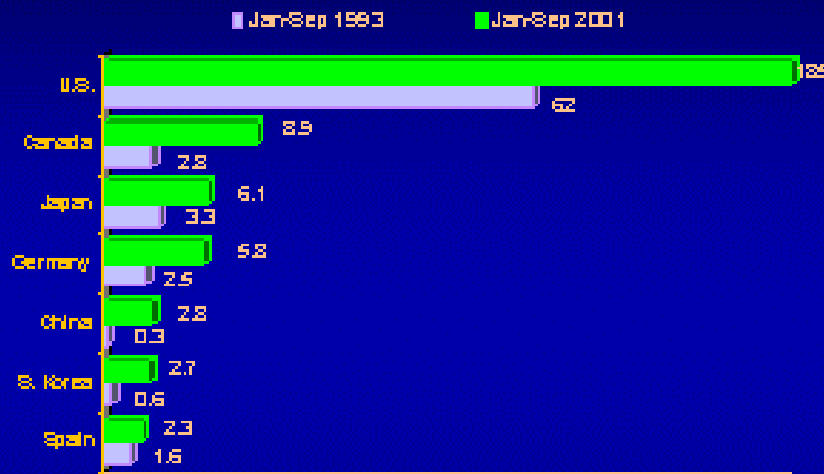


→ In the last years, more than half of total Mexican real GDP growth was the result of dynamic trade and export growth. Today, exports account for 30% of real GDP.

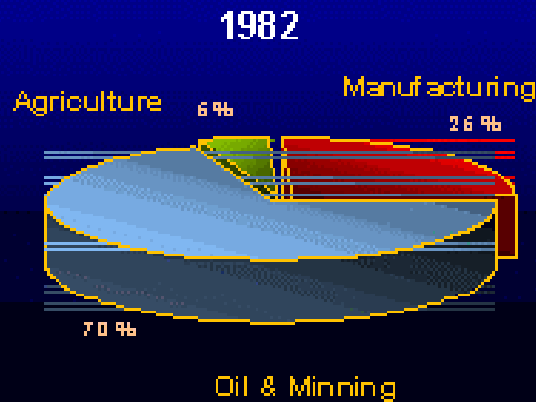


Mexico's Trade Update

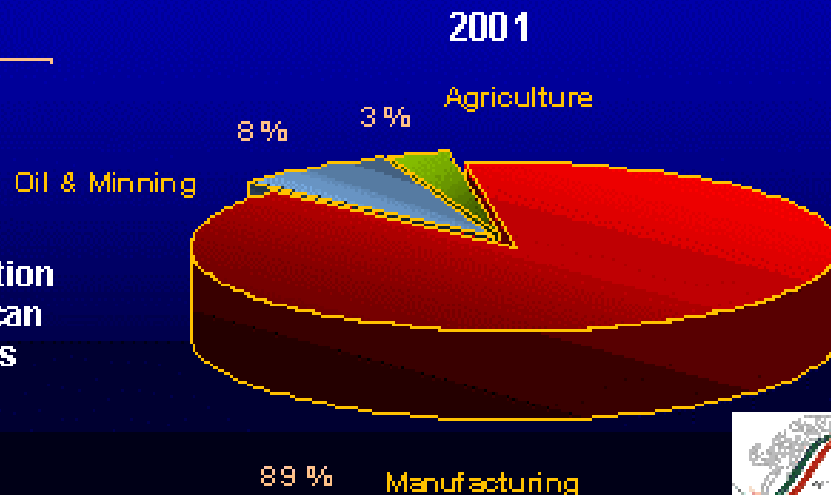
Mexico: Main Trading Partners
US billion dollars



- ✓ Mexico became in 2000 the 8th largest exporter in the world and the first in Latin America, according to the WTO
- ✓ Since 1993, Mexico's total trade has expanded 178%, going from US \$117.2 billion to US \$326 billion in 2001, growing at an annual average rate of 14%



Composition of Mexican Exports



Source: Banxico and SE-NAFTA.



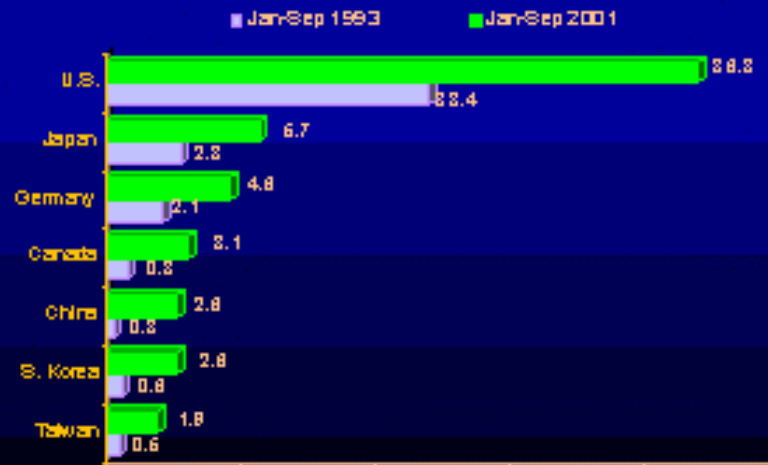
Mexico's Trade Update

✓ NAFTA has made the US and Canada among Mexico's top customers and suppliers

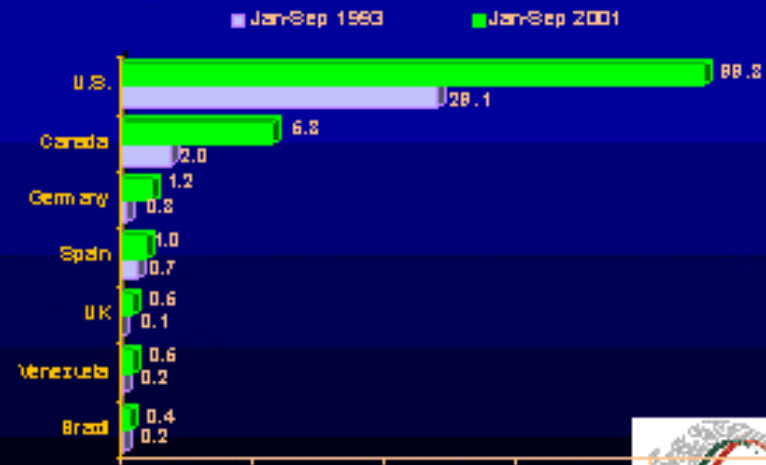
✓ Mexico's total imports have expanded 157%, going from US\$65.4 billion in 1993 to US\$168.3 in 2001

✓ Mexico's total exports have expanded 205%, going from US\$51.8 billion in 1993 to US\$158.5 in 2001

Mexico: Main Suppliers
US billion dollars



Mexico: Main Export Markets
US billion dollars



Source: US DOC, Statistics Canada and SE-NAFTA for U.S. and Canada. For the rest by Banko.



Mexico: an industrial powerhouse

- ✓ **Automobiles** – Mexico exports more than one million vehicles annually. E.g. VW's Beetle and Chrysler's PT Cruiser are produced in Mexico and exported to the world
- ✓ **Textiles** – Mexico is the main supplier of textile and apparel products to the U.S.
- ✓ **Electronics** – Mexico is the main producer of TV sets in North America with annual production of 25 million sets
- ✓ **Household appliances** – Mexico is the main supplier of gas ranges and stoves to the U.S.



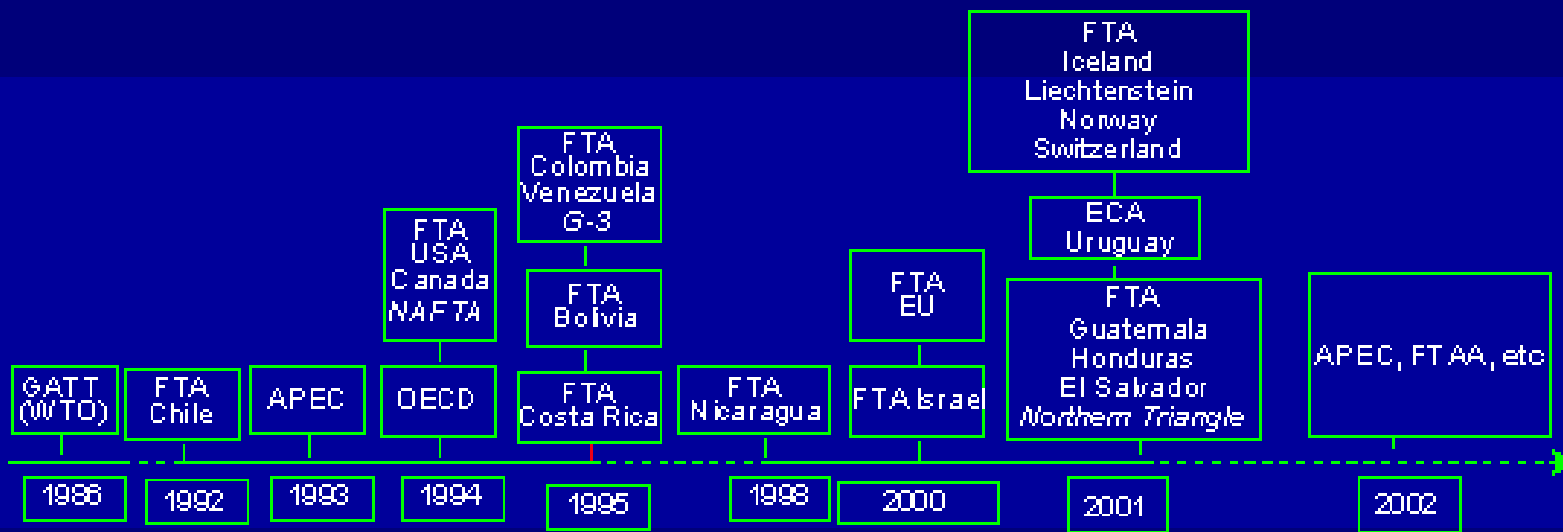


Mexico's network of FTAs:

Global Business Opportunities for NAFTA Members



Mexico's network of FTAs provide investors certainty of market access and preferential tariff treatment to key economic regions in the world



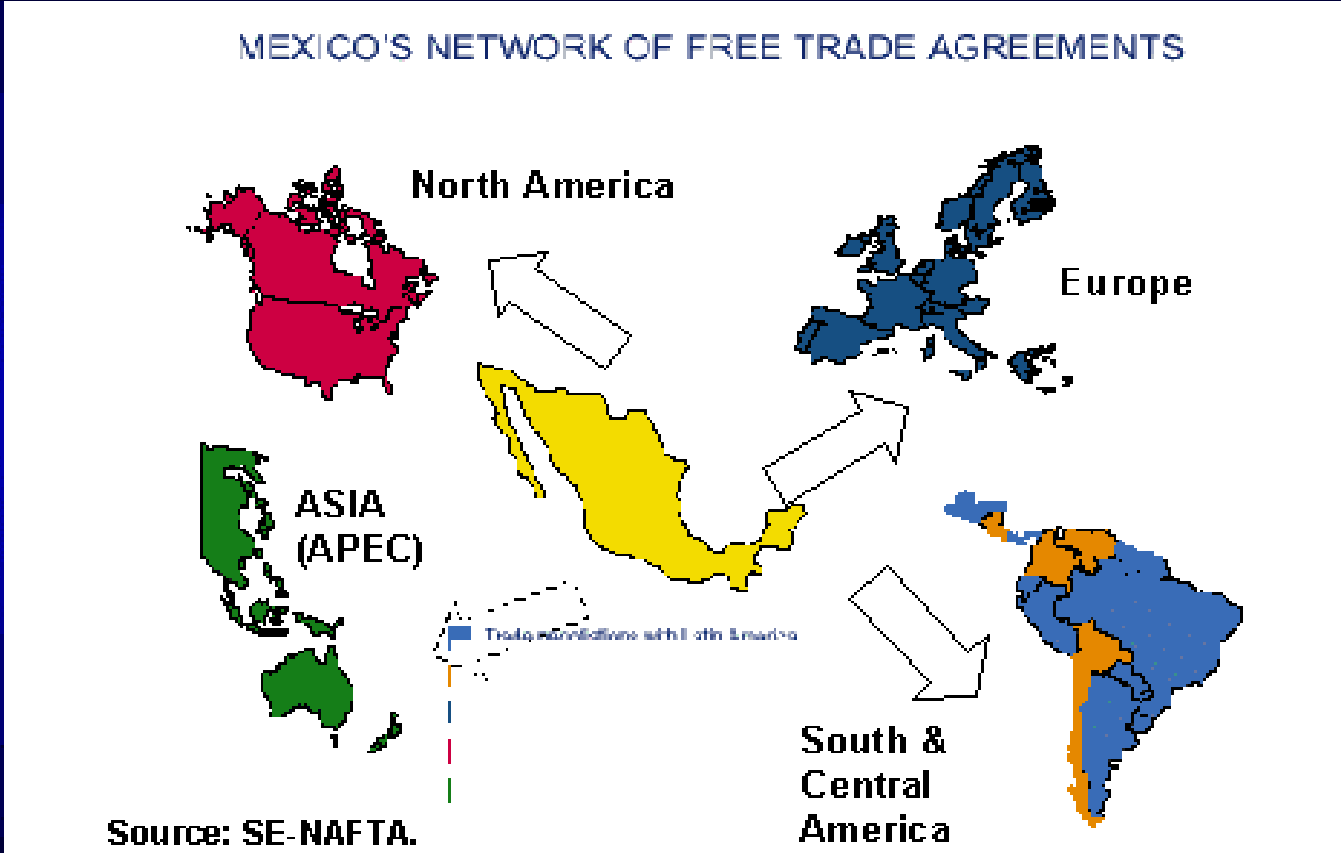
Mexico hosts APEC* in 2002

- ➔ APEC's goal is to create a free trade area in the Pacific Basin by 2010 for developed economies and for 2020 for emerging markets at the latest

* Asia-Pacific Economic Cooperation



Mexico's network of FTAs is a platform for exporters seeking access to world markets



- ✓ Mexico is a Global Trade Hub
- ✓ Mexico has agreements with 32 countries in three continents, which implies a potential market of 850 million consumers



A new business model: Mexico

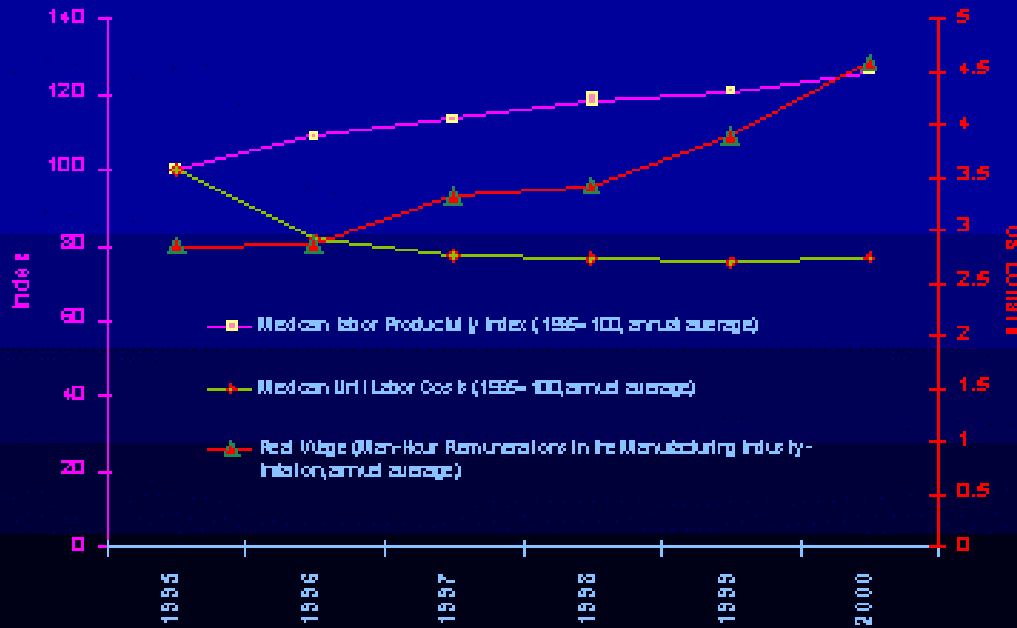
- ✓ Strategic alliances and joint production (production-sharing) enable companies to work together to enhance business growth and competitiveness to produce more goods for world markets.
- ✓ They have been an indisputable success under NAFTA.
- ✓ No major investment takes place in North America today without considering Mexico in its long-term strategic planning.
- ✓ FTAs offer NAFTA companies operating in Mexico not only preferential access to low cost and high quality inputs, but also preferential access to markets in three continents



Mexico: your business partner

- ✓ Develop a new business model through access to low-cost competitive inputs; a young, skillful and increasingly educated labor force; and preferential access to worldwide markets
- ✓ Mexico offers high levels of productivity at competitive costs

Mexico: Labor Productivity vs. Costs in the Manufacturing Industry and the Real Wage

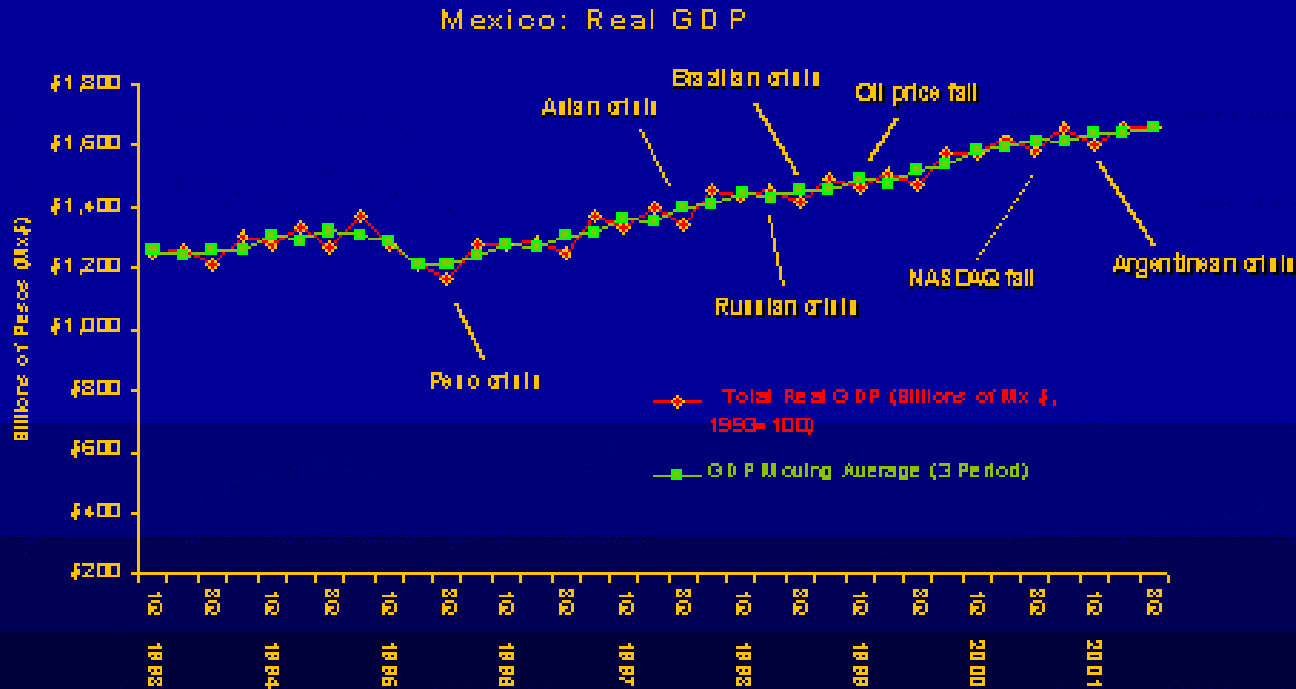


Source: INEGI and SE-SETE



Mexico: your business partner

✓ Mexico offers high yields of return to your investments in a stable economic environment



Production-sharing with Mexico to export worldwide

Advantages of production-sharing and industrial integration with Mexico to export worldwide include:

→ Reduction of **manufacturing costs**

→ Meeting of **delivery** schedules and logistics: take advantage of our largest and permanent comparative advantage -- **a common border**

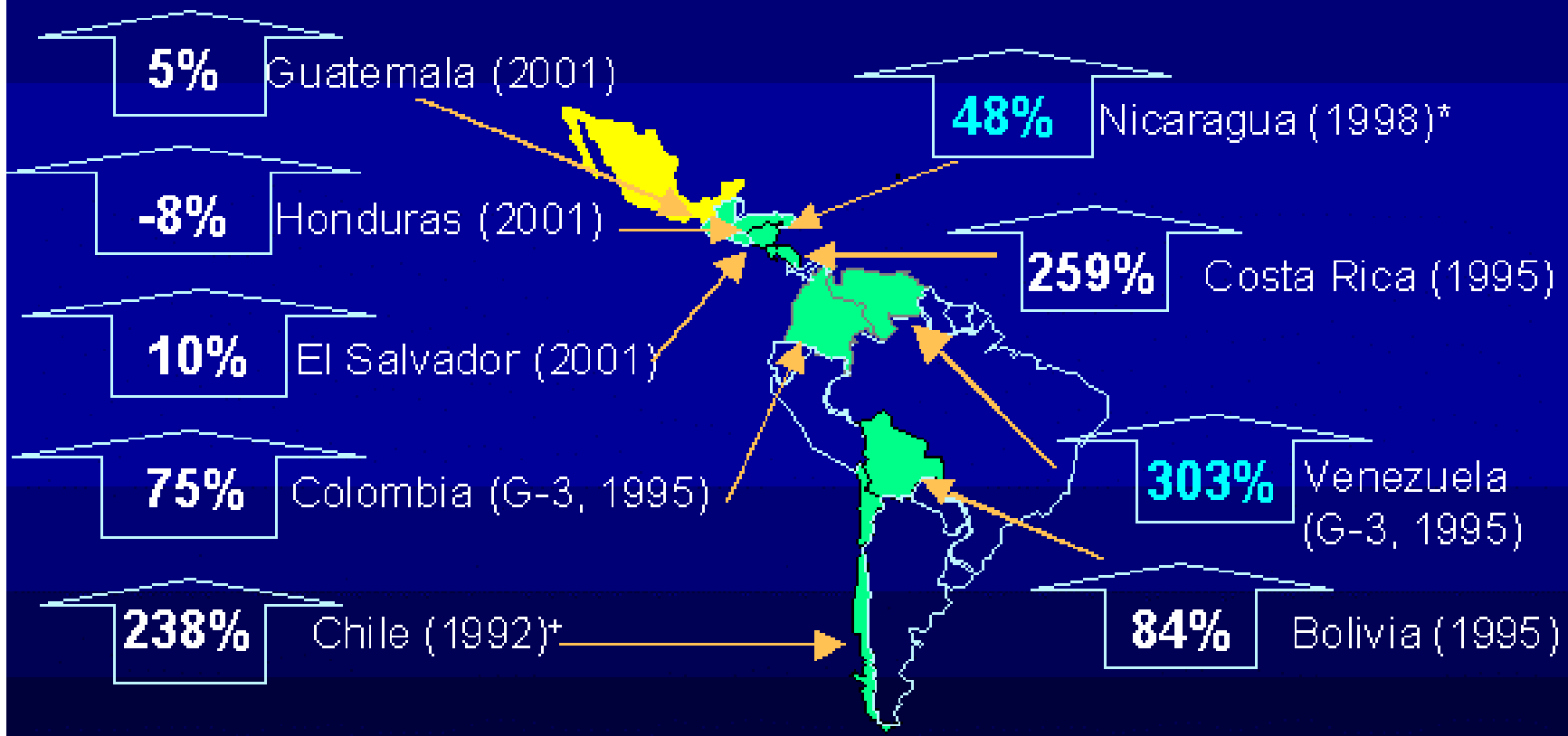
- ✓ Minimization of delays in entry and exit of goods and services
- ✓ Just-in-time manufacturing systems
- ✓ Outward processing systems

→ **A transparent and permanent legal framework that promotes business activities**



Mexico: a platform for your exports

➔ Mexican exports to its FTA partners to the South grew:



Source: Ministry of Economy with data from *Barxico*: Export growth Jan-Oct 2000 vs. Jan-Oct 1994
 +Chile Jan-Oct 2000 vs. Jan-Oct 1991 *Nicaragua Jan-Oct 2000 vs. Jan-Oct 1998 ** Guatemala, Honduras
 & El Salvador Jan-Oct 2001 vs Jan-Oct 2000



Mexico: a World of Economic Opportunity



Source: SE-NAFTA.



NAFTA has made North America more competitive

- ✓ U.S. and Canadian companies are already established in Mexico
- ✓ Most of them are considered "Mexican"
- ✓ In fact, industries in key sectors are already integrated (e.g. transportation equipment, electronics) --North America as a whole is becoming more competitive vis-à-vis the rest of the world
- ✓ **Partnerships with Mexico offer you the best gateway to reach world markets**



Take advantage of the new business model equation

- ✓ NAFTA + common border + lower-priced inputs
+ young, skilled, bilingual & increasingly
educated labor force + network of FTAs +
privileged market access to 32 countries in 3
continents

= **Competitiveness, growth and prosperity in
North America**





Final Remarks:

NAFTA Works



Final Remarks

- ✓ **NAFTA has been one of the most widely debated trade initiatives in history:**
 - In the public's mind, the workings of trade are very much related to NAFTA: if the perception is that NAFTA works, then the perception is that trade works.
- ✓ **The empirical record shows that NAFTA WORKS.**



Final Remarks: NAFTA Works & the Future

- ✓ NAFTA has been beneficial to the three parties
- ✓ NAFTA has created a partnership where a win-win game is observed
- ✓ After eight years, NAFTA is still a young agreement and not fully implemented yet. More long-run benefits are yet to come
- ✓ We must build upon our success with NAFTA to cooperate more broadly amongst ourselves, within the hemisphere, and in global fora
- ✓ **NAFTA is the model for expanding trade and prosperity on a wide scale**



Final Remarks: Trade, Globalization & the Future

✓ A note on international trade and globalization:

- In the last decade, world economy has showing that trade and exports grow faster than GDP
- If your business is linked with the growth rate of your country's economy, then GDP growth will be a good indicator of how your business will grow over the years
- However, if you operate in international markets, your business is more linked to international trade. As such, indicators like export growth will be the best forecast about your future business growth
- Export-oriented business experienced the double-digit rates of growth in exports and trade observed during the last decade, and will continue to do so as further liberalization increases world trade, bringing prosperity and linking more economies, ideas and people





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