

MEXICO



Mexico

I. Direct sales

Companies intending to carry out direct sales of their product in Mexico must understand and comply with a number of requirements:

A. NOMs (Official Mexican Standards)

Certain products, processes, services, emblems, and methods, imported, sold, used, or rendered in Mexico, must comply with technical standards, issued by the Ministry involved (depending upon the industry), in coordination by the Ministry of Economy, describing their characteristics or specifications. These standards are known by their Spanish acronym as NOMs.

According to Mexican law, NOMs need to be reviewed, and if necessary, be modified every five years. This procedure of modification makes the NOMs dynamic, and importers and domestic manufacturers shall be aware of constant specifications changes.

In the absence of a standard for a certain imported or domestic product, such product must include, before its commercialization, a label containing the NOM specifications regarding general product labeling.

The meeting of the standards contained in some NOMs must be verified and certified by the corresponding authorities, or by an authorized certifying entity. A product subject to compliance with standards must carry a statement affirming such compliance.

B. Health

Mexico has many legal provisions prescribing sanitary measures designed to promote and preserve the health of its citizens. Only those that are likely to be of interest to businessmen or their counsel planning to enter the Mexican market are referred to herein.

Sanitary controls include the verification and application of safety measures or sanctions to manufacturers and sellers of certain products. The Health Law regulates sanitary controls of national and imported products, such as food, alcoholic or non-alcoholic beverages, perfumes, cosmetics, tobacco, pesticides, fertilizers, and hazardous or toxic substances used in the manufacture of those products. The Health Law also regulates certain health products such as medical, dental and surgical equipment, prosthesis, and hygiene and healing products. The manner in which the law defines these products is discussed herein.

The manufacturing process and specifications that must be complied with by some of the products are described in technical standards NOMs. The Health Law and the Mexican Pharmacopoeia Book regulate medicines and their preparation.

First-time imports of food, alcoholic and non-alcoholic beverages, perfumes, cosmetics products, and tobacco, as well as materials used in the manufacture of those products, are subject to sampling and analysis by certified laboratories in order to determine compliance with NOMs standards. Certain products contained in a listing published in the Official Federal Gazette, may require import permits granted by Health Authorities, depending upon the risks they pose to human health.

The import and export of drugs and psychotropic substances is subject to authorization from Health Authorities, which may be granted to pharmacies, or to authorized manufacturers of medicines. Import permits for health products and medicines are needed for certain products as established by the health authorities. Those products are published in the Official Federal Gazette. Importation of fertilizers, pesticides, and toxic substance is also subject to authorization.

C. Labeling

The Ministry of Economy has issued several regulations requiring precise commercial information on the packaging or labeling of products to be sold. The information required varies depending on the product, but in most cases, it refers to its content, net weight, ingredients, safety measures and instructions of use from the manufacturer.

Imported products must include a label in Spanish containing the specifications of a particular Official Mexican Standard (NOM) depending on the product.

D. General import system

Mexico's import classification system is based in the "Harmonized System for Merchandise Classification and Codification," making its import classification system compatible with that of most industrialized countries.

Moreover, Mexico has adopted WTO-approved valuation rules that enable the foreign supplier to determine the "normal price levels" for goods shipped to its Mexican importer.

Some importers, such as importers of chemicals, such as precursors or chemical reactors, firearms, among others must register in a Sectorial Importers Registry of the Ministry of Finance.

1. Shipping documentation

An import declaration is always required and must be completed by a customs

broker or forwarding agent. Other shipping documentation includes the commercial invoice, bill of lading or airway, and when appropriate, a certificate of origin, or documents proving compliance with regulations, restrictions, and official Mexican standards. They may also include a certificate of origin of the goods, if the goods are imported from a country with which Mexico has a trade agreement.

If goods are shipped by sea, the ocean carrier must issue a bill of lading to the shipper.

This bill of lading is a title representing the goods, the contract of carriage and a receipt for the goods on board the vessel. The ocean carrier or operator issuing the bill of lading will be responsible for the merchandise from the moment received until delivered to the consignee. The ocean carrier or operator may limit its responsibility in the event of loss or damage to the goods up to an amount determined by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocols of 1968 and 1979 (The Hague-Visby Rules). If the value of the goods was not declared by the carrier or operator and inserted into the bill of lading, his liability would be limited to the equivalent of 666.67 units of account per package or unit, or units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher. The units of account are the Special Drawing Rights (SDRs) of the International Monetary Fund.

If the goods are shipped by air, the carrier must issue an airbill to the shipper upon receipt of the goods. The carrier will be responsible for the goods from the moment received until delivery to the consignee. In the event of loss or damage to the cargo, when the value of the shipment is not declared, the liability of the carrier would be limited to an amount equivalent to ten times the minimum general daily wage in Mexico City, per gross kilogram. The carrier will be liable for the total value of the goods, even in the event of force majeure, when the shipper declares the total value and pays an additional charge to the carrier equivalent to the cost of the insurance premium.

2. Broker requirement

Mexico requires the use of a customs broker to withdraw merchandise from the customs house when the total value of the shipment is more than US\$1,000.00.

E. Taxation of direct sales

1. Income tax

In most cases, direct sales originating outside Mexico are not taxable in Mexico; especially when orders are accepted outside Mexico, and merchandise is

delivered and accepted FOB outside Mexico. The activities of an individual or legal entity acting in the name or on behalf of a foreign seller, however, may result in the non-resident incurring tax obligations in a taxable transaction as a "permanent establishment".

Non-residents that have merchandise in Mexico on a consignment basis for sale are considered to have a "permanent establishment" for tax purposes.

Under the tax depot customs regime, goods can be delivered to one of many bonded warehouses found in most Mexican cities. Under this regime, import duties, taxes, and compensatory duties, are calculated, but not paid until the purchaser actually withdraws the goods from the warehouse. Having goods in such a bonded warehouse is not considered as having a "permanent establishment".

Delivery from a warehouse within Mexico will mean that the seller may be deemed to have a permanent establishment, and in such case, would be subject to Mexican income tax on profit earned on the sale. However, tax treaties may allow delivery to be made locally without triggering the concept of a permanent establishment.

2. Value added tax

VAT is imposed on most imported goods at a rate of 16 percent payable by the purchaser.

F. Transfer pricing

Mexico introduced a new system for the valuation of goods for customs purposes (consistent with the WTO Code), to simplify the determination of the basis for imposition of import duties. Importers of goods must use this system in order to establish the taxable basis upon which the import duty (ad valorem) will be applied.

The Ministry of Finance is presumptively authorized to determine the price at which taxpayers acquire or sell goods, as well as the amount of consideration for other types of operations, as mentioned in the Income Tax Law. For example, when the price of the corresponding operation is lower than market value, or the acquisition cost is higher than said price, or when the sale of goods in import and export operations is at cost, or less than cost, or whenever a payment abroad is made.

By determining the price, the Ministry of Finance may modify tax profit or loss in operations entered into by and between related individuals, companies, residents in Mexico or abroad, and permanent establishments, in the event that the taxpayer did not comply with the requirements specified in the law.

G. The Vienna convention

The United Nations Convention for the International Sale of Goods (Vienna Convention) has been in force in Mexico since January 1, 1989. Its objective is to establish a standardized system for international sales agreements, which is applied in lieu of national commercial legislation, thus facilitating commercial operations relating to tangible goods in a world moving towards the globalization of commerce.

Because Mexico is signatory to this Convention, it applies to any international sale of goods, unless the parties expressly waive application of such Convention, or any part thereof. Should the Convention be applicable, Mexican commercial legislation applies only in a supplementary manner.

The Convention itself establishes the application of Mexican legislation with regard to the following issues:

1. Validity of contracts, or any of its provisions;
2. Acquisition of title to merchandise;
3. Extra-contractual liability (e.g. injury) arising from the nature of merchandise;
4. Interest paid over due amounts; and
5. Any other matter not covered in the Convention.

The Convention excludes the following types of purchase and sale operations:

1. Sale to final users or consumers;
2. Bids, judicial sales or auctions;
3. Transfer or sale of money or securities;
4. Ships and aircraft;
5. Electricity;
6. Requirement contracts; and
7. Services.

Although Mexican commercial law in general has not formally adopted the use of the International Chamber of Commerce's "Incoterms" (International Commercial Terms) which are commonly used in international transactions, the new Navigation and Maritime Commerce Law contains provisions related to customs, inspections and packing obligations that make an express reference to the Incoterms. The Incoterm specified in an order, contract, or invoice (FOB, CIF, etc.) will determine the seller's obligations in each transaction (the place of delivery, risk of goods in transit), and the costs which must be borne by each party (insurance, freight, import, or export duties).

H. Trade disputes

Mexico's entrance to the GATT in 1986 was followed by the adoption of several Codes of Conduct, which formed the basis for the 1994 Foreign Trade Law, which is supplemented by the Regulation to the Foreign Trade Law. As a member of the World Trade Organization (WTO) Mexico is party to the Agreement on the Application of Article VI of the General Agreement on Tariffs and Trade of 1994.

In addition, as a member of NAFTA, the provisions under chapter XIX (Dispute Settlement in Antidumping and Countervailing Duty Matters) of the agreement are also applicable to Mexico.

1. Unfair practices of international trade

Pursuant to the instruments mentioned above, the Mexican legal definition of unfair practices of international trade includes discriminatory pricing, and foreign government subsidies, that cause or threaten injury to national production.

To offset the effects of the importation of goods under unfair practices of international trade, the law establishes the imposition of antidumping or countervailing duties that may only be imposed if there is a price discrimination practice or a subsidy, injury, or threat of injury, and a cause-effect relationship between them.

II. Securing transactions

Many types of security measures are available in Mexico to foreign or local lenders, and may be granted as either rights in-rem or rights in-personam. The following are some of the most prominent types of guarantees:

A. Mortgages/Liens

The most widely used security device in Mexico is the mortgage. Mortgages may be established on real estate, vessels, aircraft, or on complete production (industrial) facilities.

1. Real estate mortgages

Real estate mortgages are in-rem guarantees that are created on specifically determined property, and give the creditor, in the event of default, the right to be paid out of the proceeds of a foreclosure proceeding.

Mortgages are regulated by the Civil Code of the State where the mortgaged property is located, and may be created by agreements between the parties, by voluntary unilateral acts, or pursuant to a legal disposition.

The mortgage lien extends to the natural accessions of the mortgaged property, any improvements and fixtures made by the owner, the movable objects permanently attached to the property which cannot be separated therefrom without damaging the property, new buildings constructed by the owner of the mortgaged land, and to additions to the mortgaged buildings.

For a mortgage to be effective against third parties, it must be registered in the Public Registry of Property of the location of the property. The mortgage lien takes priority over all others except previously registered liens.

In an event of default under a mortgage, the mortgagee may foreclose and enforce, through a judicial proceeding, the sale of the mortgaged property. The mortgagee may bid in the corresponding public auction. Once the sale takes place, the mortgagee may have access to the proceeds. If the proceeds are insufficient to cover the amounts owed a deficiency, judgment will be rendered.

2. Maritime mortgages

The Navigation and Maritime Commerce Law provides that mortgages may be placed on any vessel, whether constructed or in the process of construction, and must be recorded at the Mexican Shipping Registry to be effective against third parties.

Maritime liens on the vessel have priority over a vessel mortgage. The mortgage created on a vessel will have preference over any maritime lien on the vessel, after the following priorities: (i) wages and amounts owed to the crew; (ii) credits derived from indemnities by death or injuries at sea, or on land and in direct relationship with the operation of the vessel; (iii) rewards for the salvage of a vessel; (iv) fees for the use of port infrastructure, navigational aids, and pilotage; (v) compensation due for damages or losses caused by oil pollution or by the toxic, explosive, or radioactive properties of nuclear fuel, or radioactive waste or products; and (vi) credits derived for the indemnities for extra-contractual claims for loss, or material damages caused by the operation of the vessel, excluding loss or damage to the cargo, the containers, or passengers' effects aboard the vessel.

The priority of a vessel mortgage over other vessel mortgages is determined by the date of registration. Prior mortgages have priority over subsequent mortgages.

3. Mortgages/Liens on aircrafts

Mortgages may be established over aircrafts, real estate, and chattels of an air transport company. Mortgages on aircrafts that are used in public air transportation service have to be recorded in the Mexican Aeronautic Registry.

Aircraft equipment, such as engines, spare parts, and instruments, may be

given in pledge. Constructive delivery is recognized. Mortgages and pledges must be recorded in the Mexican Aeronautical Registry. Mortgages on aircrafts have preference, except for tax and maintenance credits.

4. Complete production facilities (industrial) mortgages

Industrial mortgages are created in favor of Mexican credit institutions over the complete industrial, agricultural, ranching, or service units of the mortgagor, and include all assets, movable and immovable, that are used for exploitation of said unit. This mortgage includes any concession or permission granted, as well as moneys and credits in favor of the mortgagor.

The mortgagor retains possession of the mortgaged assets and continues to use and exploit the industrial unit. The mortgagee must consent to a sale of any of the mortgaged assets, or to any merger, except when made or replaced within the scope of its normal operations, unless otherwise agreed.

The mortgage must be recorded in the Public Registry of Property to produce effects against third parties.

5. Chattel mortgages

Chattel mortgages are not commonly used as a security measure; more often, a pledge is used for chattels.

B. Pledges

There are three kinds of pledges under Mexican legislation: the commercial pledge, the commercial pledge without transmission of possession, and the civil pledge.

The Law of Negotiable Instruments and Credit Transactions defines and regulates commercial pledges with and without possession. A commercial pledge exists when the subject matter of the pledge falls into the definition of commercial, as stated in article 75 of the Commerce Code, or if a party to the pledge is a businessman or engages in commerce, or is a company, as per articles 3 and 4 of the Code. All other pledges are considered civil and therefore, are regulated by the Civil Code.

Although commercial pledges, pledges without transmission of possession, and civil pledges are similar in many aspects, they have different means of creation and perfection.

1. Commercial pledges

A commercial pledge is constituted by any of the following: (i) the delivery to the creditor of the goods or negotiable instruments; (ii) in the case of

nominative instruments, by endorsement of the negotiable instruments in favor of the creditor, and in the case of instruments subject to registration, by endorsement and the corresponding notation in the registry; (iii) in the case of non-negotiable instruments, by delivery of the instrument or the document representing the credit to the creditor, and by recording the lien in the applicable registry or by notification to the debtor; (iv) the deposit of the goods or bearer instruments at disposal of the creditor, along with a third party designated by the parties; (v) the deposit of the goods at disposal of the creditor in places to which the creditor has keys, even though such places are owned by or located within the establishment of the debtor; (vi) the delivery or endorsement of the instrument representing the goods that are object of the contract, or by the issue or endorsement of a pledge bond relative thereto; (vii) the registration of the contract for the equipment or operating credit in the manner set forth in the Law; and (viii) compliance with the requisites set forth in the Law of Negotiable Instruments and Credit Transactions with respect to account receivables (book credits).

Pledges of fungible goods continue to be effective even when the original goods are substituted by goods of the same type. Although constructive delivery of pledged goods is not recognized for commercial pledges, there are a number of cases where the pledged goods may be placed with a third party or under the joint control of the debtor and the creditor. These pledges produce effects against third parties upon registration of the corresponding pledge in the Public Registry of Commerce of the location where the pledged goods or instruments are to be kept.

If the value of the assets given in the pledge drops below an amount that is not sufficient to cover the original obligation plus 20 percent, and if the debtor does not provide sufficient funds to liquidate the debt represented by the credit instruments, the creditor may petition the court to authorize the sale of the collateral upon maturity of the principal obligation.

The creditor may not become owner of the property given in the pledge without the express written consent of the debtor given after the creation of the pledge.

a) Warehousing

Goods may be granted in the pledge through a deposit of those goods in an authorized general deposit warehouse. After deposit is made, a deposit certificate is issued by the warehouse certifying ownership, along with a pledge bond, evidencing the creation of a pledge on the goods placed in the warehouse. Warehoused goods may only be released by the warehouse to the holder of both the deposit certificate and the pledge bond.

A person holding a deposit certificate retains dominion over the

goods deposited in the warehouse. However, such goods may not be removed without payment of all amounts due to the warehouse and deposit of the amount covered by the respective pledge. The holder of the warehouse receipt will have rights in the pledged goods superior to those of judgment creditors, and without a court order to the contrary, superior rights in the proceeds of such goods, whether in the form of sale proceeds or insurance proceeds as a result of damage or destruction. A person holding a pledge bond may request that the warehouse sell the goods deposited in order to collect its credit after maturity.

b) Confidential warehouse receipts

This type of security, although not established by the law, provides a simplified method for security arrangements in practice. The confidential warehouse receipt is a personal note from a warehouse that, when issued with a pledge bond, is accepted by many banks as collateral for commercial financing purposes. This receipt allows for the financing of goods kept in warehouses, without the need of a federal warehouse license, thus avoiding the stringent requirements of the law governing warehousing, in which the risks seem to be outweighed by the practical advantages.

c) Equipment-operating and financing credits

Since a commercial pledge requires the pledgor to forfeit possession of the assets given in pledge, alternative methods are available that allow the debtor to retain possession of the collateral. Such methods include the equipment-operating credit agreement (*crédito refaccionario*) and the financing credit agreement (*crédito de habilitación o avío*).

The assets underlying these credit agreements are also subject to the summary foreclosure proceedings provided in the Commerce Code. Both liens continue attached to the equipment or raw materials for which the credits were granted and/or from which the finished products were produced.

These credits may only be used for the precise acquisitions stipulated in the financing agreement. The creditor should verify the proper use of the credit or risk loss of the lien. Improper use of the credits by the debtor constitutes default and the creditor may rescind the agreement or demand immediate payment, and in either case, can claim damages.

Both credits are generally granted by the opening of a credit line against which the debtor may draw. The agreements must be in

writing and recorded in the Public Registry of Property when the security is on real property, and in the Public Registry of Commerce when the security is on personal property. The agreement must establish the duration and purpose of the loan, the use of the funds, and a precise description of the collateral. The primary obligation of the borrower in both cases might be evidenced by one or more promissory notes.

i) Equipment-operating loan

The collateral related to this loan (*crédito refaccionario*) must be used for the acquisition of any of the following: tools, instruments, farming equipment, fertilizer, cattle or breeding stock, the development of farms and raising of crops (whether seasonal or permanent), the preparation or developing of land or farming, the purchase or installation of machinery and equipment, and the construction necessary for the business of the debtor. The proceeds of the loan may also be used to pay for operating expenses, the acquisition cost of real and personal property, and taxes incurred therewith, provided that the debts were incurred in the year preceding the date of the credit agreement.

These operating credits are secured simultaneously or separately with real property, improvements, fixtures, machinery and equipment, and in general, all that is acquired or improved by the use of the proceeds of the credit, even future products.

ii) Financing loans

This type of security agreement (*crédito de habilitación o avío*) is used for the financing of the direct and immediate production costs of a business. Financing credits are granted for the acquisition of raw materials or for the payment of wages, salaries, and other direct expenses required for the operation of the business. The financing credits are secured by raw materials acquired with the proceeds of the credit, as well as by the products resulting therefrom.

2. Pledge without transmission of possession

The pledge without transmission of possession is an in-rem right concerning movable property or rights that guarantee the fulfillment of an obligation while enabling the debtor to maintain the material possession of the pledged property. This kind of in-rem right allows the debtor to use the assets for

his commercial activities even if they are pledged in favor of a creditor. The pledged goods may be combined with other property, and even sold by the debtor within the usual course of his predominant commercial activities.

The agreement containing the pledge of any movable asset without transmission of its possession has to be ratified before a Public Notary. The pledge must be recorded in the Public Registry to produce effects against third parties.

The rules of the commercial pledge are additionally applicable to the pledge without transmission of possession.

3. Civil pledges

The Civil Code defines a civil pledge as a property right over chattels for the purpose of guaranteeing the performance of an obligation and its priority in payments. Nearly every chattel may be given in pledge and must be evidenced in a written agreement, and is perfected by actual or constructive delivery. In the latter case, the pledge must be recorded in the Public Registry of Property.

In the event of default by the debtor, the creditor may demand, and the judge shall order, the sale of the pledged collateral at a public auction. If the collateral cannot be sold at a public auction, it may be transferred to the creditor for two-thirds of the legally required minimum bid. The debtor may agree after default that the creditor may retain the collateral in satisfaction of all or a portion of the debt, or that the pledged item may be sold extrajudicially.

Priorities among competing mortgages and pledges of constructively-delivered property are determined by the recording date, and by the transaction date for pledges actually delivered.

C. Guaranty

The guaranty is the simplest form of security in Mexican Law and takes two forms: the bond ("fianza") or the unconditional guarantee ("aval").

1. Bond

A bond is an agreement accessory to a principal contract between the creditor and the debtor whereby the guarantor assumes the debtor's obligation in the event of default. A bond may not exist without the existence of a valid obligation.

Bonds may be granted by an individual, a legal entity, or a bonding company. However, a company may not guarantee obligations of third parties unless provision is made in its corporate object clause.

A guarantor under a bond may not be called upon to meet his obligations until the creditor has first exhausted his rights of action against the debtor and his assets; however, this benefit may be expressly waived. Bonds are mainly used both in judicial proceeding and in administrative contracts.

2. Unconditional guarantee endorsement

This endorsement guarantees payment of specific obligations is evidenced by a negotiable instrument and is regulated by the Law of Negotiable Instruments and Credit Transactions. The obligation appears on the face of the instrument it guarantees. The unconditional guarantee is deemed to guarantee the entire amount of the instrument interest included, unless otherwise established therein.

The grantor of the unconditional guarantee endorsement (aval) is jointly and severally liable for the debt, even if the principal debt is cancelled, to tally or partially, due to a defect. The creditor may not institute an action against the debtor or exhaust remedies against him.

The holder of a negotiable instrument is entitled to a summary "executory commercial action" against the issuer or the guarantor, attaching assets simultaneously with initiation of the action of collection. For this unconditional guarantee to be effective, the use of the words "por aval" above the signature is sufficient.

3. Joint and several liability

It is a usual legal practice in agreements that a third party voluntarily and expressly becomes jointly and severally responsible with the debtor for the payment of a debt.

D. Conditional sales-reservation of title

Seller may reserve title to the goods sold until complete payment by purchaser of the purchase price. If the goods sold consist of real estate or movable goods which can be identified, the clause containing the reservation of title shall be recorded in the Public Registry of Property in order to produce effects before third parties.

Should movable goods cannot be identified, the parties may also include in their agreement a clause stating that the sale will be rescinded in the event of lack of payment of the purchase price. However, this clause will not produce effects before a third party who purchased the goods in good faith.

When the seller rescinds and repossesses the goods upon judicial order, payments received must be returned to buyer less depreciation and fair rental.

Provided that recordation in the Public Registry of Property takes place, and in the event of bankruptcy of purchaser, the seller may request the judge to separate the goods sold, which have not been paid for, from the assets of the bankruptcy proceeding.

E. Trusts

Although trusts are widely used for many different purposes and in a wide variety of transactions (such as to manage assets, to transfer properties, to invest in shares and other securities and to create a business concern), trusts may be used as a vehicle to guarantee debts when the security involves a substantial amount of property.

A trust is created through an agreement between the grantor or grantors, and the trustee must be a Mexican Financial institution, such a bank or brokerage. A beneficiary or beneficiaries are also named, and are entitled to the benefits of the trust agreement. Grantors may also be designated as beneficiaries.

The trustee will perform its duties through its agents which may accomplish the purposes of the trust by instructions from a technical committee designated by the grantors. Property and rights of any type may be placed in trust. Those trusts affecting real property must be recorded at the Public Registry of Property of the location in which the real property is located.

F. Guarantee trust

This kind of trust especially designed as an instrument to serve as guarantee for any sort of debt.

Only Mexican credit institutions, insurance and bonding companies, brokerage and warehouses, and special purpose financial entities, may act as trustees. Guarantee trusts may be used to guarantee several simultaneous or successive obligations, even if they are in favor of different creditors. The parties to the trust may agree that the grantor may use movable assets affected by the trust, combine them with other goods, or instruct the trustee to sell them within the usual course of the activities of the grantor.

G. Letters of credit

Letters of credit are instruments used, among other things, to secure payment in the sale of goods. Letters of credit allow the seller of merchandise to be paid by a bank or its agent upon instructions from the purchaser, or upon presentation of certain documents such as invoices or bills of lading by the seller. The bank or its agent will pay the seller with funds from a line of credit extended to the purchaser. Stand-by letters of credit have become a frequent instrument in Mexico.

H. Leases

Lease agreements may be structured in certain cases to be, in effect, security arrangements.

1. Lease with purchase option

These are governed by the general rules contained in the civil codes for each State or the Federal District. A lease agreement may grant the lessee an option to purchase the leased merchandise either during the lease term or the expiration thereof. The purchase price and payment conditions may be determined in the lease agreement.

The local civil codes usually require registration at the Property Public Registry of real estate leases of a certain term in order to be effective before third parties.

III. Government procurement

A. Awarding contracts

As a general rule, contracts are awarded through a public bidding procedure. Any party that satisfies the solicitation documents may submit a proposal duly signed during the event for the delivery and opening of proposals or submit it by postal service, courier or electronic means.

The bid must include both a technical and economic proposal, incorporating guarantees, depending upon the nature of the project. Bids are first evaluated to ensure that all requirements are met, and any bid not satisfying the legal, technical and economic requirements, including effective guarantees, outlined in the invitation to bid, is subject to disqualification.

After a detailed examination of both technical and economic proposals, the contract will be awarded to that bidder who satisfies the technical, legal and economic conditions required by the procuring entity, and satisfactorily guarantees compliance of the respective obligations. However, when two or more bidders are eligible, the contract will be granted to the cheapest bidder. In public procurement procedures related to acquisitions, leases and services, procuring entities may also award the contract to the best evaluated bidder in terms of points, percentage or cost/benefit criteria, which have to be previously set forth in the solicitation documents.

Contracts must be executed within 20 calendar days after the notice of the award. Otherwise, the contract may be awarded to the second best bidder. Additionally, the winning supplier or contractor shall grant a performance bond to assure compliance with the contractual obligations.

The laws also permit government agencies and entities to conclude restricted

bidding under certain conditions. In which case, invitations must be extended to at least three prospective suppliers or contractors. Additionally, the laws articulate requirements for the use of restricted bidding. For example, restricted bidding is permitted when the contract can only be executed with a determined individual, since he is the holder of certain patent or trademark rights, or other exclusive rights.

If the entity or agency concludes that restricted bidding is not suitable, it may opt to award the contract directly through a single-source procurement procedure.

B. Foreign participation

Mexican law distinguishes between national and international bids. The bidding procedure is considered to be national when, only Mexican nationals are permitted to participate. Under the Law of Acquisitions, the assets to be acquired through a national procurement procedure must have been produced in the country and contain at least fifty percent of national content.

On the other hand, the bidding procedure, is considered to be international when the contract may be awarded to either Mexican or foreign nationals.

International bidding procedures may be carried out only in the following cases:

1. Where it is obligated pursuant to a treaty;
2. Where the relevant entity or agency determines, after a market investigation, that the quantity or quality of national suppliers is not adequate, or that national contractors do not have the capacity to perform the work contemplated;
3. Where the contract cannot be awarded, because no bids were tendered, or the bids did not meet minimum requirements set forth under the bidding terms; or
4. Where required as a condition for the granting of foreign credits to the federal government, or its guarantor.

However, the applicable laws expressly give government entities and agencies the right to deny the participation of suppliers or contractors in any international tender, if they are nationals of nations with which Mexico has no international treaty, or in the case of nations in which reciprocal treatment is not provided to Mexican suppliers or contractors, or to Mexican products and services. Thus, nations that have entered into trade agreements with Mexico may hold a distinct advantage in obtaining government procurement contracts.

C. Projects for the Provision of Services (PPS)

In the last years, the Federal Government has encouraged schemes of public-private investment inspired by the UK's Public Private Partnerships (PPP). In Mexico these schemes that allow the financing of public services by the private sector are known as Projects for the Provision of Services (PPS).

A PPS is implemented through a long term service contract, which is awarded after a public bidding procedure in order to ensure best value for money. The services hired under a PPS contract must improve the services that would have otherwise been provided by a public entity and must be delivered to the entity's budget. The high quality services must be rendered with assets supplied by the private investor under the terms and conditions stipulated in the long term contract.

In the most complex cases, the supplier may be in charge of the design, financing, construction, operation, and maintenance of the assets and related services.

In its initial phase in Mexico, the PPS initiative has focused on highways, health and education. The Federal Government will continue to identify projects and sectors where important benefits can be generated by the utilization of the PPS scheme.

The applicable legislation for PPS is the Rules for the Implementation of Projects for the Provision of Services, published in the Official Federal Gazette on April 9, 2004, which are supplemented by (i) the Law of Public Acquisitions, Leases, Services, Public Works and Related Services, and its regulations; (ii) the Law of Budget, Accountancy and Federal Public Expenses, and its regulations; as well as (iii) other rules that may be applicable in light of the nature and scope of the relevant PPS contract.

IV. *Representatives, distributors, franchises*

A. Representatives

A foreign vendor can sell goods or services in Mexico directly through its own employees. Additionally, vendors may sell merchandise through representatives or intermediaries (who may be commission agents), through distributors, or through franchisees.

When dealing through a commission agent, the vendor should be careful in ensuring that the agent is classified as an independent contractor, and not as an employee.

Such precaution is necessary because an employee could claim a labor relationship for services in Mexico exists under Mexican law, independent of

the nationality or residence of the employer, and thereby be entitled to the employee benefits. Furthermore, it is important to keep in mind that the Labor Law states that any person conducting sales, subject to direct supervision, is considered an employee of the person for whom he conducts the sale.

Mexican law does not regulate the amount to be paid as commission.

For tax purposes the agent's commission will be considered as his normal income. The sale by the non-resident vendor could be subject to Mexican taxes.

B. Distributors

Distributors are independent vendors who purchase and resell products for their own account.

Distributors, unlike commission agents, derive their income from the difference between the wholesale price at which they purchase, and the retail price at which they sell. On the other hand, a commission agent's income is based on the commission received, which is usually a fixed percentage of sales. The risks of loss are suffered by the distributor upon accepting the purchase of products. Commission agents do not suffer risks of loss of products, as they act only as intermediaries.

C. Franchisees

Mexican law broadly defines franchises as an agreement whereby technical knowledge is transferred, or technical assistance is granted, to produce, sell goods or render services in a uniform manner, and with the same commercial, administrative and operative methods set by the owner of the trademark, with the purpose of maintaining the quality, prestige and image of the products or services therein distinguished. Franchises involve the granting of a license to use a trademark.

Since a franchise agreement implies the licensing of a trademark, a franchise has to be recorded before the Mexican Institute of Industrial Property to gain protection of the trademarks against third parties. Unless otherwise agreed, the franchisee will then be authorized to exercise all legal actions necessary to impede the illegal use of the trademark, as if he were its owner.

The parties to a franchise agreement enjoy full contractual freedom. Their respective obligations include, among others, the granting of a trademark license and technical assistance, protection of confidential information, compliance with quality and operational standards, payment of royalties, and access to the franchisor's operating system.

Franchise agreements are not subject to government approval. In accordance with the Intellectual Property Law, franchisors must deliver to potential

franchisees the technical, economic and financial information regarding the franchise and its system, prior to execution of the franchise agreement.

D. Relevant considerations

Representatives, distributors, and franchisees are subject to Competition Law. It is important to avoid agreements that unfairly eliminate competitors from the market.

Either party, in accordance with the terms of the agreement, may terminate any and all agreements governing the above relationships. Mexican law does not contain specific provisions for the payment of damages or remuneration upon termination of the agreement, except as provided by the agreement

The vendor may prefer other ways to either enter the Mexican market or expand market penetration. For example, the vendor can create a subsidiary or open a branch in Mexico, instead of, or in addition to, having a representative, distributor, or franchisee. Rules are different in each case and offer the foreigner different advantages.

V. Intellectual property, Licensing

The Instituto Mexicano de la Propiedad Industrial (IMPI), is an independent government agency devoted to the registration and enforcing of intellectual property rights. The content of the law may be summarized as follows:

A. Patents

A patent is a right granted to an individual or to an assignee to exclusively exploit an invention for a non-renewable twenty-year term, beginning from the date of filing of the related application.

An invention must meet the following requirements to be patentable:

1. It must be novel, and not be comprised in the state of the art, where state of the art is defined as the technical information generally available to the public through a written or oral description, through working, or through any publication in Mexico or abroad. There is no loss of novelty if an invention is exhibited nationally or internationally at a recognized industrial or trade show, of if the inventor or assignee starts using it, provided that the patent application is filed within a twelve months term counted from the date of disclosure, and the applicant provides documents about the disclosure;
2. It must be the result of an inventive activity not readily deduced from the state of the art, nor may it be evident or obvious to an expert;
3. It must be capable of industrial application, that is, it must be useful

- towards the manufacture of a product, or to be used within a process for any type of economic activity; and
4. It must be a human creation that allows the transformation of matter or energy in a manner which may be used to satisfy a concrete need.

The following inventions are not patentable:

1. Biological processes for production or reproduction of plants or animals,
2. Biological or genetic material as found in nature,
3. Animal breeds,
4. The human body and the parts or organs thereof,
5. Vegetal varieties (These are protected by the Vegetal Variety Law),
6. Software, and
7. Business methods

Patent law incorporates the first-to-file principle. Mexico is a party of, among others, the Paris Convention, TRIPS, the Patent Cooperation Treaty, and UPOV. Thus, the date of filing a patent application in another member country is treated as the date of filing in Mexico if the applicant claims convention priority.

There is no explicit obligation to work an invention, but the law does provide that anyone may apply to the IMPI for a compulsory license if the patent is not worked for more than three years following issuance of the patent application, or four years following the filing of the application, provided that the applicant or patentee has no valid reason for the failure to work the invention.

The IMPI may also issue emergency licenses on patented pharmaceutical products, provided that the Mexican Council of General Health acknowledges a disease as of priority attention. The IMPI sets the amount of the royalties to be paid to the patentee, and the term of the emergency license.

B. Utility models

Utility models are objects, utensils, apparatus or tools, that as a result of a modification to their arrangement, configuration, structure or form, perform a different function with respect to the parts forming them, or represent advantages with respect to the usefulness of the parts.

Utility models may be registered with the IMPI if they are absolutely new and capable of industrial application. Protection is granted for a non-renewable term of 10 years from the date of filing.

C. Industrial designs

Industrial designs include industrial drawings and industrial models. Industrial drawings are any combination of figures, lines or colors, incorporated to an industrial product as an ornament, giving it a peculiar aspect of its own. Industrial models, provided that they do not imply technical effects, are three-dimensional models that serve as molds to manufacture industrial products, and give a special appearance.

Industrial designs may be registered with the IMPI and are granted protection for a non-renewable term of 15 years if they are new, and are used as a type or mold, to make industrial products.

D. Trade secrets

Trade secrets, or “secretos industriales,” are defined as any information capable of industrial application, maintained in confidence, which may be useful to obtain or to maintain a competitive advantage in the performance of economic activities; the confidentiality of which, the owner has taken measures to preserve by labeling information as “confidential,” “secret,” or in another similar manner, and has executed confidentiality agreements with all the individuals and entities that have access to the confidential information. An industrial secret must necessarily relate to the nature, characteristics, or purposes of products, to production methods or processes, or to the means or forms of distribution or marketing of products, or to the rendering of services.

Information in the public domain, information which may be obvious to a technician, or information which must be publicly disclosed by law or by court order, is not considered an industrial secret.

Any confidential information shall not be deemed to be in the public domain if such information is disclosed to an authority for the purpose of obtaining permits, registries, authorizations, or similar materials.

The protected information must be set forth in documents, electronic or magnetic media, optical discs, microfilms, films or other similar instruments.

Trade secrets may be transferred or licensed to third parties. Individuals with access to industrial secrets may not reveal them without justified cause or consent from the owner or licensee. Individuals or entities hiring employees, or contracting services from competitors, with the purpose of obtaining industrial secrets, may be liable for damages. Individuals that had access to an industrial secret due their employment or professional activity, are liable for the non-authorized use or disclosure of the industrial secret, provided that they were expressly warned about the confidential nature of the information.

The only manner under which trade secrets can be enforced in Mexico is

through the filing of criminal charges, as their disclosures is considered a Criminal Offense.

E. Integrated circuits

Integrated Circuits are protected as follows:

1. Integrated circuits are products in final or intermediate form, having at least one active element, and one or more interconnections to form an integral part of the body, the surface, or a piece of semiconductor material, destined to have an electronic function.
2. Topography or layout is the three-dimensional disposition, having at least one active element, with one or all of the interconnections of an integrated circuit for use within it.
3. Original topography or layout is the topography or layout of an integrated circuit that is the result of the creative effort of the inventor, and which is not obvious or common among creators or among manufacturers of integrated circuits at the time of invention.

Protection is afforded to the topography and/or layout of integrated circuits which are original and have not been commercially worked anywhere in the world.

There is a two-year grace period from the date of first use. Any original combination of a previously-known layout may be protected. The term of protection is 10 years from the date of filing.

The owner of a Certificate of the Topography of a n Integrated Circuit has the right to stop others from reproducing the circuit in whole, or in part, and has the right to stop the importation, sale, or distribution, without authorization.

There is no infringement if the protected topography or layout of an integrated circuit is used for:

- a) Evaluation, analysis, or academic purposes, not for profit;
- b) Creating a different original topography or layout;
- c) A third party who, independently and prior to the publication of the registration in the Industrial Property Gazette, created an identical topography.

If a third party in good faith is importing, reproducing, distributing, or selling integrated circuits, incorporating protected topography or layouts, there will be no infringement until after the infringer is notified in writing by the owner of the certificate. The infringer may finish his supplies in stock provided that a reasonable royalty is paid to the owner of the certificate. A protected topography of integrated circuits must bear the legend "(M)" or "(T)," plus the name of the owner.

F. Trademarks and service marks

A trademark is defined as a visible sign or symbol that distinguishes products or services from others of the same species or class in the marketplace. Accordingly, trademarks may be:

1. Any name or visible design, including color designs, provided that they are sufficiently distinctive to distinguish products or services from others of the same class;
2. Three dimensional forms;
3. Trade name and corporate names;
4. Individual's names, unless there is a homonym previously registered, or there is no consent of the individual from whom the name was taken.

Some marks are non-registrable, such as:

1. Words or designs that are not sufficiently distinctive;
2. The proper, technical, or commonly-used names of products or services, as well as words which are the usual or generic designation of the products to be covered;
3. Descriptive names or designs;
4. Geographic designations, if they may mislead the consumers, or any name designating the place of manufacture of products or the rendering of services; as well as names of places known for the manufacturing of certain products;
5. Names, figures or designs that are well-known (as provided by the article 10 bis of the Paris Convention) or famous in Mexico;
6. Any name, form, or design, confusingly similar or identical to a previously registered name, trade, service mark, or design, used to cover the same products or services;
7. The translation to other languages of non-registrable words; and
8. Colors by themselves. Color designs are registrable.

Trademarks and service marks, with the exception of well known and famous marks, must be registered in order to obtain exclusive right of use.

As a general rule, registration is granted to the first applicant; however, an earlier user, in Mexico or abroad, may file a cancellation action against a registration. Trademarks may be registered for 10 renewable years from the date of filing of the application with the IMPI. Use of a trademark may not be discontinued for more than three consecutive years without justification; otherwise, the registration would be vulnerable to a cancellation action.

Trade or service marks cover only specific goods or services within a single class of products according to the international classification provided in the Nice Arrangement. There are no multiple-class applications

G. Collective trademarks

Legal entities formed by producers, manufacturers, business -people, or service providers, may register collective trademarks in order to distinguish their products or services from those of non-members. A collective trademark may not be transferred to third parties, and its use is reserved for the members of the applicant entity.

H. Commercial slogans

Commercial slogans are phrases or legends that have the purpose of announcing businesses or commercial, industrial or service establishments to the public, to easily distinguish them from others of their kind. Commercial slogans must be registered in order to obtain exclusive right of use. Commercial slogans may be registered for up to 10 renewable years from the date of filing of the registration application.

I. Trade names

The visible names of commercial, service or industrial premises, are protected without need for registration, provided that they are used in Mexico. The protection covers the geographic zone of the effective clientele of the business using the trade name, and may be extended throughout the country if there is massive and constant diffusion of the name on a national level.

A user may apply for publication of the trade name in the Gazette of the IMPI to establish a presumption of good faith in the use of the name.

Trade names are not protected for a specific class of goods or services. The publication is valid for 10 years and may be renewed.

Trade names are becoming less common every day, and are being replaced by service marks. Unlike service marks, trade names may not be filed on intent -to-use basis, and might not provide automatic protection throughout the country.

J. Appellations of origin

Appellations of origin are names of geographic regions used to designate a product that originates from said region, and whose qualities or characteristics stem exclusively from the region. Mexico is a party to the Lisbon Convention. The Mexican state is the owner of the appellations of origin. The use of an appellation of origin requires a license issued by the IMPI.

K. Royalty payments

Mexican law does not provide any specific rules governing minimum or maximum royalties. Tax authorities, however, have the right to adjust the taxable profit of the payer if such royalties are excessive and do not reflect "market value."

L. License agreements

Trademark and patent licenses are business agreements and parties may freely stipulate most of the provisions, including governing law, forum, arbitration, and royalties, as well as time, place, and currency of payment.

Licensees may file actions against trademark and patent infringement, unless the license contains an explicit stipulation prohibiting the licensee filing such actions. Licensees are fully valid and enforceable between the parties without recording the agreement with the IMPI

However, recordation with the IMPI is required so that the use of the licensed trademark or patent inures to the benefit of the registrant or patentee.

Only Mexican patents, patent applications, registered trademarks, trademark applications, and trade secrets, may be licensed.

M. Copyright

Copyright is protected for original intellectual creations without need for registration. There are two categories of rights related to copyright:

1. Economic rights to use or reproduce the work of the author for profit.

This right is effective during the author's lifetime and 100 years after his death. The protection of posthumous works lasts 100 years, counted from the day of first publication; and

2. Personal rights, which include recognition of authorship and opposition to any deformation, mutilation or modification made to the copyrighted work, without authorization or opposition to any action, which may decrease the value or prestige of the work, or the reputation of the author. This right is perpetual, non-transferable, non-waivable, and does not expire when an action to enforce it is not exercised.

Copyright protects the following types of works: literary, scientific, technical, legal, pedagogic, didactic, musical, pictorial, design, engraving, lithographic, sculptural, plastic, architectural, photographic, cinematic, audiovisual, radio and television, software, and on any other work which could be considered comprised within the generic types of artistic or intellectual works mentioned above.

The author or his assignee has the right to the exclusive use of any protected work. Only the right to use, reproduce, distribute, broadcast and adapt a protected work may be assigned. The author's personal rights are not assignable.

As a general rule, the assignment of rights to use or reproduce a work are not perpetual; if the parties do not provide a term in the assignment agreement, the law considers the assignment to be only for a period of five years. As an exception, assignments involving literary works and software are permanent.

The author has the non-assignable right to be designated as such, and to oppose any deformation, mutilation, or change of his work. These rights pass to the author's heirs.

Copyright is protected even if it is not registered, published or disclosed.

Copyright infringement is defined as any of the following actions carried out without the consent of the author or his assignees:

1. To use a protected work;
2. To use the picture of a person;
3. To manufacture, reproduce, store, distribute, market copies of phonograms, videograms, or books protected by copyright;
4. To sell, offer for sale, store, or circulate, protected works that have been modified, adapted or deformed;
5. To import, sell, lease, or carry on, any action to deactivate electronic protection systems of software;
6. To rebroadcast, fix, reproduce, or publish, radio broadcasts;
7. To use, reproduce, or exploit, a registered work, pseudonym or character.

Copyright infringement is punishable by fine, but if the infringement is done on a commercial scale, there may be criminal penalties as well. The IMPI is in charge of prosecuting most cases of copyright infringement.

Mexico is a party to the Universal Copyright Convention, the Interamerican Copyright Convention and the Berne Convention.

N. Mexican law for the protection of new varieties of plants

New varieties of plants are protected under a separate law, the Vegetal Variety Law. Mexico is also a party of the International Union for the Protection of New Varieties of Plants ("UPOV"):

To be protected, plants must be: (i) new; (ii) different; (iii) stable; and (iv) homogeneous.

The term of protection is granted for:

- 25 years for perennial, forestry, fruit, ornamental plants, and grafts.
- 20 years for other species.

The owner has the right to the exclusive use of:

1. The breeding material for commercial production;
2. Marketing; and
3. Sales

Applications to register plant varieties are filed with the Ministry of Agriculture. Plant varieties will be identified by a specific name proposed by the breeder. The breeder's rights are as follow:

1. To be acknowledged as breeder of the plant variety;
2. To prevent the use of a plant variety without authorization;
3. To license others to use the plant variety.

VI Investment framework

Consistent with NAFTA, Mexico enacted a Foreign Investment Law (FIL), effective as of December 1993, and amended on December 1997, which abolished restrictions on foreign investment in most areas. FIL repealed several statutes that strictly regulated the participation of foreign investors in certain activities. The Foreign Investment Commission is the exclusive authority for the application of FIL.

On September 1998, new Regulations were published for the FIL and the Foreign Investment Registry to further relax requirements and filings. Lately, further amendments were published on July 2006 same that removed several restrictions to foreign investment in Mexico.

A. Foreign investment law

FIL establishes, as a general rule, that foreign investors may hold 100 percent of the capital stock of any Mexican corporation or partnership, except in those few areas expressly subject to limitations under the FIL. In certain activities limited by FIL, investors from NAFTA, the European Union and EFTA countries enjoy greater access, as provided in NAFTA, MUEFTA and the Free Trade Agreement with EFTA member states (MEFTA-FTA).

1. Acquisition of existing Mexican companies

Except in certain limited cases foreign investors may acquire up to 100 percent of the shares of any company. However, a resolution from the Foreign

Investment Commission is required when foreign investors wish to acquire more than 49 percent of the capital stock of existing Mexican companies, when the value of the involved companies' assets exceeds the threshold fixed by the Foreign Investment Commission. Such threshold is fixed annually.

2. Real estate

The Mexican Constitution establishes a "restricted zone" (100 kilometers wide from the borders and 50 kilometers wide from the coastal shores) in which direct foreign ownership is prohibited.

However, FIL authorizes foreign participation in a Mexican company owning real estate within the restricted zone for non-residential purposes and requires only a notification to the Ministry of Foreign Affairs; if for residential purposes, title of the real estate must be held through a trust by a trustee, which must be a Mexican bank. Approval of the Ministry of Foreign Affairs is required. Long term leases of real estate are no longer prohibited.

3. Neutral investment

Neutral investment is a carryover from the 1989 Regulations to the 1993 Foreign Investment Law. FIL regulates the mechanism to allow foreigners to hold greater percentages of the capital of Mexican companies in restricted areas. Neutral investment may be done either through Mexican companies or in authorized trusts, as follows:

- a) The Ministry of Economy may authorize companies to issue special series of shares with limited or no voting rights.
- b) Banks acting as trustees may be authorized by the Ministry of Economy to issue instruments of neutral investment that grant holders economic and limited voting rights, with the restriction that no voting rights may be granted for ordinary shareholders or partners meetings.
- c) The Foreign Investment Commission may authorize neutral investment in the capital stock of Mexican companies by international development financial companies.

VII. Free Trade Agreement between Mexico and the European Union

1. Introduction

As a result of previous negotiations with the European Union (EU), Mexico and the EU formalized a free trade agreement known as the Mexico-European Union Free Trade Agreement (MEUFTA), which entered into force on July 1st,

2001. Specifically, MEUFTA focuses on the trade of goods and services. The main goal of the treaty is to intensify trade and investment, and MEUFTA covers issues such as trade in goods, rules of origin, non-tariff measures, government procurement, trade in services, intellectual property, agriculture, and transportation.

The principal achievement of MEUFTA is the permanent elimination of all tariffs among the partners according to a rapid phase-out schedule. For instance, tariffs on industrial products, which account for more than 90 percent of the total bilateral trade in merchandise, will be liberalized during a seven year period of transition, with all tariffs being eliminated by January, 2007.

This goal of permanent liberalization is visible through the series of actions taken by the partners. For example, upon the enforcement of MEUFTA on July, 2000, the EU eliminated tariffs on 82 percent of the Mexican industrial products, and Mexico liberalized 48 percent of the industrial products of the EU. By January, 2003, the EU liberalized customs duties on all Mexican industrial products, and Mexico eliminated an additional 5 percent of tariffs, bringing the total to 52 percent liberalization. Furthermore, Mexico assured that the remaining 48 percent of EU industrial products would only be subject to a maximum tariff of 5 percent (currently 4 percent), with complete liberalization by January, 2007.

Despite the fact that industrial products constitute more than 90 percent of the bilaterally traded goods, MEUFTA contemplates liberalization of other sectors as well. For instance, MEUFTA articulates that agricultural products will be liberalized gradually and progressively, so that by the year 2010, 62 percent of bilateral trade will be completely free of duties. However, key products such as sugar, dairy, beef, and grains will be excluded. Furthermore, the service markets of both parties will be progressively liberalized, with complete liberalization occurring by the 2011.

Additionally, this treaty provides EU operators with more rapid preferential treatment than Mexico has ever before granted to any of its preferential partners. It places them in a much better position to compete in the Mexican market, which is strategically important, and has significant growth potential. While preserving EU sensitivities for agriculture and fishery products, the package negotiated for these products grants market access for the EU's most important export products. For services, EU operators have been granted better access than that previously enjoyed by Mexico's other preferential partners, including the United States and Canada.

The treaty provides for customs cooperation, mainly by introducing one single administrative document (the "EUR. 1 ") to simplify customs procedures,

guarantee the co-ordination of each party's customs systems, and ensure the correct classification of originating products.

Several technical standards were agreed upon to protect the health of humans, animals, and plants, as well as consumers and the environment. Such technical standards also guarantee the truthfulness of the information provided for a product regarding its ingredients, net weight and volume. Requirements for the manufacture of machinery and equipment were also established. Regarding sanitary and phytosanitary standards, the treaty reserves the right of Mexico and the EU to adopt the aforesaid standards to protect the life and health of humans, animals, and plants, against risks emerging from sicknesses, plagues, pollutants, if these risks are scientifically supported.

Countermeasures may be adopted for a maximum period of three years in order to provide temporary relief to a sector that could be threatened or at serious risk due to substantial increase of the imports between Mexico and the EU.

Mexican service providers are given access to the European service market without restrictions limiting the number of operations or service providers in that territory; they are granted "national treatment," which guarantees the same conditions as those granted to service providers established in the EU, and receive most favored nation treatment in reference to other countries.

Regarding government procurement, the treaty includes a clear definition of what are considered governmental entities of the parties. Procurement, for purposes of the treaty, includes the purchase of goods, services (such as construction services), and the lease or rental of goods. Pursuant to the treaty, each party must provide the same national treatment to the products, services and suppliers; that is, they must receive the same treatment as that accorded to domestic products, services and suppliers. Discrimination on the basis of foreign nationality or affiliation (or ownership of a locally established supplier) by the purchasing governmental entities is not allowed.

Economic competition is promoted and monopolistic practices will be investigated and punished. Other measures may be adopted in conformity with domestic law against non - competitive commercial practices.

Obligations concerning intellectual property are established in accordance with the laws of each party to the Treaty regarding the acquisition, conservation, and enforcement of intellectual property rights.

A mechanism for commercial consulting and dispute resolution is established, through which the dispute resolution mechanism provided for the WTO can be appealed.

Upon entering into a free trade agreement with the EU, Mexico became

the only nation with free trade agreements with both the United States and the European Union. This system of liberalized trade with two of the largest economic blocks in the world, places Mexico in a unique situation to act as a location of investment and development. For example, through NAFTA, United States companies can set up Mexican corporations engaged in manufacture in Mexico, and as long as their products comply with MEUFTA's rules of origin, their final products enjoy access to the European market on a tariff privileged basis. On the other hand, corporations within the EU can undergo a similar process, and enter United States markets through Mexico. Therefore, not only does Mexico's free trade agreement with the EU stimulate Mexico's economy by liberalizing trade, but it also establishes Mexico as a gateway between the United States and the European Union, creating investment and growth within Mexico, and providing unparalleled trade and investment opportunities for both European and ad U.S. companies.

2. Principal objectives of MEUFTA

The objective of MEUFTA is to allow preferential access for EU and Mexican exporters of goods and services into their respective markets. To achieve this, MEUFTA provides for the following:

- 1) Liberalization of trade in goods and services by:
 - a. The dismantling of customs tariffs, and
 - b. The elimination of all import and export restrictions, other than customs duties and taxes;
- 2) Removal of barriers to investment;
- 3) Guaranteeing equal treatment for the investors of the other party, as granted to their own domestic investors;
- 4) Ensuring that investment will not be coerced by restrictive government policies;
- 5) Protection of intellectual property;
- 6) Guaranteed access to government procurement contracts;
- 7) Co-operation in competition issues;
- 8) A dispute solving mechanism.

Overall, MEUFTA fosters the confidence required to make long-term investments and partnering commitments by investors of both parties. With the implementation of MEUFTA, Mexico secures access for its industrial products into the EU market, while the EU re - establishes the competitiveness of the EU exports to Mexico, securing access to Mexican market under the same benefits enjoyed by NAFTA originating products.

3. Trade in goods

The most basic achievement of MEUFTA is the permanent elimination of all tariffs among the partners according to a rapid phase-out schedule. Only the most sensitive products are subject to a long phase-out.

a) Industrial products

Industrial products account for more than 90 percent of the total bilateral trade in merchandise. In this case, the liberalization covers the entire range of products and is implemented progressively over a transitional period of 7 years. All tariffs were eliminated in January, 2007.

On July 1, 2000, the EU eliminated tariffs on 82 percent of Mexican industrial products. Similarly, Mexico liberalized tariffs on 48 percent of the EU industrial products, and eliminated the 1999 tariff increases on EU footwear and certain textile products (dismantling from 25 percent-35 percent to 10 percent-15 percent).

On January 2003, the EU liberalized customs duties on all Mexican industrial products, and Mexico eliminated tariffs on an additional 5 percent of EU industrial products, to total 53 percent of the same. Furthermore, Mexico ensured that the remaining 47 percent of the EU industrial products were subject to a maximum tariff of 5 percent, which has since decreased to 4 percent.

b) Automotive sector

EU exporters are not required to have a manufacturing facility in Mexico to be able to sell vehicles in Mexico. The importation of new vehicles from the EU is restricted by import quota limitations.

On January 1, 2007, all restrictions and duties on the importation of new vehicles from the EU were eliminated. Furthermore, the agreement envisages very favorable access for the main EU auto parts and components.

c) Customs co-operation

MEUFTA introduces one single administrative document called EUR.1, in order to simplify the classification of the originating status of the products, as well as the inspections and customs procedures in the carriage of goods. The EUR.1 is similar to the Certificate of Origin implemented by NAFTA.

d) Agricultural products

Agricultural products were progressively liberalized, reaching 62% by 2007. Key products such as sugar, dairy, beef and grains will continue to be excluded.

In the agricultural sector, both the EU and Mexico obtained favorable market access conditions for several of their key export products. For instance:

- 1) The EU obtained the progressive and total liberalization of wines, beer, liquors and spirits (vodka, cognac, certain whisky and gin), cut flowers, tomatoes, pectic substances, tobacco, and olive oil;
 - 2) Mexico obtained the elimination of tariffs on coffee, tropical fruit and vegetables, and preferential contingents for concentrated orange juice, avocados, honey, and cut flowers;
 - 3) Since 2003, 37.9 percent of EU agricultural products are free of duties, with two more tariff liberalizations in 2008 and 2010, up to 49.55 percent;
 - 4) For the Mexican agricultural products, in January 2003, 68.2 percent of agricultural products were liberalized, with two additional tariff eliminations by 2008 and 2010, to total 74.14 percent.
- e) Fishing sector

The fishing sector is gradually liberalized with respect to more than 99 percent of the current volume of bilateral trade. From 2003, Mexico liberated 71 percent of the EU fishing products, while the EU eliminated tariffs on 88 percent of Mexican products.

f) Safeguards

Safeguards may be adopted in order to provide temporal relief to a sector that may be facing serious damages because of substantial increases in the imports between Mexico and the EU.

g) Government purchases

EU and Mexican investors have access to public contracts for all products, services, and suppliers, based on the same national treatment as accorded to domestic products, services, and suppliers, provided that the value exceeds certain established thresholds. MEUFTA provides for clear rules guaranteeing the transparency of the process.

EU operators will have guaranteed access to Mexico's lucrative markets on the best terms substantially similar to NAFTA. Access to markets at federal government level includes most government enterprises and key sectors such as petrochemical (Pemex), dredging, construction, and IT.

Mexican investors receive the same benefits that the EU awards to its partners in the framework of the WTO public contracting agreement.

h) Intellectual property

The protection of intellectual property, such as patents, trademarks, and copyrights, is adjusted to the strictest international standards. EU investors are guaranteed that the EU competitive advantage in high technology is fully protected. A special committee attends to the effective application of such rights.

i) Competition

Various co-operation mechanisms are provided for to permit and facilitate the application of the respective legislations of the EU and Mexico governing competition.

j) Dispute resolution

MEUFTA provides for an effective dispute solving mechanism, which also includes arbitration, without infringing upon the respective rights of the Parties, within the framework of the WTO. The decisions of the arbitration panel are binding on both parties.

Arbitration procedures do not apply to intellectual property, anti-dumping matters, balance of payment problems, issues covered under the WTO, and free trade agreements with third countries. In addition, MEUFTA allows an alternative procedure, under which either party may undertake a dispute settlement under the WTO framework. The only condition is that no action may be disputed simultaneously under both forums.

k) Trade in services

The service markets of both parties will be progressively liberalized within a period of no more than 10 years, that is, by the year 2011. The agreement covers all services, including, among others:

- 1) Financial, allowing all EU banks and insurance companies to directly operate in Mexico;
- 2) Telecommunications;
- 3) Distribution;
- 4) Energy;
- 5) Tourism;
- 6) Environmental

The only exceptions are audiovisual, maritime cabotage and air transportation services. From the date of entry, the parties agreed not to introduce new

restrictions on EU or Mexican investors. The relevant provisions for services ensure investors that:

- 1) No restrictions on the number of operations or services provided in the other party's territory will be introduced;
- 2) Full enjoyment of national treatment at equivalent conditions;
- 3) Treatment of "most favored nation" will be granted, surpassing the benefits bestowed on third parties.

l) Investment and related payments

MEUFTA confirms the international commitments of the parties on investment and related payments. It also envisages a revision of the legal framework to evaluate the possibility of a subsequent liberalization.

m) MEUFTA rules of origin

The general structure and provisions of the EU standard protocol were followed. As such, the EU harmonized rules are applied to the vast majority of industrial, agricultural, and fishing products. The exceptions can be classified as follows:

- 1) A transitional easing of the EU rules regarding certain sectors like textiles, granting an adaptation period for the Mexican industry;
- 2) A special adjustment of the EU rules for sectors like the chemical and auto motive industry, due to the lack of raw materials or components, such as certain chemical products, complex auto parts and machinery;
- 3) A strengthening of the EU rules, accompanied by ad-hoc solutions for products like footwear, cotton, and synthetic or artificial fabrics, to guarantee preferential access to the Mexican market for EU products.

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EUROJURIS INTERNATIONAL BUSINESS GROUP:

who we are

Eurojuris International

Eurojuris was formed in the late 1980s with the objective of providing clients with access to legal advice and representation from local lawyers throughout Europe and worldwide.

Eurojuris is now the leading network of law firms in Europe and worldwide with over 600 member firms and approximately 5000 lawyers. In addition Eurojuris can, through its correspondent firms, provide access to local firms in many other countries throughout the world. Members and correspondents are always well established medium sized independent law firms satisfying the Eurojuris criteria.

Eurojuris aims to provide more than just a reliable directory of legal firms. A permanent headquarters with full time staff to manage the organisation was created in 1993 and its responsibilities include co-ordinating numerous national activities, publishing brochures, newsletters and guides, organizing meetings and congresses, promoting specialist groups and setting up an organisation to provide cohesion among different legal systems and business cultures.

The Eurojuris commitment to quality is paramount and is maintained by ensuring that management procedures and work methods are tailored to match the client needs and are dynamic and open to constant improvement. It is also essential that all Eurojuris International members understand and implement approved work methods and that regular internal and external control procedures are reviewed on a systematic basis.

Eurojuris International Business Group

The Eurojuris International Business Group (Eurojuris IBG) is one of a number of the Eurojuris practice groups. Eurojuris IBG is a proactive, business generating group that was formed to enable a small group of Eurojuris members to focus on the needs of business clients. Members of the Eurojuris IBG are experienced in their practice areas and leaders in the international legal and business community.

Eurojuris IBG members aim to provide a Partner level service to clients and, through close co-operation with European colleagues, to provide a consistent and seamless service.

Eurojuris IBG aims to offer a uniform presentation and mutual legal education schemes with common practices and to develop common services for the clients of member firms.

As more and more businesses find that improved communication and access opens the way to more international trade, the need for legal representation throughout a number of jurisdictions becomes essential. Eurojuris IBG provides access to expert local knowledge through a lawyer in the jurisdiction of the client's head office.

The members of Eurojuris IBG maintain close levels of co-operation and knowledge of each other's firms. This is achieved not only via the usual media of email, fax and telephone, but also through regular meetings, some of which take place in the offices of the member firms to enable members to understand the way in which they can better serve their client's needs.

The members of Eurojuris IBG fulfill very strict criteria: they are business minded, they work with business clients across Europe and overseas, they all work in the English language and have some knowledge of other European languages. Importantly they are equipped with the most up to date information technology systems and maintain substantial Professional Indemnity Insurance.

How to expand **your business** across borders



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