

## **New EU-Mexico agreement**

### **The agreement in principle**

Brussels, 23 April 2018

This document summarises the negotiating results of the Trade part of the EU-Mexico modernised Global Agreement at the time of the agreement in principle in April 2018. As the agreement in principle does not correspond to the end of the negotiating process, the description of the results achieved should not be considered as final. Some chapters still need some fine-tuning, while for some others some issues are still open and remain to be settled before the actual finalisation of the negotiations. Any agreement referred to in this text is to be considered ad referendum and should not be taken as being in all cases the definitive position of the EU or Mexico.

This is not a legal text.

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## **1. Trade in goods**

The original agreement did not contain a number of provisions for rules for trade in goods that have by now become standard in trade agreements. It also left out of liberalisation a number of tariff lines in agriculture and fisheries.

### *Agriculture and fisheries*

With the new Agreement full liberalization will reach more than 85% of lines which had not been liberalized. Exclusion of products has been kept to the strict minimum and refers only to the sugar sector.

For the remaining items increased market access has been negotiated, with partial liberalization and Tariff Rate Quotas (TRQs) Mexico obtained the following TRQs beef (10,000 t carcass weight equivalent with 7,5% duty phased-in in 5 years), beef offals (10,000 t carcass weight equivalent with 7,5% duty phased-in in 5 years), poultry will be fully liberalized except for chicken breast (TRQ with preferential duty of 10.000 t) and egg products (5000 t egg equivalent for egg yolks). On bananas, export of Mexican bananas will be aligned to the preferential tariff as for the other preferential bananas exporter (75€/t) at the moment of the entry into force of the agreement. Mexico also obtained a full liberalization for pork with the exception of frozen ham (TRQ of 10,000 t carcass weight equivalent). On honey, Mexico will benefit from full liberalization in 7 years. During the dismantling period, the existing TRQ for honey granted under the existing agreement will be replaced at entry into force by a TRQ of 35,000 duty free. Finally, on ethanol (25.000 t phased-in in 5 years) and raw sugar for refining only (30.000 t at 49€/t phased-in in 3 years).

On the EU side, for cheese and dairy products significant market access improvements were agreed for EU's core export products to Mexico. The agreement will provide for TRQ of 20,000 t in 5 years for mature cheeses and 5,000 t in 5 years for fresh cheeses, 50,000 t phased in 5 years for skimmed milk powder. Dairy preparation will benefit from total TRQs of 13.000 t. The tariff for infant formula will be reduced to 50% of the MFN rate in 5 years. There will be a considerable improvement of market access conditions for EU's exports for pork (fully liberalized except a TRQ of 10.000t of loins) and poultry (full liberalization at entry into force for mechanically deboned chicken meat and 20.000 t of leg quarters). All TRQ obtained by the EU are duty free.

For fruits not yet liberalized exports of apples will reach full liberalization in 10 years and tin peaches will be liberalized in 7 years.

For food and processed agricultural products (PAPs), this agreement will achieve liberalisation of all processed agriculture products with rapid or immediate tariff dismantling for key products such as pasta, chocolates, confectionery and chocolates, biscuits, lactose and lactose syrup. This result implies improved market access to both parties and cheaper imports for consumers.

### *Industrial goods*

Full liberalisation was already agreed in all sectors under the existing agreement with chemicals, plastics, cosmetics and textiles and clothing, where the EU is very competitive.

### *Lifting of non-Tariff Barriers*

The Trade in Goods text contains reinforced rules that will facilitate trade between the EU and Mexico. Apart from the elimination of most of the remaining customs duties, the

text contains provisions on fees and formalities, import and export licensing; it bans export duties, and contains new generation provisions on remanufacturing, goods entered after repair and temporary admission of goods.

A firm standstill guarantees that the parties will not be able to increase duties towards each other, while banning export subsidies will guarantee fair competition.

The section on Agriculture contains a declaratory article on cooperation in international fora on matters related to trade in agriculture in particular the developing of disciplines on exports restrictions which may affect availability of supplies in the international markets. It then contains a second article on Export Competition reaffirming Parties' commitment to the WTO Nairobi Declaration, eliminating all export subsidies and those measures having equivalent effects not allowed by the WTO agreements. It finally establishes a mechanism of transparency and exchange of information.

### *Sectorial annexes*

Annexes attached to the Trade in Goods text guarantee continued trade between the parties.

#### *Annex on wine and spirits*

There will also be an agreement for the facilitation of trade in wine between the parties, which will make access for wines easier on both sides. This will help EU exports, but also allow Mexico better access for its developing wine industry.

#### *Annex on motor vehicle*

The annex on motor vehicles will guarantee the access for EU cars and car parts by recognition of UN/ECE and EU regulations on cars. Mexico is increasing its export of cars to the EU, while the EU's export of parts is increasing in parallel.

#### *Annex on pharmaceutical*

The recognition of the EU regulatory regime would provide the certainty that this trade can continue unhindered. The annex on pharmaceutical products confirms the Parties cooperation on the adoption of international standards. Both sides will work towards seeking to achieve a Mutual Recognition Agreement on Good Manufacturing Practice to new pharmaceutical products.

## **2. Rules of Origin**

The Chapter on Rules of Origin and Origin Procedures consists of General Provisions in three sections (Section A: Rules of Origin, Section B: Origin Procedures and Section C: Miscellaneous) as well as Annexes: including Introductory Notes, Product Specific Rules, Text of the Statement on origin, Provisions on Andorra and San Marino.

### *General Provisions*

Section A: Rules of Origin: The requirements for originating products include the key provisions of the absorption rule and the principle of territoriality. The provision on cumulation allows for bilateral cumulation between the Parties. The EU traditional provision on insufficient operations applying as a limit to both product specific rules is kept. Accounting segregation may be applied for materials and for some final products. The so called 'non-alteration' rule stipulates the activities which may be undertaken in

respect of originating products in a non-Party such as operation to preserve the products, storage, splitting of consignments, exhibitions, etc.

Duty drawback is not prohibited.

Section B: Origin Procedures: The claim for preferential tariff treatment shall be based on a statement on origin by the exporter/producer.

Regarding the verification, customs authorities may request administrative cooperation to obtain information in the exporting Party. Direct visits by the customs authorities of the importing party to an exporter/ producer in the exporting party shall not be allowed for the verification. In the case of suspected irregularities and fraud, the customs authorities of the parties shall provide each other mutual administrative assistance on the basis of the existing agreement between the EU and Mexico.

Section C: Miscellaneous: Section C provides specific provisions concerning Ceuta and Melilla; the rules of the functions of the Committee(s) under the agreement as well as transitory provisions. The standard provisions on Andorra and San Marino are also included.

#### *The Product Specific Rules of Origin (PSR)*

All PSR were agreed on the basis of the condition that they would allow EU exporters to qualify for tariff reductions negotiated under the agreement.

The key points for Annex II (Product Specific Rules of Origin) are the following:

Regarding PSR for Car parts:

Industrial PSR for Cars and other vehicles (HS headings 8701-8707): 45% max NOM (Non-Originating Material). Therefore, for the entire automotive sector, the permanent PSRs are the same as in the EU-Japan or EU-Korea FTA.

In addition, temporary arrangements have been granted by the EU for Mexican imports: Exclusively for passenger cars with gasoline engine above 1,8 l (HS Ex 8703.23, and 8703.24), for chassis fitted with engines for the motor vehicles of heading 8703 (HS Ex 87.06) there is a staging period of 6 years, during which the threshold is at 55% max NOM the first 3 years and at 50% max NOM the following 3 years. For gasoline engines of 1.8 l and above, there is a staging period of 6 years, during which the threshold is at 55% max NOM. Finally, for non-passenger vehicle (HS 87.01, 87.02, 87.04 and 87.05), a quota of 10,000 units split into 2.500 units for tractors (HS 8701) and 7.500 units for other vehicles (HS 8702, 8704, 8705), there is a staging period of 6 years, during which the threshold is at 55% max NOM the first 3 years and at 50% max NOM the following 3 years. Mexico granted to the EU temporary arrangement for batteries (HS 8507) in the form of a temporary relaxed rules over 3 years (Manufacture from materials of any heading, provided that the value of non-originating materials classified in the same heading as the final product does not exceed 50% of ex-works of the product).

For textiles and clothing the current double transformation rules for textiles and clothing has been maintained with some additional flexibility in some areas (technical textiles, synthetic fibers and non-woven).

For chemicals, the rules agreed reflect modern production processes and are similar to those agreed in the EU-Japan FTA.

### **3. Customs and Trade Facilitation**

EU and Mexico are signatory parties of the Agreement on Trade Facilitation (TFA) within the framework of the World Trade Organization.

While the EU-Mexico Agreement currently in force contains only provisions on customs cooperation, the new agreement contains an ambitious Chapter on Customs and Trade Facilitation. It has been developed on the basis of the provisions of the TFA, going even further in certain areas.

This Chapter aims to boost EU-Mexico trade by agreeing on enhanced rules of good governance for customs procedures: streamlining procedures, making them more efficient, and thereby saving time, money and red tape for all companies. It sets common principles and provides for enhanced cooperation and exchange of information between the customs authorities of the EU and Mexico with a view to facilitate, where possible, import, export and transit requirements and procedures. Substantial provisions on transparency ensure that the traders and public has access to relevant information on customs legislation, decisions or administrative policies and that for new customs-related initiatives interested persons have an opportunity to comment before their adoption.

The EU and Mexico undertake to apply simplified, modern and where possible automated procedures for the efficient and expedited release of goods, resorting where appropriate to risk management, streamlined requirements on data and documentation, release of goods at the first point of arrival, and pre-arrival processing.

The EU and Mexico will issue, upon request, binding preliminary information to traders on the tariff classification of goods and origin (advance rulings), which will provide them with legal certainty and stability in the customs treatment of their international trade. In addition, the EU and Mexico will provide for an impartial and transparent system for addressing complaints by operators about customs rulings and decisions. With a view to expediting procedures, they will adopt and maintain risk management systems for high-risk goods and post-clearance audits to ensure compliance with customs and other related laws or regulations. The EU and Mexico will cooperate in establishing the mutual recognition of their Authorised Economic Operators programmes, provided that the programmes are compatible and based on equivalent criteria and benefits. Furthermore, EU and Mexico agreed on enhanced provisions regarding other areas such as penalties, transit, single window, customs brokers and pre-shipment inspections.

### **4. Trade Remedies**

As compared to the existing agreement, the Trade Remedies chapter brings clarity and legal certainty to the economic operators by making a clear distinction between the different instruments and clarifying the conditions for their application.

The chapter contains three sections. Two are related to the use of the existing WTO instruments (anti-dumping/anti-subsidy and global safeguards), and one relates to bilateral safeguards.

While the aim of a free trade agreement is to open markets, the WTO trade defence instruments should remain at the disposal of economic operators, in order to address problems caused by either unfair practices such as dumping and subsidization, or by a sudden increase of imports. In addition to the confirmation of the parties' rights and obligations under the WTO agreements, some additional elements have been included, such as increased transparency and additional consultations. The text also includes

provisions allowing for the possibility to introduce a limited level of duties if this is sufficient to remove the injury caused by dumped or subsidized imports (the so called lesser duty rule) and a public interest test.

The objective of the bilateral safeguard clause is to remedy economic damage caused by an unexpected and significant increase of preferential imports. This clause is limited in time (in general 10 years) and allows for the suspension of preferences during a period of up to 2 years, with a possible extension of one year. While the clause is sufficient to give relief to an industry if the conditions are met, it is also designed in a way that it cannot be abused to remove preferences without due justification.

## **5. Sanitary and phytosanitary matters**

The current Agreement contains a single Article on SPS, with a generic commitment to increase cooperation in SPS matters, and the creation of a SPS Committee.

The Modernization has led to a fully-fledged Chapter on SPS, providing many specific trade facilitation measures. In addition, the architecture of the relationship has been much strengthened with provisions on increased transparency, information exchange, cooperation, certification and import checks, a process for technical consultations etc. Both sides agreed to a swift and transparent import approval procedure. This means that the risk assessment for any application should be processed normally within one year. These trade facilitating steps are balanced by clear provisions enabling either side to establish the level of protection it determines to be appropriate (in line with Article 5 of the SPS Agreement);

In short, the agreed text will enable faster yet safe trade, ensuring that good agri-food quality products are traded without any unnecessary SPS constraints. In terms of process, clear timeframes will prevent any unnecessary delay.

Of particular interest to the EU is the progress made with regard to treating the EU as a single entity. For applications concerning products already exported from another MS, Mexico shall approve the application no later than 6 months, unless in duly justified circumstances.

Both Parties also agreed to endeavor to reduce the number of audits, as befits trading partners with a mature relationship. This will also benefit EU MS.

Furthermore:

- For exports of many fruits and vegetables, Mexico required so far the so-called 'preclearance' i.e. an additional layer of inspection carried out in the EU by Mexican inspectors for each consignment exported. As the costs for these controls are being passed to the EU MS, this practice has hindered very significantly EU exports. The agreed text foresees the elimination of preclearance.
- Until now, for export of animal based products (particularly meat) MEX conducted an inspection of each and every MS establishment interested in exporting to MEX again at the cost of EU exporters. This led to high costs and unnecessarily long processes. Mexico has now agreed to the so-called 'prelisting' principle, whereby approved MS will see their establishments listed without prior additional audit by Mexico whenever it has approved a market access application and recognised the system as safe. In addition, audit costs will no longer be paid by exporters but by the auditing Party.

- Inevitably, both Parties will face from time to time outbreaks of pests or diseases in certain areas of their territory. This has in the past led to export difficulties for some EU MS. To tackle this, both Parties agreed to ambitious provisions on regionalization, aiming to limit trade restrictions to the specific areas suffering the outbreak. It is foreseen that the importing Party shall normally base its own determination of the areas on the information provided by the exporting Party and that it will operate under clear and swift deadlines (e.g. within 90 days of receipt of the required information).

## **6. Animal Welfare and Antimicrobial Resistance**

The current Agreement contained a single Article on SPS, and there were no provisions on animal welfare (AW) or anti-microbial resistance (AMR).

While AW was mentioned in the Mandate, this was not the case for AMR as the EU policy has seen an increased pace recently.

The Modernization has led to a fully-fledged Chapter on AW/AMR, providing many specific commitments for enhanced cooperation. The Chapter is excluded from disputes settlement precisely because there is a focus on cooperation.

In addition, the architecture of the relationship has been much strengthened with the setting up of a working group, which will share information with the SPS Committee.

For AW, both sides agree to improve the implementation of the OIE standards. This is in line with EU policies of supporting the development and improved implementation of OIE AW standards. The right of regulate of each Party is however not in question. The commitments in this sense are balanced by clear provisions enabling both Parties to establish the level of protection it determines to be appropriate.

For AMR, the Parties recognize the importance of tackling this global threat, which knows no borders, and work together to control it. In this sense, they commit both to phase out the use of some substances as growth promoters, as well to promote and support international standards and cooperation in the multilateral fora.

Furthermore:

- The working group may invite experts for certain activities, thus opening the door to exchanges with different stakeholders.
- The information shall be shared with the SPS Committee, thus ensuring that there is a good flow of information and exchanges.
- The Chapter is not subject to dispute settlement, as the aim is to cooperate and there are no direct impacts on trade.

## **7. Energy and Raw Material**

The ERM complements the provisions of other chapters relevant to energy (goods, services investment technical barriers, state own enterprise, procurement) by providing significant value in the following areas:

- Increasing transparency and fairness /licensing authorisation processes for hydrocarbons and electricity as a means to improve governance and investment conditions

- Improving market access as a means to ensuring fair and non-discriminatory access to energy networks as well as to important raw materials
- Promoting trade in sustainable energy goods such as renewable energy and energy efficient products through for example cooperation on common standards

Increasing the transparency and fairness of authorisation processes not only decreases risk for investors; it also helps promote better governance in the energy sector in both the EU and Mexico. While both parties remain fully sovereign regarding decisions on whether or not to allow the exploitation of their natural resources, the ERM chapter with Mexico nonetheless ensures that public procedures to allocate and/or issue such authorisations are fair and transparent and are open on equal basis to EU investors. For EU investors this helps ensure access to new liberalised Mexican hydrocarbons and clean energy markets worth up to 15 and 6 billion dollars respectively a year.

In terms of promoting market access and tackling non-discrimination, one of the main aims here in the ERM chapter is to eliminate export restrictions of energy and raw material goods, including the elimination in principle of all duties (or any measure having an equivalent effect). Moreover, while both the EU and Mexico fully retain the right to regulate, the Agreement also prohibits export monopolies and unjustified government intervention in the price setting of energy goods and raw materials for industrial customers; the chapter also bans export or dual pricing where export prices are set above domestic prices. As energy goods represent between 16 and 28% (depending on international prices) of Mexico's total goods exports to the EU, these provisions help avoid EU customers paying too much for energy and also help ensure that EU industry is not disadvantaged. They also help the EU to diversify its energy sources – with the third highest gas reserves in the Americas.

The ERM chapter agreed by the EU and Mexico will also allow renewable and conventional producers of electricity and gas to freely access and sell via their respective electricity grids and natural gas pipelines. The chapter also assures that these access rules are created and legally enforced by an independent regulator.

Finally, the ERM chapter specifically includes energy efficiency and renewable energy products in the TBT chapters' articles on promoting common technical rules and standards, which are often a considerable barrier to trade.

## **8. *Technical Barriers to Trade***

The Chapter contains provisions on international standards, where the Parties reiterate their commitment to base their technical regulations on international standards, and furthermore agree on an open list of international standards setting organisations. On conformity assessment, the Chapter recognises the different approaches of the Parties to conformity assessment and their relevant trade facilitation measures: for the EU the use of supplier's declaration of conformity and for Mexico the recognition of product certification carried out in the EU.

The Chapter also establishes general principles for conformity assessment: fostering the use of international schemes for conformity assessment, basing the choice of conformity assessment procedures on risk assessment; and transparency of conformity assessment procedures: publication of procedures and approved conformity assessment bodies. On transparency the Parties build on the WTO TBT Agreement and commit to the decisions and recommendations of the WTO TBT Committee: such as extended time for comments

by the other Party after notification or minimum time prior to entry into force after adoption. The Chapter also contains obligations regarding public consultations, obligations to involve the regulators in the discussion of trade concerns, and additional information obligations.

The Chapter also contains information exchange and technical discussions provisions to address trade irritants in a timely manner and marking and labelling provisions that will facilitate labelling for economic operators while respecting the health and safety requirements of the Parties.

## **9. Services**

The EU exports some €10 billion of services to Mexico each year. The agreement will make it easier for EU firms to provide services on the highly growing Mexican market. The agreement contains a number of provisions that apply horizontally to all trade in services, such as a provision to reaffirm the Parties' right to regulate. It maintains the right of EU Member States' authorities to keep public services public and it will not force governments to privatise or deregulate any public service at national or local level. Likewise, Member States' authorities retain the right to bring back to the public sector any privately provided services. Europeans will continue to decide for themselves how they want, for example, their healthcare, education and water delivered.

### *Delivery services (postal and courier)*

The agreement includes provisions on universal service obligations, licences and the independence of the regulators. The agreement will also ensure a level-playing field between EU suppliers of postal and courier services and their Mexican competitors, such as Mexpost.

### *Telecommunications*

The agreement includes provisions focused on ensuring access to telecommunications services for all service providers, and on establishing a level playing field for telecommunications services providers, namely through dispositions dealing with the regulation of the sector (such as licencing, management of scarce resources or universal service obligations) as well as dispositions precluding anti-competitive practices. The agreement includes also a set of consumer-oriented provisions, such as those pertaining to number portability, mobile roaming or confidentiality of communications.

### *International maritime transport services*

The agreement contains obligations to maintain open and non-discriminatory access to international maritime services (transport and related services) as well as access to ports and port services.

### *Financial services*

The agreement contains specific definitions, exceptions and disciplines on new financial services, self-regulatory organisations, payment and clearing systems and transparency. Many of these provisions are based on rules developed under the World Trade Organisation, while addressing specificities of the financial services sector.

### *Temporary movement of company personnel*

The agreement includes advanced provisions on movement of people for business purposes (otherwise known as "mode 4"). They cover all traditional categories such as intra-corporate transferees, business visitors for investment purposes, contractual service

suppliers, and independent professionals, as well as newer categories such as installers and maintainers. The EU and Mexico have also agreed to allow spouses and children to accompany those who are either service suppliers or who work for a service supplier. This will, in turn, support investment in both directions.

### *Digital Trade*

The agreement sets out horizontal rules that apply to any trade done by electronic means, thus having implications that go beyond trade in services. The provisions seek to fulfil three main objectives: to remove unjustified barriers to trade by electronic means; to bring legal certainty for companies; and to ensure a secure online environment for consumers. The first objective is addressed through ambitious provisions prohibiting the imposition of customs duties on electronic transmissions and banning authorisation procedures that specifically target online services for protectionist reasons. The objective of bringing legal certainty for companies is addressed in provisions that guarantee the legal validity and effect of electronic contracts, and of electronic authentication and trust services (such as electronic signatures or digital certificates) and that prevent countries from requiring access to a company's proprietary source code. Finally, consumer-oriented provisions seek to improve online consumer trust by ensuring transparent and effective consumer protection rules in the online environment, by precluding the spreading of "spam" and by ensuring that consumers have access to an open internet.

The chapter includes a review clause providing that the Parties shall reassess, within three years of entry into force of the agreement, the need for inclusion of provisions on the free flow of data.

## **10. Investment**

### *Investment Protection*

The agreement contains provisions liberalising FDI and protecting investments between the EU and Mexico through a comprehensive approach covering both services and non-services sectors. The chapter enables the establishment and operation of enterprises in the territory of each Party, guaranteeing market access as well as non-discriminatory treatment. Performance requirements, such as local content or transfer of technology requirements, as a condition for the establishment or operation of enterprises, are prohibited. Comprehensive liberalisation commitments are undertaken through a hybrid list approach (a negative list for discriminatory treatment and a positive list for market access). Market access commitments will apply to both services and other sectors such as manufacturing and basic industries.

The liberalisation of FDI achieved by these provisions is complimented by commitments allowing for the free movement of capital and transfer and payments necessary for the proper functioning of an investment. Safeguard measures can be applied if justified by e.g. balance of payments or monetary problems, under the same conditions as those allowed by the WTO and EU Treaties.

The investment protection provisions are based on clear and precise standards which provide basic guarantees that governments will respect certain fundamental principles of treatment that a foreign investor may rely upon when making a decision to invest in the EU and Mexico. These guarantees include non-discrimination, no expropriation without prompt and adequate compensation, and a general guarantee of fair and equitable treatment and physical security. The FTA defines precisely when governments are in

breach of the fair and equitable treatment obligation and removes the scope for discretionary interpretation by tribunals.

The liberalisation commitments in this Agreement go substantially beyond those of the previous agreement and will in particular bind the recent opening of Mexico's energy sector. The protection of investment is extended beyond the existing 17 bilateral investment treaties to the remaining EU Member States, ensuring equality of treatment and opportunities for all EU investors.

### *Investment Dispute Settlement*

The EU-Mexico agreement fully implements the new EU approach to investment protection and investment dispute resolution by fundamentally reforming the old-style ISDS system. It establishes a standing international investment court system composed of a Tribunal of First Instance and an Appeal Tribunal.

Disputes about the respect of one of the investment protection provisions included in the EU-Mexico Agreement (such as protection against expropriation without compensation, non-discrimination or fair and equitable treatment) will be submitted to a standing international and fully independent Investment Tribunal System. The Members of the Tribunal System will be appointed in advance by the EU and by Mexico and will be subject to strict requirements of independence and integrity. Decisions of the Tribunal of First Instance can be appealed to a permanent Appeal Tribunal which will ensure legal correctness and certainty about the interpretation of the agreement.

Proceedings before the Tribunal System will be fully transparent and interested third parties will be allowed to make submissions. While the investment dispute resolution mechanism ensures that the rights of European and Mexican investors will be respected, it also safeguards the EU and Mexico against potential abuses of the system, notably through the prohibition of multiple claims, enhanced disclosure requirements and the application of the 'loser-pays principle' to the allocation of procedural costs.

## **11. Public Procurement**

Mexico will open up more new public procurement opportunities to EU companies than to any of its other trading partners. EU companies will be able to bid to provide goods and services to Mexican public entities which had never open before their procurement. For example EU companies will be able to bid for goods and services purchased by the International Airport of Mexico City. Mexico has also reconfirmed the coverage to some very important public procurement purchasers such as the Mexican Social Security Institute (IMSS), the State's Employees' Social Security and Social Services Institute (ISSSTE) as well as the two largest energy entities: the Federal Electricity Commission (CFE) and PEMEX (Petróleos Mexicanos). For its part, the EU has offered reciprocal access for Mexican suppliers to the European procurement market including the utilities market.

Mexico has also committed to enter into negotiations with the Mexican States to offer access for EU bidders to procurement of some Mexican States by the signature of the agreement. Mexico has also committed to achieve a minimum coverage of public entities for the states that offer access to EU bidders. This is important because this is the first time that Mexico opens public procurement at State level in a trade agreement.

Mexico has also offered non-discriminatory access for EU companies to "Public Private Partnership" contracts in return for access to the EU works concessions.

The agreement also ensures that public procurement contracts are tendered out under non-discriminatory rules and that transparency is guaranteed. Mexico has accepted to ensure a high level of predictability and transparency of its public procurement processes covered by the Agreement by introducing new generation disciplines equivalent to those internationally agreed in the WTO "Government Procurement Agreement". These include high standards for the remedies available to bidding companies if they think they have been treated unfairly.

Mexico has also agreed to make the tendering process more transparent by publishing all of its public tenders on a single procurement website. This will make information about opportunities in the Mexican market more easily accessible for European companies thus creating new opportunities for European business including SMEs.

A new element in the agreement is also the possibility to take into account environmental and social considerations throughout the procurement procedure, provided they are non-discriminatory and they are linked to the subject-matter of the contract.

In Mexico, public procurement represented 5.2% of the gross domestic product (GDP) in 2015 and 21.1% of the total government expenditure during the same year. The country's federal government procurement market is worth some €20 billion each year; however this value does not include PEMEX, which is by far Mexico's largest buyer.

## **12. Competition**

### *Competition (Anti-trust)*

The EU and Mexico have agreed on a chapter on anticompetitive conducts, which ensures that companies operating in Mexico have to respect the same basic competition principles as in Europe: no abuse of a dominant position, no agreements between enterprises that restrict competition, and scrutiny of the competitive effects of a merger. At the same time, Mexican and European companies are ensured that their rights in competition procedures will be respected (procedural fairness), and that they can confidently turn to the respective competition authorities to enforce competition law. Finally, the competition chapter also confirms the importance of cooperation between the competition authorities.

Anticompetitive conduct can be an important behind-the-border trade barrier. Rules on competition are therefore not that much about increasing market access per se, but rather about ensuring appropriate conditions which will enable market access to become effective and translate into real business opportunities. The competition chapter helps ensuring a level playing field for European companies, and avoids trade benefits stemming from the FTA being eliminated by anti-competitive practices.

### *Subsidies*

The chapter on subsidies as agreed between the EU and Mexico acknowledges that certain kinds of subsidies can hinder competition and trade. Therefore, the subsidy chapter includes rules to limit the potential negative effects of the subsidies, while at the same time recognizing that subsidies may be necessary to achieve a public policy objective.

- Mexico has agreed to ensure transparency not only as regards subsidies to goods, but also as regards subsidies to services, thereby going beyond the existing WTO rules. As a result, both sides will make public information about subsidies in selected services sectors which are important from a market access point of view, such as telecommunications, financial services, transport and energy. This requirement seeks to ensure that companies and citizens have information on how government money is spent.
- Companies have the possibility to alert their governments to subsidies which may have negative effects on their business. Governments can then engage in a consultation process and exchange information about the subsidy. In case the negative effect of the subsidy is confirmed, both sides will do their best to find a satisfactory solution.
- Finally, both the EU and Mexico have agreed to apply conditions on two types of subsidies: guarantees are allowed on condition that they are limited in terms of amounts and duration, and subsidies to ailing companies are possible only if a viable restructuring plan exists. These conditions ensure that inefficient and unviable companies do not receive unlimited state support and distort the level playing field for other companies.

The chapter is an important achievement when it comes to levelling the playing field for European and Mexican companies. It is a major improvement in comparison to the previous agreement with Mexico, which did not include rules on subsidies at all.

#### *State owned enterprises*

The text sets out rules that aim at ensuring a level playing field between private and public enterprises.

Most importantly, it establishes binding rules requiring SOEs to (i) act according to commercial considerations and (ii) ensure non-discriminatory treatment when they engage in commercial activities. What this means in practice is that the decisions of SOEs must be commercially motivated and that SOEs must not discriminate towards the other Party's goods, services and enterprises when buying or selling, when located in their own territory or in the other Party's territory.

A set of rules concerning the regulatory framework means that regulators are not allowed to give undue preferences to SOEs in their regulatory activities. Both sides have also agreed to apply the OECD Guidelines on Corporate Governance of State-Owned Enterprises where possible.

Rules on transparency allow both sides to seek further information on particular enterprises and their activities on a case by case basis.

The scope of the activities covers the largest SOEs, enterprises granted special rights or privileges and designated monopolies at all levels of government where the turnover threshold exceeds 200 million special drawing rights.

The agreement fully protects both the EU's and Mexico's right to provide public services to their citizens. The agreement does not lead to any privatization of public enterprises - both sides are free to organize their economies in this respect as they choose.

### **13. Intellectual property right**

The Agreement includes a comprehensive chapter covering all the main Intellectual Property Rights (IPR) outcome including on geographical indications and ensure high standards of protection and enforcement beyond TRIPS rules.

The provisions on copyright and related rights cover all the rights protected by the EU *acquis*, including resale rights, and mirror the high EU standard as regards the term of protection. The trademark provisions include the important commitment to the Madrid Protocol and the Nice Agreement and follow the new EU approach on the possibility of seizing goods in transit. The IPR chapter further copies the EU definition of industrial designs including complex designs and the term of protection of registered designs of up to 25 years.

As regards pharmaceutical and plant protection patents, the IPR chapter contains both the possibility of compensation for unreasonable delays in the marketing authorization process and provisions on the data protection terms in this regard. Plant varieties are protected in line with the latest international standards. The IPR chapter integrates the most significant parts of the recently established EU *acquis* in relation to the scope of protection of trade secrets and the procedural rules applicable in this regard.

The IPR chapter further includes a detailed section on civil and administrative enforcement, which in particular provides for the availability of provisional and precautionary measures and remedies. A dedicated text on border enforcement ensures the active involvement of customs authorities in targeting and identifying IPR infringements with respect to all goods under customs control. Customs authorities shall hereby be supported by a central database and may act upon their own initiative to suspend the release of or detain suspect goods.

The IPR chapter goes well beyond the existing agreement with Mexico, which basically only makes reference to international obligations. The added value for Europe's IPR-intensive industry and IPR owners is therefore significant.

#### *Geographical Indications*

The Section contains provision for the reciprocal protection of a selected list of Geographical Indications (GIs) of the EU and Mexico. In the case of the European Union 340 names for foodstuffs, wines and beers will be protected. This is on top of the already existing protection for EU spirits GIs protected through the 1997 EU/Mexico Spirit Agreement. The Spirits Agreement will also be incorporated into new agreement.

### **14. Trade and Sustainable Development**

Through dedicated provisions in the Trade and Sustainable Development (TSD) Chapter, the EU and Mexico sets out common aspirations and objectives to build a free and fair trading relationships, by marrying the values of sustainable development with the economic engine of trade.

#### *Upholding the multilateral system*

The TSD Chapter contains a set of binding commitments to protect workers' rights, environmental and climate protection, based on the multilateral system of the International Labour Organisation (ILO) Conventions and the Multilateral Environmental Agreements (MEAs). These commitments include obligations to effectively implement

the "fundamental" ILO standards covering subjects such as freedom of association and effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labour, abolition of child labour or equal opportunities for women and men to obtain decent and productive work. These are complemented by a resolve to promote the ILO Decent Work agenda, including on occupational health and safety, working conditions, and labour inspection.

Furthermore, the TSD Chapter includes provisions on the fight against climate change and the transition to a sustainable low-carbon economy, referencing the Paris Agreement.

It also identifies potential areas where trade and climate change agendas can reinforce each other such as: the conservation and sustainable management of the biological resources, forests and fisheries, the promotion of trade in legally harvested and sustainable products or promotion of low-carbon technologies and energy efficiency. Key relevant international instruments include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity (CBD) and fisheries instruments at global (FAO) and regional level (RFMOs).

#### *Transparency*

Transparency is of particular relevance in the context of TSD. Notably, non-state actors (employers' and workers' organisations, business organisations, environmental interest groups or academics) can be informed about and provide inputs at any moment on the development, introduction, and application of measures related to trade and labour or the environment.

#### *Working together*

The TSD provisions also establish priority areas for sharing of information and joint initiatives, including cooperation in international fora responsible for social or environmental aspects of trade such as the WTO, ILO, UN Environment and MEAs.

Furthermore, in view of the increasing importance attached to the issue, the TSD chapter includes obligations to promote the uptake of responsible business conduct/ corporate social responsibility practices, in accordance with internationally agreed UN and OECD principles and guidelines.

#### *Overseeing mechanism*

The EU approach to TSD is based on the notion that long-lasting changes in labour and environmental practices can only happen through an inclusive reform process in the country. The TSD enforcement mechanism is geared towards creating ownership, when needed with the necessary pressure elements. This implies regular dialogues, involvement of civil society and close cooperation between the Parties as a mean of reaching common positions on any matter related to the TSD chapter.

#### *Solution of controversies*

Disagreements or controversies on any matters arising under the TSD chapter are solved by using the governmental bodies (Trade and Sustainable Development or the Trade Committees), government-to-government consultations and a mechanism for impartial assessment of serious issues through an independent Panel of Experts and the publication of a public report with recommendations. The report can serve as a catalyst for further dialogue between the Parties and for civil society to take up through their dialogue with the Parties.

## **15. Transparency**

This Chapter includes ambitious provisions on the publication, administration, and review and appeal of measures of general application related to trade matters. The Parties have committed that a measure of general application with respect to any matter covered by the Agreement will be published via an officially designated medium and will provide an explanation of the objective of, and rationale for, the measure; and that adequate non-discriminatory procedures of review and appeal shall exist to challenge those measures.

## **16. Good Regulatory Practice**

The objective of this Chapter is to establish a set of Good Regulatory Practices that the Parties will use when developing regulations.

The provisions ensure that the public is aware in advance of the major regulatory activities that regulators are planning to undertake. Furthermore, there are provisions that ensure that opportunities will be available for the public to contribute to the regulatory process at an early stage. It specifies that these opportunities are available to a wide set of interested persons, and that foreign stakeholders are not discriminated. Stakeholders should be given sufficient information about the regulatory initiative in order for them to be able to ascertain if and how their interests could be affected by the planned regulations.

There are provisions regarding the use of Regulatory Impact Assessments for the development of regulatory initiatives, where the Parties commit, according to their rules and procedures, to consider the need of the regulatory act, to examine all possible regulatory alternatives and to assess potential impacts of future regulations before issuing them.

The Parties commit to carry out evaluations of their regulations, in order to assess if they have been effective and efficient and if they have achieved the outcomes for which they were designed.

The Parties also commit to establish internal coordination procedures to facilitate the development of regulations and to maintain an online regulations repository.

This Chapter is not subject to dispute settlement.

## **17. Small and Medium Enterprises**

The vast majority of companies in both the EU and Mexico are Small and Medium-sized Enterprises (SMEs). Their business activities are diverse, as are their needs in various trade areas. At the same time, SMEs have fewer resources than large companies to overcome the challenges of trading internationally such as import and licensing requirements and the Agreement includes a chapter specifically addressing their needs.

This agreement with Mexico is one of the first EU FTAs which includes a dedicated SME chapter, in line with the 2015 EU trade strategy "Trade for all". The provisions will require Mexico to provide a specific web site containing information that EU SMEs need to access the Mexican market, and vice versa. SME Contact Points on each side will work together to take into account the specific needs of SMEs and identify ways that they can take advantage of new opportunities in each market.

EU SMEs will gain significantly from many of the more general provisions of the FTA. These provisions make doing business easier with Mexican partners when they export or import goods and services, invest or work together. Measures such as tariff elimination, simplified customs procedures and more compatible technical requirements are lowering export related costs per sold unit and allow SMEs with lower trade volumes to compete alongside larger companies on the Mexican market. This also enhances SMEs' ability to participate in supply chains, e-commerce, and public procurement and to provide services.

### **18. Anti-corruption**

This agreement is the first time the EU has negotiated provisions to combat and prevent corruption in trade and investment which is important due to the negative ways corruption also affects trade: it compromises market access opportunities, erodes trade concessions, and distorts commitments aiming to create a level playing field. It can act as an outright non-tariff barrier or as a cost to foreign direct investors, companies seeking to participate in public procurement procedures and secure government contracts, economic operators seeking to secure authorisations and exporters/importers of goods including in the area of customs and related controls.

The objectives of the Anti-corruption provisions are to prevent corruption in trade and investment through different measures, notably by promoting integrity in the private and public sector, enhancing internal controls, external auditing and financial reporting as well as to strengthen the fight against corruption pursued already through international conventions, in particular the United Nations Convention against corruption (UNCAC). In this regard, the Parties reiterate their commitment to make corruption a criminal offence for government officials and to consider as well making corruption an offence for businesses.

The two sides will also tackle money laundering notably by ensuring that the identity of who really owns a bank account, trust or fund (the 'beneficial owner') is always known and the relevant authorities, such as tax or judicial authorities, can access that information.

The Parties seek to promote the active participation of civil society in the prevention and fight against corruption. The Domestic Advisory Groups will be able to present proposals on how to better address corruption in bilateral agreements such as the one with Mexico.

A consultation mechanism will allow the Parties to consult with a view to finding an amicable solution to any disagreement on the interpretation or implementation of the Anti-corruption provisions. In the consultation procedure, the Parties can seek the assistance of a Group of Experts, which would issue an Opinion with a proposed solution. Such Opinion would be made public and would require the Parties to discuss, with the help of their civil society if appropriate, ways of implementing such recommendations.

### **19. Dispute Settlement**

The Dispute Settlement ('DS') Title sets out the procedures for solving any potential disputes between Mexico and the European Union on the interpretation and application of the Trade Part of the Agreement.

The mechanism is triggered when one Party considers that the other has failed to comply with the obligations under the Agreement. The Parties are expected to embark in consultations to find an amicable solution. The DS Title also foresees the possibility for both Parties to find an amicable solution with the help of a mediator ("mediation" mechanism).

If no solution is found, the complainant can request an independent and impartial panel of arbitrators to rule on the matter. It must be composed by three arbitrators with high qualifications, expertise and experience in trade and international law, who must observe high standards of ethical conduct and render decisions fairly.

During the proceedings, both sides have the possibility to be heard and to expose their arguments. Hearings are open to interested persons, who can also make their own submissions to the panel. The panel will issue a report and its decision is final and must be respected by the Parties. If a Party is found in breach of its obligations, such Party must bring its measures into compliance with the Agreement. The complainant can put in place counter-measures if the infringing Party fails to implement the decision.

The panel that adjudicates the dispute is agreed by the Parties. The dispute settlement procedures are based due process and transparency principles, allowing interested parties to attend hearings and make their own submissions to the panel.

As a result, the DS Title in the Agreement with Mexico puts in place effective, timely and transparent procedures to ensure that both Parties abide by the rules and obligations in the Trade Part of the Agreement.