

Request for technical inputs from EU Industry on EU-Mexico trade relations

Fields marked with * are mandatory.

REQUEST FOR INPUTS FROM INTERESTED STAKEHOLDERS ON EU-MEXICO TRADE RELATIONS

In 2015, the EU carried out a Public Consultation give stakeholders an opportunity to comment on relevant aspects of the Impact Assessment accompanying the Commission's recommendation to launch the negotiations for updating the EU-Mexico FTA (under the existing EU-Mexico Global Agreement). Following this authorisation of the Council to proceed, these negotiations were launched in June 2016.

In order to feed this negotiation process, the Commission would like to offer the opportunity to interested stakeholders to share their views on what they consider key aspects to be addressed through the modernisation. This questionnaire consists of technical questions and aims at collecting practical experience of doing business with Mexico. The target audience is essentially European economic operators with trading experience with Mexico but the Commission appreciates technical inputs from any interested stakeholders.

To facilitate the treatment of the information collected, this questionnaire is structured according to the different chapters that are currently under negotiation with Mexico, and economic operators are invited to structure accordingly their reply using the on-line form. However, should there be any additional point you wish to draw the Commission's attention to, please describe this under "Other issues". Where possible, the Commission would appreciate receiving as much specific information as possible (substantiated where possible by economic indicators and/or data) as to respondents' interests, prioritization within sectors, and any proposals for solutions, where problems have been identified.

The Commission, subject to the application of the EU's rules on access to documents (Regulation (EC) No 1049/2001), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure.

For more information or additional questions please contact:

[EU-Mexico Trade relations](#)

[EU-Mexico Political relations](#)

[Specific privacy statement](#)

For information on the market access barriers, see [MADB](#)

I. TRANSPARENCY AND CONFIDENTIALITY

(The questions in this section marked with * are mandatory)

Received contributions may be published on the Commission's website, with the identity of the contributor. Please state your preference with regard to the publication of your contribution.

Please note that regardless of the option chosen, your contribution may be subject to a request for access to documents under [Regulation 1049/2001](#) on public access to European Parliament, Council and Commission documents. In such cases, the request will be assessed against the conditions set out in the Regulation and in accordance with applicable [data protection rules](#).

* Please, indicate your preference:

- My contribution may be published under the name indicated; I declare that none of it is subject to copyright restrictions that prevent publication
- My contribution may be published but should be kept anonymous; I declare that none of it is subject to copyright restrictions that prevent publication
- I do not agree that my contribution will be published at all*

Unless respondents provide a substantial justification for their opposition to the publication of their contribution, contributions are published on the dedicated website.

II. ABOUT YOU

* Are you replying to this questionnaire to express:

- Your personal views as a citizen or private individual
- On behalf of a body, organisation or association for which I work, or whose views I represent

* If your organisation is registered in the transparency register, please provide the registration number:

3978240953-79

* What is your name or the name of your organisation if you are not expressing your personal view?

Text of 1 to 100 characters will be accepted

BusinessEurope

* What is your e-mail address? (your email will not be published)

Text of 1 to 100 characters will be accepted

j.ploner@businessseurope.eu

*Do you accept that the Commission contact if she considers useful to ask you further information:

- Yes
- No

* What type of body, organisation or association are you representing?

- Enterprise
- Business association
- Public Administration (Government institution, regulatory authority)
- Consumer organisation / association
- Trade union
- NGOs
- Consultancy / professional services
- Academic/research institution
- Other

Are you/your members involved in trade relations between the EU and Mexico (trade in goods, services or investment)?

- Yes
- No, but (I)/ my organisation (have)/has been involved in the past
- No, but (I)/my organisation (am)/is planning or exploring the possibilities
- No. Trade between the EU and Chile is not viable for (me)/my organisation
- No. (I)/my organisation (do)/does not intend to engage in international trade.
- Not relevant

Where are you/the body you represent located?

- In one of the 28 Member States
- Mexico
- Other

Please specify where are you located:

Text of 1 to 100 characters will be accepted

Brussels

What are the main areas/sectors of activity of interests for you or for the body you represent?

- Not relevant / No specific sector
- Farming (crop and animal production), hunting and related service activities

- Forestry and logging
- Fishing and aquaculture
- Mining of coal and lignite
- Extraction of petroleum and gas
- Mining of metal ores
- Other mining and quarrying
- Mining support service activities
- Production of food products
- Production of beverages
- Production of tobacco products
- Production of textiles
- Production of apparel (clothing)
- Production of leather and related products
- Production of wood and products of wood and cork, excluding furniture
- Production of paper and paper products
- Printing and reproduction of recorded media
- Production of coke and refined petroleum products
- Production of chemicals and chemical products
- Production of basic pharmaceutical products and pharmaceutical preparations
- Production of rubber and plastic products
- Production of other non-metallic mineral products
- Production of basic metals
- Production of metal products (except machinery and equipment)
- Production of computer, electronic, and optical equipment
- Production of electrical equipment
- Production of machinery and equipment not covered by any other category listed here
- Production of motor vehicles, trailers and semi-trailers
- Production of other transport equipment
- Production of furniture
- Other manufacturing
- Repair/installation of machinery and equipment
- Electricity, gas, steam and air conditioning supply
- Water collection, treatment, and supply
- Sewerage; waste collection, treatment and disposal activities; materials recovery
- Remediation activities and other waste management services
- Construction of buildings
- Civil engineering
- Specialised construction activities
- Wholesale and retail trade and repair of motor vehicles and motorcycles
- Wholesale trade, except of motor vehicles and motorcycles
- Retail trade, except of motor vehicles and motorcycles
- Land transport and transport via pipelines

- Water transport
- Air transport
- Warehousing and support activities for transportation
- Postal and courier activities
- Accommodation
- Food and beverages service activities
- Publishing activities
- Motion picture, video and television programme production, sound recording and music publishing activities
- Programming and broadcasting activities
- Telecommunications
- Computer programming, consultancy and related activities
- Information service activities
- Financial services activities, except insurance and pension funding
- Insurance, reinsurance and pension funding, except compulsory social security
- Activities auxiliary to financial service and insurance activities
- Real estate activities
- Legal and accounting activities
- Activities of head offices; management consultancy activities
- Architectural and engineering activities; technical testing and analysis
- Scientific research and development
- Advertising and market research
- Other professional, scientific and technical activities
- Veterinary activities
- Rental and leasing activities
- Employment activities (incl. recruitment activities)
- Travel agency, tour operator, reservation service and related activities
- Security and investigation activities
- Services to buildings and landscape activities
- Office administration and other business support activities
- Public administration and defence; compulsory social security
- Education
- Human health and healthcare activities
- Social work activities (incl. residential care)
- Arts, entertainment and recreation (incl. sport)
- Other service activities (incl. repairs of computers and personal and household goods, and other personal services)
- Activities of households as employers of domestic personnel; undifferentiated goods and service producing activities of households for own use
- Activities of extraterritorial organizations and bodies
- Other

Please specify what are your main areas/sectors of activity of interests:

Text of 1 to 100 characters will be accepted

We are the umbrella organisation for the European business with cross-sector representation

III. TECHNICAL INPUTS ON THE EU-MEXICO TRADE RELATIONS

In order to feed the EU negotiations process, the technical questions of these questionnaire are structured according to the structure of EU FTAs. We recommend you to be selective as regards the areas in which you would like to provide comments. In case of doubts, select "Other issues".

*

Please select the questions to which refers the technical inputs you would like to make:

- Trade in Goods (i.e. rules of origin, import restrictions, export restrictions, customs procedures, discrimination, trade defence, TBT, SPS)
- Trade in Services and Investment
- Rules (i.e. Intellectual Property Rights, Competition, Government Procurement, SMEs, Transparency, trade and sustainable development)
- Other issues

Trade in goods

*We recommend you to be selective as regards the areas in which you would like to provide comments.

Please select the subsections for which you would like to provide technical inputs:

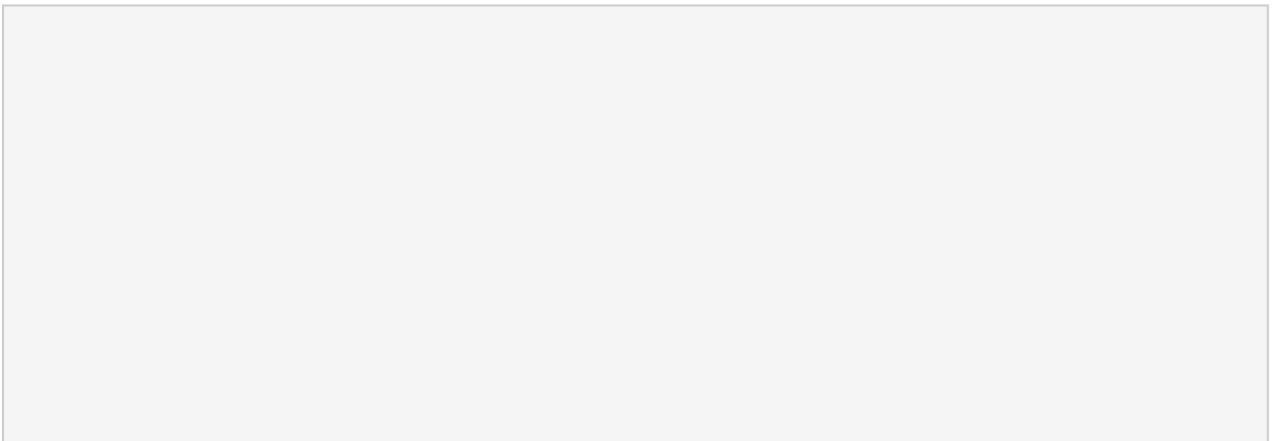
- General goods-related questions
- Rules of origin
- Customs procedures (including import and export procedures)
- Import restrictions and prohibitions
- Access to raw materials and export restrictions and prohibitions
- Discrimination in domestic regulation and taxation
- Sanitary and Phytosanitary Measures (SPS) (agricultural goods, fish and fishery products)
- Technical Barriers to Trade (TBT) (industrial goods)
- Trade defence instruments (anti-dumping, anti-subsidy and safeguards)

Trade in goods: Rules of Origin

If your industry needs specific flexibility as regards the rules of origin applicable to your exports to Mexico, please explain:

The rules of origin chapter should be updated to better respond to the current business needs of the different industrial sectors. Regarding cumulation it is important to ensure consistency with other agreements that were concluded in the region.

If your industry has sensitivities as regards the rules applicable to import from Mexico, including possible cumulation by Mexican exporters of materials or products from other countries or from other EU trade agreement partners, please explain:



Trade in goods: Questions related to customs procedures (import, export and transit procedures)

If you face problems regarding customs procedures, please select the types and provide a description here below:

- General problems with procedures and requirements for imports, exports and/or transit in the Mexico
- Inspections and controls during clearance
- Pre-shipment inspections
- Release times
- Fees and charges
- Confidentiality data
- Data requirements
- Documentation requirements
- Compulsory use of customs brokers
- Other customs procedures
- Transparency/publication of and access to trade regulations
- Discriminatory treatment
- Lack of uniformity in application of procedures
- Complexity in application of procedures
- Customs valuation
- Tariff valuation
- Relation with/access to the customs authorities
- Co-ordination between different border agencies
- Use or non-use of information technology
- Application or non-application of relevant international standards
- Procedures for legal recourse/appeal
- Remanufactured goods and repair operations
- Transshipment
- Reference pricing
- Logistics/congestion
- Advance rulings
- Proofs of origin
- Other

Please provide a description of the difficulties encountered in the way in which Mexican authorities implement customs procedures, if any:

Customs requirements and documentation should be standardized and simplified to avoid lengthy rejection processes.

Customs procedures are often delayed due to minor mistakes in the documentation, which itself is rather complicated and prone to errors. This results in long delays (at least 10 days for instance to issue a new EUR-1 certificate), making it sometimes cheaper for the European exporter to apply the MFN tariff.

It takes from 2 to 4 weeks to obtain a standard import permit. For an import permit with the involvement of the Mexican health and environment authority, it takes 6 additional months. In addition, changes to existing import permits take several weeks.

In the case of Free Sale Certificates issues are encountered with the certificates required by the Mexican authorities for the entry of products intended for human consumption or use and that must accompany the import application. Mexico requires that certificates be issued by the health authority or the agency designated by it as competent. Even though the Mexican authorities published a note in 2006 allowing not only national health authorities but also other institutions (for instance chambers of commerce) to issue the certificates, there are still problems with the acceptance of certificates issued by non-health authorities.

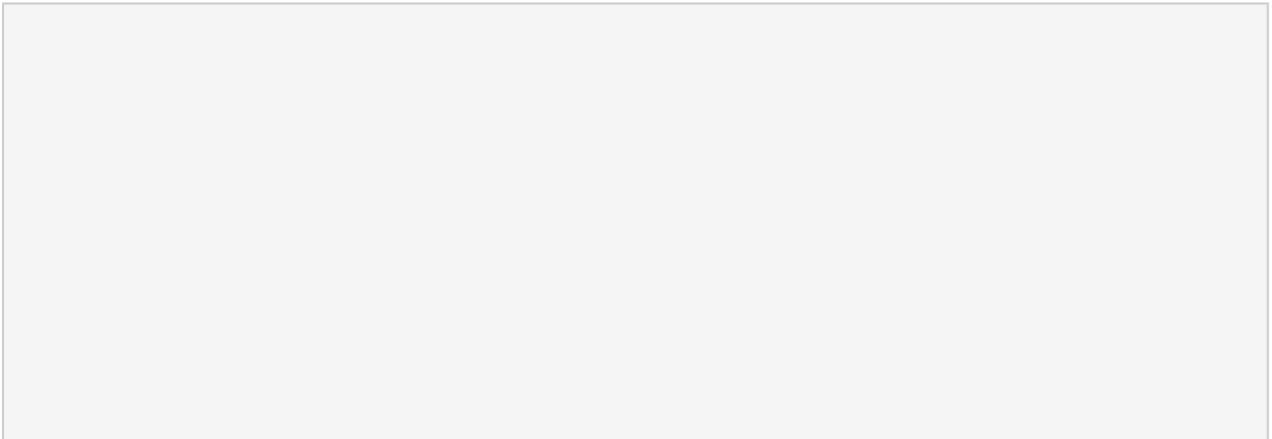
There are also problems with the import of samples resulting from different practices due to a lack of specification (e.g. quantities) in the Customs Law and the General Rules on Foreign Trade. In the case of meat products, only authorized establishments can introduce them to the Mexican market. Some companies, however, despite having authorization by the Ministry of Agriculture but not yet an importer-distributor partner, are not allowed to bring their samples to events where the goal is precisely to find one. Another issue with samples is the fact that, according to the General Rules on Foreign Trade, they have to be "found marked, broken, punctured or treated in a way that disqualifies them for sale, or for any use other than that of samples". This requirement is a problem for many products as a modified appearance has negative implications on the presentation and evaluation by a potential customer or distributing partner.

Trade in goods: Questions related to duties, import restrictions and prohibitions

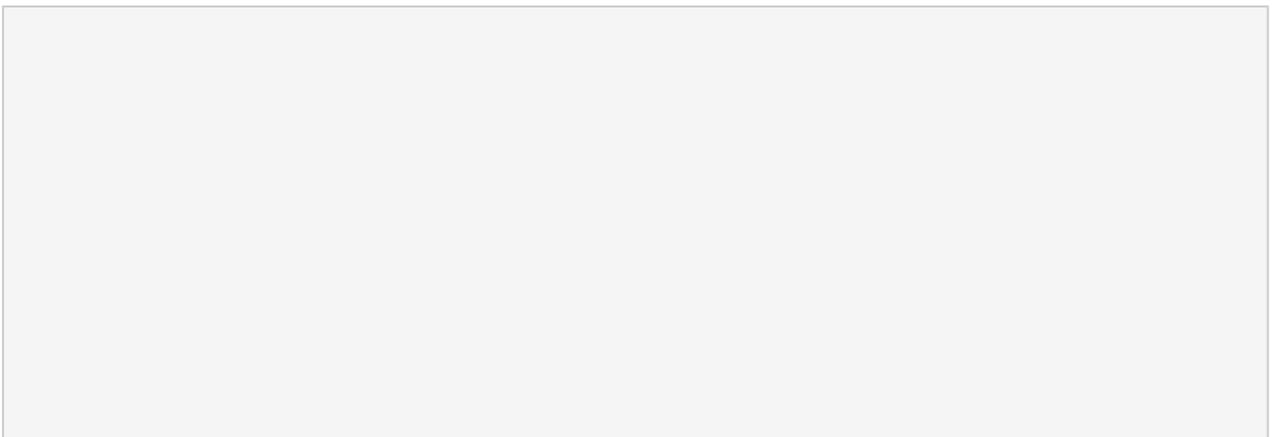
If your sector faces import restrictions or prohibitions in Mexico, please specify the type of import restrictions (import duty, combined with additional or specific duties, tariff rate quota, import licensing, import prohibition, import monopolies, etc):

Some European products face competition from US or Canada originating imports. For instance, Mexico has a 10% import tariff on baby formulas from Europe while alike products from the US or Canada are not subject to duties. Another example is the 67% Mexican duty levied on cigarettes, HS 2402.20, which was eliminated on this product through its FTAs with Canada, USA, Chile, Peru, and Central America, putting EU exports at a significant disadvantage.

If your product is subject to import licensing requirements which hinder trade (e.g. non-automatic license), please describe them:



If you face other measures applied by Mexico which hinder EU export (e.g. export duty, export quotas or bans, VAT rebate schemes, licensing, minimum export prices, export monopoly), please describe them:



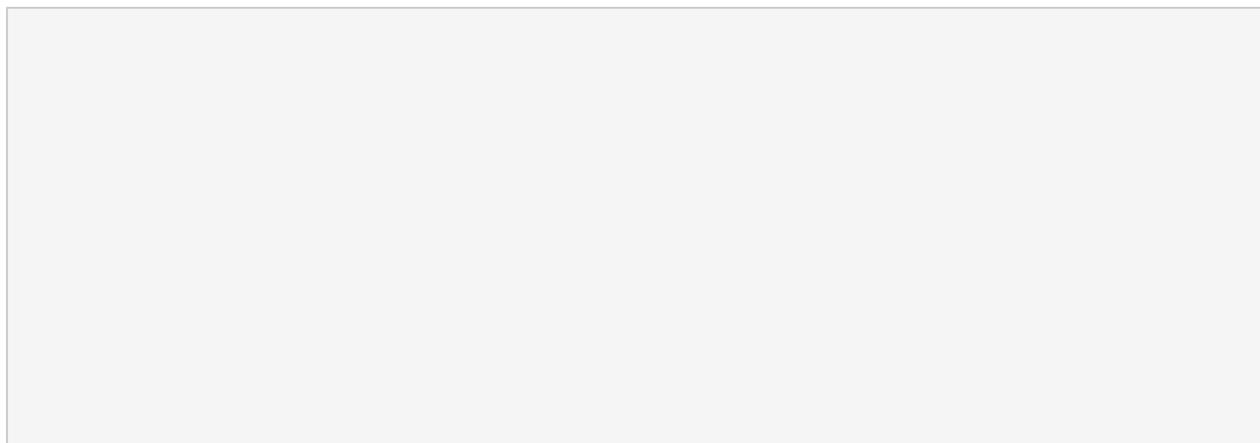
***Trade in goods: Questions related to Sanitary and Phytosanitary Measures
(Agricultural products, fish and fishery products)***

If you have encountered major Sanitary and Phytosanitary (SPS) barriers when trying to export agricultural and fishery products to Mexico, please describe them:

Mexico has some specific requirements for special seed treatments for imported products which are neither authorized nor available in Europe and therefore make the production for the Mexican market very costly (for instance tomato seeds). A harmonized methodology for pest risk assessment and some additional flexibility in the recognition of treatments should be covered in the agreement.

Mexico conditions the recognition of the Spanish system of accreditation of pig producers to the recognition of their own system. Given that member states cannot negotiate the health aspects of imports of Mexican products individually, as this is a Community competence, the possible agreement should be negotiated at EU level. Preparatory efforts for mutual recognition have already been made on a bilateral basis (e.g. Spain) and can serve as example for a solution on EU level.

If you have any recommendations for solutions which would facilitate trade, please describe them:



Trade in goods: Technical Barriers to Trade

If you found product requirements either established by a technical regulation or a standard to be a problem in exporting your products to Mexico, please describe them:

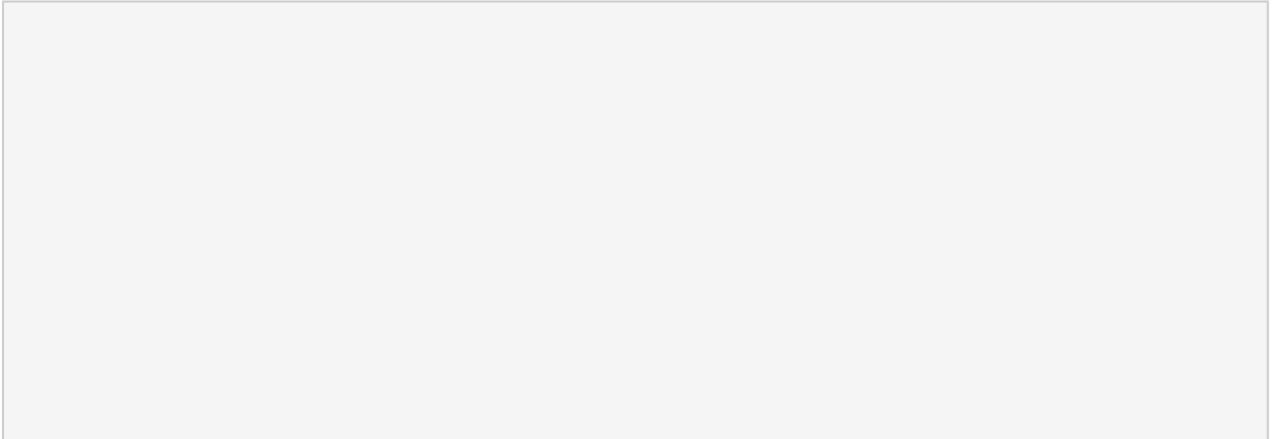
The Agreement should lead to comparable requirements for test laboratories, mutual recognition of test results, mutual recognition of certificates of conformity, transparent development of consistent technical regulations and the use of international ISO/IEC/ITU standards. One product that is experiencing standard recognition issues due to SAGARPAs intransparent requirements is deep-frozen horse semen.

If you found that trade barriers for EU exports to Mexico arise not necessarily from the product requirements as such, but from the procedures used by Mexico to verify compliance with these requirements (conformity assessment procedures), please describe these procedures and how more burdensome they are than those applied by the EU:

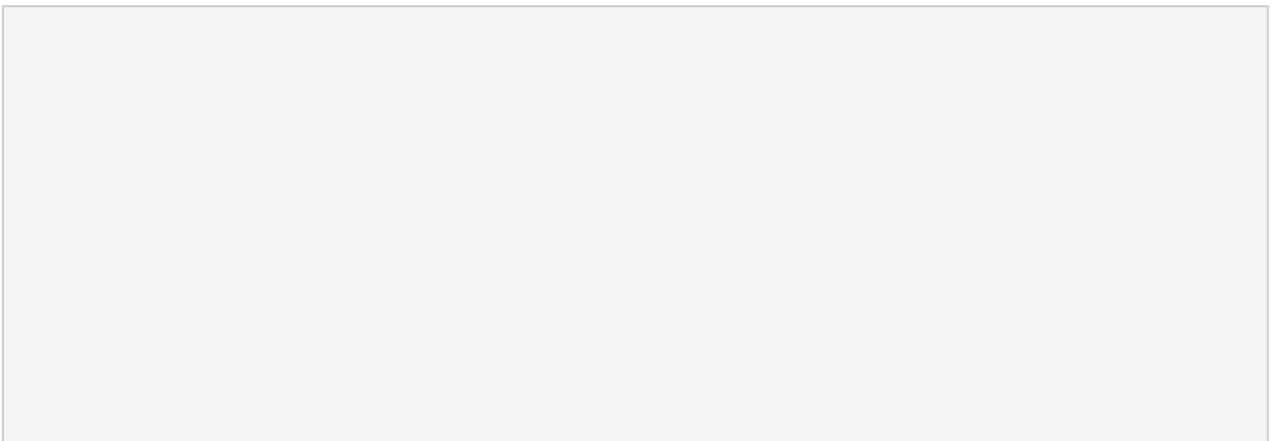
The registration of health products has to be made through different public health institutions (IMSS-Social Security Institute, ISSSTE-Institute for Social Security and Services for State Workers, SP- People's Health Insurance, PEMEX-Mexican Petroleum, SEDENA-Secretariat of National Defence, MARINA-Navy). These institutions have different procedures that can take up to three years (mainly IMSS and ISSSTE). The institutional approval process for marketing of medicines in Mexico has a number of shortcomings, notably in terms of length, lack of transparency and unpredictability.

Products with regulatory approval and wide reimbursement throughout the world are often denied listing in Mexico based on alleged inadequate efficacy or safety defined through non-transparent criteria. As a result, there has been a dramatic reduction in public formulary listings for innovative medicines that have been approved for inclusion in the national formulary. Decisions denying institutional approval are not subject to any effective method of appeal. Accordingly, due to the reimbursement delays there is an average of two years for access to medicines, if made available at all in the public sector.

If you encountered difficulties (e.g. increased costs and marketing delays) due to the conformity assessment procedures followed by Mexico, please describe them (e.g. no acceptance of product specific test results from accredited EU conformity assessment bodies, specific requirements in terms of accreditation, time-periods set for certification):



If you encountered difficulties in Mexico due to lack of transparency and good regulatory practice in the development, adoption and enforcement of technical regulations, please describe them (e.g. no public consultation before the implementation of TBT measures or difficulties for foreign companies to intervene in these local process, short implementation periods for new measures, deviation from international standards, excessive labelling or marking requirements):



Trade in goods: Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)

If you had experience related to the use of trade defence instruments in Mexico (anti-dumping, anti-subsidy or safeguards) and there were particular difficulties in communicating with and/or receiving information from Mexican authorities dealing with trade defence instruments, please describe the problem:

An anti-dumping investigation has been initiated on December, 23rd 2014 by the International Trade Practice Unit of the Ministry of Economy (UPCI) against carbon steel pipes with straight and helical longitudinal seams originating in Spain, the US and India.

If you encounter market distortions (subsidies, pricing policies) in the Mexico which should be addressed (e.g. by trade defence measures or other types of measures or which create structural trade difficulties), please describe them:

Rules

*Please select the subsection for which you would like to make comments:

- Transparency
- Intellectual Property Rights
- Competition, State owned enterprises and subsidies
- Government procurement
- Small and Medium Enterprises (SMEs)
- Trade and sustainable development

Rules: Questions related to Intellectual Property Rights

If you consider that there is a type of protection or enforcement measure missing in Mexican legislation and practices, please describe the problem (e.g. penalties disproportionate to provide sufficient deterrent against violations):

IPR protection and enforcement are not always granted despite Mexico's participation in international treaties (WIPO, PCT, UPOV, ACTA). For instance, generic companies can often submit a health registration of a product very early, essentially resulting in patent infringement. Improvements should thus be made in the recognition of all types of patents. Patent disputes can only hardly be resolved at an early stage, as preliminary injunctions or final decisions on these cases within a reasonable time remain an exception. When granted, injunctions can simply be lifted by the alleged infringer by paying a counter-bond. An effective enforcement mechanism for IP protection should be a top priority in this agreement.

Other sectors that have faced problems are the jewellery and toy sector that detected parallel production, use, sale and illegal importation of their products in the Mexican markets. Together with the Mexican Institute of Industrial Property rights collaborative efforts have been made to tackle these problems. The identified cooperation possibilities for border enforcement and the detection and eradication of counterfeit imports can serve as example for broader efforts in this modernized agreement.

Particular problems are also encountered with the names of certain products and the use of Geographical Indications, for instance "Manchego cheese", "Jerez" and geographical references for ham, chorizo and sausage.

If you are dissatisfied with the current conditions of protection and enforcement of intellectual property rights (IPR) in Mexico, please explain briefly the nature/scope of the problem:

Regulatory data protection or patent term extensions are both inadequate in Mexico. For instance, Mexico only allows 5 years of protection for regulatory data for crop protection products compared to the 10 years' standard in major countries like the US or the EU, making the Mexican market less attractive for innovative products. The level of protection and patent term extensions are both key to incentivize innovative sectors, like for instance pharma, to invest significant resources in the development of test data that proves the high product standard.

For pharmaceuticals, Mexico has committed to provide protection generated to obtain the marketing approval. However, there are concerns that differences are made between synthesized and biologic medicines, which would not be conform with TRIPS. RDP should be provided regardless of the manner in which medicines are synthesized.

Two problems have been reported relating to trademarks. Firstly, unlike most other IP offices the Mexican IP Office examines ex officio whether or not there are relative grounds for refusal of new applications in the form of earlier identical or similar third party trademarks. This often leads to undesirable and highly unpredictable results. Even in a case where the owners of two conflicting trademarks agree that the two conflicting trademarks may coexist, the Mexican IP Office will reject the younger trademark application and will in most cases not even accept a Letter of Consent by the owner of the earlier trademark. This is extremely burdensome and completely unnecessary especially in cases where both trademarks are owned by two different affiliates of the same group of companies. In this context, there should be a request to (i) either abolish the ex officio examination for relative grounds of refusal or (ii) at least accept Letters of Consent as a principle.

The second problem regarding trademarks relates to the use requirement for the maintenance. Art. 6.5 of the EU's proposal for an IPR chapter tackles the possible revocation of trademarks due to non-use within a continuous five-year period - a globally common practice. However, very often the trademark is not used by the trademark owner himself, but by licensees, local distributors or by other affiliates of the same group of companies. In most countries the trademark owner then only has to prove that the other party has used the trademark with the consent of the trademark owner. This may be done by proving that both parties belong to the same group of companies or by submitting a written license agreement or by evidencing that there is an oral license in place.

In Mexico, however, the use by a third party will only be accepted as use by the trademark owner if a written license was registered with the Mexican authorities before. This is a very burdensome and expensive requirement that should be abolished. Especially for foreign trademark owners it means that for avoiding loss of trademark rights due to non-use they have to record licenses in favor of local licensees, affiliates, distributors.

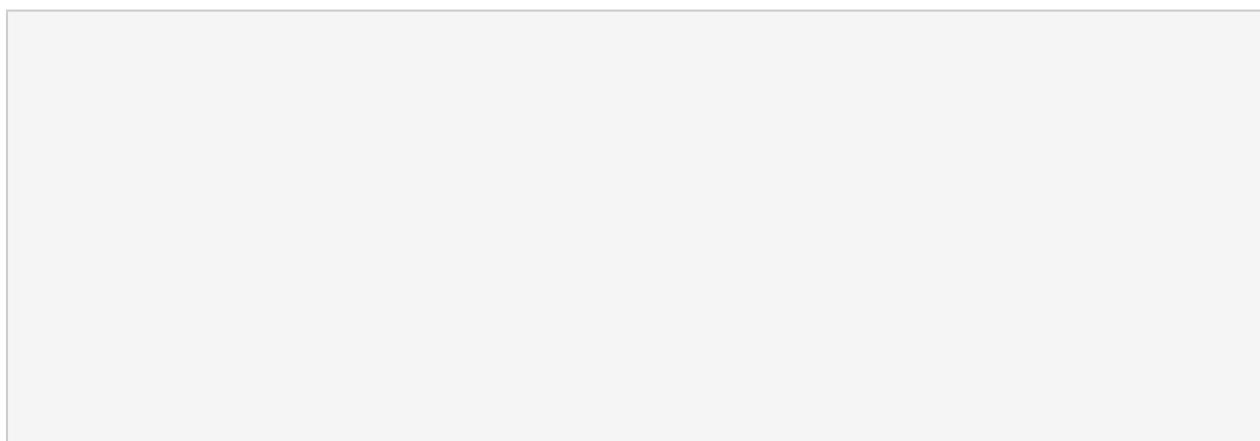
Rules: Questions related to Competition, State Aid/Subsidies and State-Owned Enterprises

If you are dissatisfied with the current conditions of protection and enforcement competition matters in Mexico, please explain briefly nature/scope of the problem (e.g. cartels, abuse of dominant position, vertical or horizontal restrictions of competition, anti-competitive mergers & acquisitions that are harming your business which are not investigated):

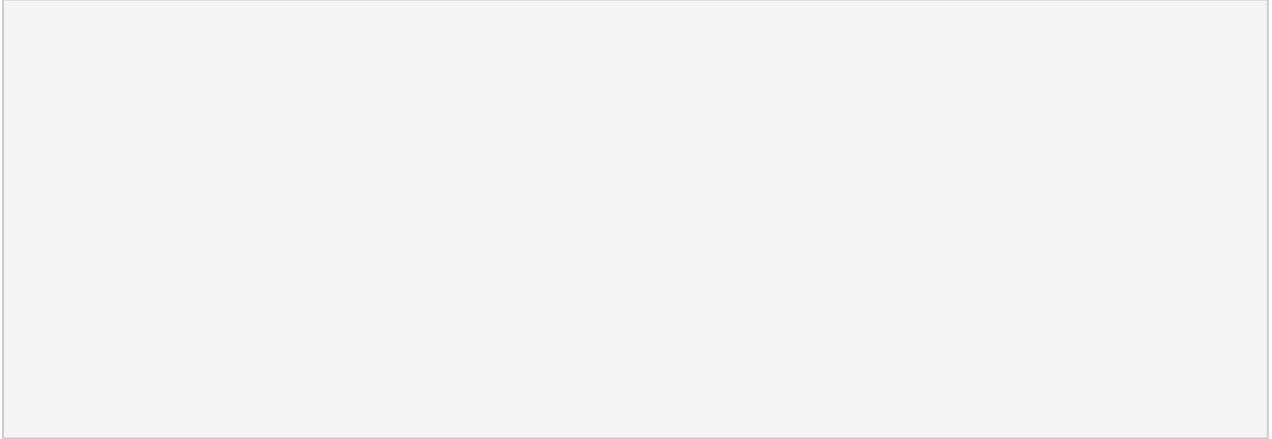
Hydrocarbons as a key raw input for the chemical industry value-chain, are the most regulated market by the Mexican Government through state-owned PEMEX (Mexican Petroleum). There is a lack of information and transparency on proposed reforms in the energy sector. In 2017 the market is expected to be more open to national and foreign companies. However, there is the possibility that the Mexican authorities e.g. through customs are modifying or creating additional taxes (such as IEPS) that may result in a price increase for key raw materials to protect the dominant state-owned player.

For businesses trying to diversify by adding supply sources besides the dominant state-owned producers e.g. by adding distributors which are less bureaucratic with more business minded flexibility, this is a worrying prospect. This insecurity potentially threatens the vital stable raw material supply and can impact directly EU companies' investments in Mexico.

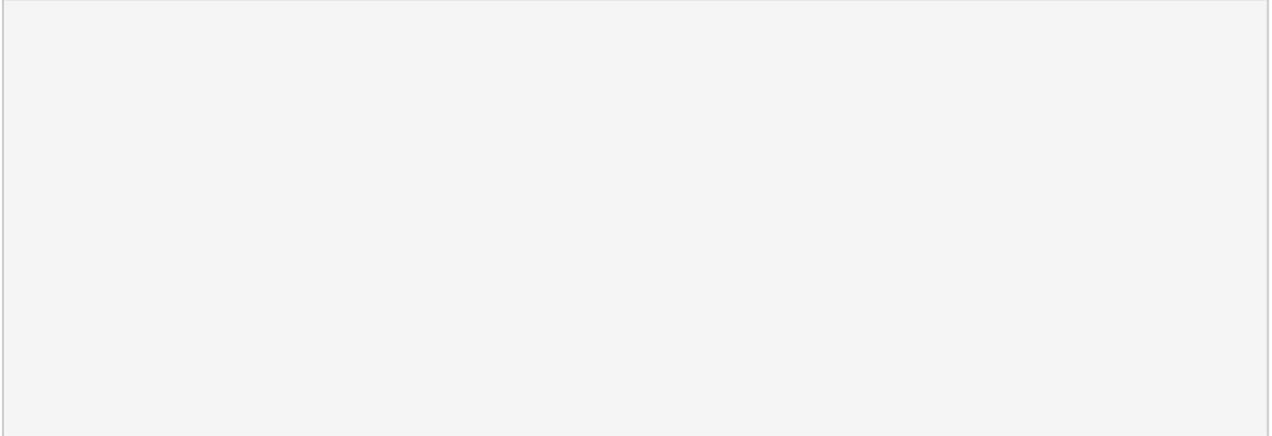
If you consider that there is a type of protection or enforcement measure missing in Mexican legislation and practices in order to react against infringements of Competition law (i.e. cartels, abuse of dominant position, vertical or horizontal restrictions of competition, anti-competitive mergers & acquisitions), please describe the problem (e.g. penalties disproportionate to provide sufficient deterrent against violations):



If you are aware of instances where state aid/subsidy granted by Mexican authorities (to you or your competitor), please describe to the extent possible the form of the state aids/subsidies involved (e.g. export rebates, tax/duty exemptions, below-market loans, state guarantees, grants), the objective (e.g. research and development aid, export aid, regional development aid), the sectors concerned, the granting authority (e.g. federal or provincial government, specific agency) and its effects:



If you are aware of any exemptions from the national law granted to Mexican state-owned enterprises or the existence of statutory laws or favourable regulatory or other measures applicable to state-owned enterprises that have an adverse effect on your business, please provide a brief description:



Rules: Questions related to Government procurement

If you are dissatisfied with certain aspect of the Mexican government procurement markets, please describe and explain your concerns (e.g. lack of transparency, difficult access to qualification system, burdensome registration requirements and procedures, very short time periods to prepare and submit offers, insufficient possibilities to challenge award decision or very short time periods to fill an appeal):

The Mexican legal framework on public procurement establishes requirements of national content in certain tenders which may limit the participation of foreign companies and/or goods in these processes.

The Law on Acquisitions, Leases and Public Sector Services states in article 28 that national biddings may involve people of Mexican nationality and that the goods to be acquired must be produced in the country and have at least fifty % of national content. In addition, a transitional decree was approved in June 2009, which states that "The Ministry of Economy will progressively increase the percentage of national content referred to in section I of the article 28 of the Law of Acquisitions, Leasing and Public Sector Services, up to sixty-five %, within three years, counting from the entry into force of this decree." This is contrary to the envisaged commitments in the modernized agreement.

Also included in the last paragraph of article 30 of the Law on Public Works and Services, public tender may require the incorporation of materials, machinery and equipment of national permanent installation, by the percentage of the value determined by the convener. These measures are applied without prejudice to those negotiated in the public procurement chapters of the various free trade agreements signed by the country.

If you consider that there are key sectors, types of contract (public contracts, concessions, and other forms of Public Private Partnership) or Mexican procuring entities which should be market access priorities for a modernised agreement, please specify.

As regard services, mention precisely the category of services as well as the mode of supply (cross-border supply / consumption abroad / commercial presence/ presence of third country natural persons) in which EU providers are interested.

Other Issues

If there any other issues related to the rules related to trade relations between EU and Mexico not covered in the sections before in this questionnaire, you can provide additional inputs here:

Regarding specific interests from the automotive sector, Mexico currently fully accepts both UNECE and FMVSS regulations. This arrangement should remain in place. The accession of the Mexico to the UNECE 1958 and 1998 agreement would be supported.

If you wish, you can also upload a file. Please use pdf format, if possible.

Contact

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