



INTER-AMERICAN DEVELOPMENT BANK



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**-- Session I: Competition Provisions in Regional Trade Agreements --**

**Note by Mexico**

**I. Introduction**

1. In 1986, Mexico began a process of trade liberalization by joining the General Agreement on Tariffs and Trade (GATT)<sup>1</sup>. This process of liberalization was deepened in the 1990's through the negotiation of several regional trade agreements, of which the North American Free Trade Agreement (NAFTA) is the most significant.

2. In this document, the term RTA will refer to Bilateral Agreements, Free Trade Agreements (FTAs), and Economic Integration Agreements (EIAs). The aim of RTAs is to eliminate restraints to trade in goods and services, facilitate foreign direct investment (FDI), as well as strengthening competition conditions, and protecting Intellectual Property Rights (IPR), among other disciplines.

3. Through the negotiation and implementation of RTAs, Mexico has quadrupled its exports, and multiplied by almost a tenfold its yearly attraction of FDI. This is due to the fact that trade liberalization has turned Mexico into a much more attractive center for production, and has helped it become an export platform for the global economy.

4. It is no coincidence that the Mexican Federal Competition Law (LFCE) was approved and entered into force one year before the NAFTA came into effect, as the process of trade liberalization had to be accompanied by the creation of a solid domestic competition framework in order for Mexico to be able to take full advantage of the trade opening and to generate more economic opportunities for its citizens.

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1 Currently the World Trade Organization (WTO).

## II. Competition provisions

5. Currently, Mexico has 12 RTAs with 44 countries that include competition related matters and principles. These Agreements and their specific provisions are shown in the table below.

**TABLE 1<sup>2</sup>**

<b>RTAs</b>	<b>Parties</b>	<b>Year</b>	<b>Chapter</b>	<b>Specific provisions</b>
North America Free Trade Agreement (NAFTA)	United States and Canada	1994	X	Government Procurement
			XI	Non Discriminatory Treatment of Investment
			XIII	Telecommunication Monopoly Treatment
			XV	Competition Policy, Monopolies and State-Owned Enterprises Bilateral Cooperation
			XVII	Intellectual Property Rights & Competition
			Various (VIII, XI, XIV, XVI, XIX, XX)	Dispute Settlement
			Various (III, VII, IX, XIV, XX)	Committee/Working Group
Free Trade Agreement (FTA)	Costa Rica	1994	XIII	Non Discriminatory Treatment of Investment
			XIV	Anti-competitive practices
			XVII	Dispute Settlement
			Various (IV, V, VI, X, XI, XII, XVII)	Committee/Working Groups
Free Trade Agreement (FTA)	Bolivia	1994	X	Monopolies
			XIV	Government Procurement
			XVI	Anti-competitive practices
			XV	Non Discriminatory Treatment of Investment
			Various (VIII, XI, XII, XIV, XV, XIX)	Dispute Settlement

<sup>2</sup> List of Regional Trade Agreements notified to the GATT/WTO and in force, August 2008.

G-3 Free Trade Agreement (Colombia and Venezuela)	Colombia <sup>3</sup>	1995	XI	Telecommunication Monopoly Treatment
			XVI	Monopolies and State-Owned Companies
			XV	Government Procurement
			Various (IX, XII, XIII, XV, XVII, XIX)	Dispute Settlement
			Various (IV, V, XII, XIV, XV, XVI)	Committee/Working Groups
Free Trade Agreement (FTA)	Chile	1998	IX	Non Discriminatory Treatment of Investment,
			XIV	Competition, Monopolies, and State-Owned companies. Bilateral Cooperation
			Various (IX, XVIII)	Dispute Settlement
			Various ( III, VII, VIII, IX, XI, XIII, XIV, XVIII)	Committee/Working Groups
Free Trade Agreement (FTA)	Nicaragua	1998	XI	Telecommunication Monopoly Treatment
			XV	Government Procurement
			XVI	Non Discriminatory Treatment of Investment
			XVII	Intellectual Property & Anti-competitive practices
			Various (V, XII, XIII, XV, XVI, XX)	Dispute Settlement.
			Various (IV, V, VII, XI, XII, XIV, XV)	Committee/Working Groups
Free Trade Agreement (FTA)	Israel	2000	VI	Government Procurement
			VII	Competition, Monopolies, and State-owned Companies
			Various (VII, X)	Dispute Settlement
			Various (II, III)	Committee/Working Groups

<sup>3</sup> This FTA only includes Mexico and Colombia since November 19, 2006.

Mexico-European Union Free Trade Agreement (MEX – EU FTA)	The 27 States of EU	2000	Title V	Concessions, Competition, Intellectual Property, and Trade
			Title VII	Committee/Working Groups
			Title VII	Dispute Settlement
			Title IV	Competition
			MEX – EU FTA Facilitation Agreement	For the implementation of the Agreement. Includes a Competition Provision.
Free Trade Agreement between Mexico and the European Free Trade Association (EFTA)	Island, Liechtenstein, Norway y Switzerland	2001	II	Committee/Working Groups
			IV	Anti-competitive conducts
			V	Government Procurement
			VIII	Dispute Settlement
Free Trade Agreement between Mexico and the North's Triangle	El Salvador Guatemala y Honduras	2001	XII	Telecommunication Anti-competitive practices
			XVI	Intellectual Property Anti-competitive practices
			XIV	Non Discriminatory Treatment of Investment
			Various (V, XI, XIII, XIV, XIX)	Dispute Settlement
			Various (III, IV, VI, VII, X, XI, XIII, XV)	Committee/Working Groups
Free Trade Agreement (FTA)	Uruguay	2003	XI	Telecommunication Anti-competitive Practices
			XIV	Competition, Monopolies, and State-owned Companies
			XIII	Non Discriminatory Treatment of Investment
			XX	Government Procurement
			Various (VIII, XII, XIII, XVIII)	Dispute Settlement
			Various (III, IV, VIII, XII, XIV)	Committee/Working Groups

Agreement for the Strengthening of the Economic Partnership	Japan	2004	VII	Non Discriminatory Treatment of Investment
			XI	Government Procurement
			XII	Competition Practices Anti-competitive Bilateral Cooperation
			Various (I, XIII, XVI)	Committee/Working Groups
			Various (VII, X, XV)	Dispute Settlement

6. All 12 RTAs that Mexico has negotiated contain either specific competition chapters or competition-related provisions. In fact, Mexico has seven RTAs with a specific competition chapter. In both cases, the provisions included in these type of chapters seek to deter anti-competitive conduct by incumbent firms, and to ensure that the public provision of services do not limit competition. Most RTAs include a provision that define anti-competitive practices and how to address them, and provisions related to non discriminatory treatment, government procurement, due process, dispute settlement, and transparency.

7. In nearly all of the cases, the provisions contained in the RTAs include specific definitions on State Monopolies and State Enterprises, and competition itself. These provisions also look to promote cooperation on competition issues, and establish the basis for consultations, through the creation of Trade and Competition Committees or Working Groups on Trade and Competition.

8. Internationally, it is believed that RTAs have had a positive impact on bringing to the forefront the importance of establishing effective competition laws by exerting indirect pressure on different governmental authorities to adopt pro-competitive measures that facilitate interaction between trade partners.

9. With the aim of contributing to a stronger competition environment in the North American region, the three NAFTA partners made a commitment to effectively apply their respective competition laws, and established the basis for cooperation on competition enforcement.

### III. Bilateral Agreements

10. In addition to the 12 RTAs, Mexico has signed bilateral agreements in relation to the application of competition law. Specifically, there are five agreements of this nature, two of them were signed between governments, and the other three were celebrated between competition agencies. Table 2 shows these agreements:

**TABLE 2**

<b>Bilateral Agreements</b>		<b>Parties</b>	<b>Year</b>	<b>Framework</b>
<b>Government to Government</b>	Mexico-US	Mexico and the United States	2000	NAFTA
	Mexico-Canada	Mexico and Canada	2001	NAFTA
<b>Agency to Agency</b>	CFC - National Economic Prosecutor's Office	Mexico and Chile	2004	Competition Authorities Initiatives
	CFC- Korea Fair Trade Commission	Mexico and the Republic of Korea	2004	Competition Authorities Initiatives
	CFC - Superintendency of Competition (MOU)	Mexico and El Salvador	2007	Competition Authorities Initiatives

11. In the first case, we note that a major Agreement (NAFTA) preceded the subsequent bilateral effort with the United States and Canada in order to enhance the cooperation and coordination among the competition authorities of these countries, and to strengthen competition law enforcement in the free trade area.

12. In both government to government, or agency to agency agreements, there has been a greater effort to emphasize and describe in more detail the cooperation mechanisms to effectively implement the competition provisions contained in the related RTAs, especially on notification matters, avoidance of conflicts, technical and enforcement cooperation, consultations, transparency and confidentiality of information. We must point out that the interagency agreement with Korea is the only one that has been negotiated with a country with whom we have not concluded an RTA.

13. Mexico has three interagency agreements of this type, one with the Republic of Chile, the other with Korea, and a more recent one with El Salvador. In all of these cases, the positive relationship between the competition agencies has been the key to undertake this sort of formal understanding. This also applies to the agreements we have in place with the US and Canada.

14. All the bilateral agreements signed by Mexico represent important instruments for the promotion of cooperation on competition issues and domestically, have promoted closer interaction between Mexican trade and competition authorities.