

The Mexican economy is expanding rapidly but it needs to increase productivity if its dynamism can be sustained and poverty and unequal income distribution can be reduced. The unanimous approval by the Congress of the Union in 2006 of reforms to the LFCE confirmed the importance of economic competition in Mexico as State Policy. Despite the recent reforms of the law, Mexico still lags in the efficiency of its implementation of competition law. This is due in part to the fact that it does not have a pro-competition legal and regulatory framework and lack of effective implementation. Moving ahead is ~~moving~~ politically difficult, despite the considerable benefits that can be gained.

Measures to increase domestic competition and economic efficiency are necessary before foreign participants can engage fairly in the Mexican economic activities.

Chapter 9: Government Procurement

Objectives

- a. To develop a common understanding of government procurement policies and systems, and on each APEC economy's practices
- b. To liberalize government procurement markets in the APEC region in accordance with Bogor principles and objectives
- c. To contribute to the government procurement work in multilateral fora

Achievements since last IAP

In recent years, Mexico has made progress in simplifying and modernizing its government procurement regime. It is necessary at this point to keep up the efforts particularly in enhancing the transparency of its GP regime. (Every regulation related to government procurement can be consulted at the Ministry of Good Governance and Transparency's web page. By Law, national goods have a 10 per cent preference in the economic evaluation set against goods in non- FTA partner economies.) Basically, the Mexican regulations related to government procurement do not prohibit the participation of bidders from non-FTA economies, but it is the procuring entity who decides, under clearly set out rules, whether to open the tendering procedure to international competition, including non-partners.

Significant progress has been made over the last few years in developing transparency. (The electronic government procurement system COMPRANET, has been improved with a view to making it easier for firms to participate in government tendering processes and to provide a transparent mechanism for informing the public about government procurement processes.) This system provides public information concerning federal government demand for goods, services, leasing and public works. (A complaints procedure has also been instituted under the Ministry of Public Governance.)

There have been some preferences given in Mexico's FTAs. Nine of the FTAs signed by Mexico have chapters on government procurement; these agreements cover 39 economies. Of those economies, 35 are party to the WTO Plurilateral Agreement on Government Procurement and two are observers. Additionally, in March 2007, Mexico and Chile concluded a chapter on public procurement under their FTA and are awaiting approval of the same by their respective legislative bodies. Moreover, Mexico is also in the process of negotiating a chapter on this subject with Uruguay and is close to embarking upon negotiations on the same subject with Korea.

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Assessment

There are no plans to change the existing 10% rule in favor Mexican national goods or to give non-parties access to the benefits given under Mexico's various FTAs.

Chapter 10: Deregulation/ Regulatory Reform

Objective

APEC economies will facilitate free and open trade and investment in the Asia-Pacific Region by

- a. Enhancing the transparency of regulatory regimes (including through the use of new technologies)*
- b. Eliminating domestic regulations that may distort or restrict trade, investment or competition and are not necessary to achieve a legitimate objective and*
- c. Speeding up reforms which encourage efficient and well functioning product, labor and capital markets and supportive of institutional framework*

Overview

The first significant action of Mexico in the area of deregulation was the creation of the Economic Deregulation Unit within the Ministry of Commerce in 1989. At this time, Mexico's structural reform program was focused to make the market more competitive. But the financial crisis of 1994–1995 gave added impetus for the reform process. The Agreement for the Deregulation of Business Activity (ADAE) was signed in 1995. The ADAE was designed to reduce the costs of opening and operating businesses in Mexico. From 1995, with establishment of the Zedillo government, Mexico's structural reform program made more efforts to stress the efficiency and competitiveness of businesses activities.

The basic regulatory reform strategy was focused only on economic regulations: (i) the review of existing regulations (stock); (ii) the review of all new proposed regulations or legislative proposals (flow); (iii) the proposal of legislative reforms to improve Mexico's regulatory framework; and (iv) the support for regulatory programs at the state and local levels. During the latter half of the Zedillo government, however, it was expanded as a comprehensive regulatory reform. For a strengthened and consolidated regulatory improvement program, the Zedillo government created the Federal Regulatory Improvement Commission (COFEMER), with technical and functional independence, and greater review powers. COFEMER diagnosed the quality of existing regulation in specific regulatory areas and proposed reforms to the head executive. COFEMER has provided opinion in several high impact/controversial areas since its creation. Just in the telecommunications sector, for example, between 2003 and 2008, COFEMER has provided opinion in more than 20 relevant regulatory proposals.

Improvements Implemented since last LAP

In 2007, there were some notable achievements at specific state level and national level. At the level of specific state reforms, Guanajuato's 2007 Regulatory Reform Law is significant progress. It has objectives of institutionalization of the consultative process, validates legality of electronic processes, and has robust oversight for law implementation (with corresponding sanctions). Another achievement is the inclusion of mercantile disputes in an alternative justice system. It helps resolution in one-fourth the time of the traditional justice system. At the level of economy, there was a stakeholder engagement to formulate reform strategies,

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their websites and include enquiry points to facilitate the flow of information. Is there, or will there be, a "one stop" website that will provide information or contact points for parties interested in services and services-related issues pertaining to Mexico's domestic measures?

There is no specific "one stop" website for services issues. Each Ministry has a website to consult the regulatory regimes in services and services related issues. Additionally, the Congress (Congreso de la Unión) has its own website where it is possible to consult Mexico's domestic measures in services and other sectors.

(Business Services: Accounting)

17. The annual sectoral report indicates that foreign providers must "renew their professional studies in the Direction General of Accreditation, Incorporation and Revalidation of the Secretary of Public Education" before registering in the General Directorate of Professions to obtain the Professional Certificate/License. In this context, what actions are signified by the word "renew"?

The word "renew" is close to the meaning of "ratify". Foreign providers must *ratify* their professional studies in the Direction General of Accreditation, Incorporation and Revalidation of Public Education (Dirección General de Acreditación, Incorporación y Revalidación) in order to keep in force the issued document.

(Business Services: Architectural)

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19. What opportunities are foreseen now that the NAFTA MRA for Architectural Services has come into force?

By enforcing these agreements Mexico pursues better access for service providers in other markets and in the other hand consumers have more options to choose professionals with high technical level.

✓ **(Business Services: Engineering)**

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(Business Services: Legal)

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22. Mexico has not made any commitments in this sector in the WTO. Is Mexico considering adding commitments for foreign legal consultancy services (advisory services on foreign and public international law) to its GATS schedule?

Mexico is following the level of ambition of the different revised offers of the negotiations within the framework of the WTO.

23. It is noted that no further improvements are planned in this sector. To what extent does Mexico consider that it has met the Bogor objective for this sector?

Considering that before taking any action towards further liberalization in specific sectors Mexico carries out a careful evaluation, the sector of legal services is also subject to internal consultations in order to determine the future level of ambition in this sector in line with the Bogor objectives.

(Business Services: Other)

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25. For foreign investment, entry requirements include “consultations among the interested sectors to define the participation.” Please clarify how these consultations are conducted and how they impact foreign investment.

According to the Foreign Investment Law there are no entry requirements to allow foreign

shall be constituted with domicile in Chile or have an agency authorized to operate within the national territory.

- In the case of social communication media — such as newspapers, magazines, or regularly published texts whose publishing address is located in Chile, or a national news agency — only Chilean nationals may be president, administrators, or legal representatives of the juridical person.
- In the case of limited cable television or microwave television services, only Chilean nationals may be president, directors, managers, administrators and legal representatives of the juridical person.
- In the case of the owner of a concession of television broadcasting, and cable services, must be a Chilean juridical person with domici

The general Council on Television (Consejo Nacional de Television) may establish, as a general requirement, programs broadcast through public (open) television channels include up to 40 percent of Chilean production.

Suppliers of services will be subject to evaluation by the Under-secretariat of Telecommunications (Subsecretaria de Telecomunicaciones) and the national Council on Television (Consejo Nacional de Television) in which they must certify compliance with the requirements that ensure competent performance in the sector.

The main regulations in this area are established in:

- Law 18,838 on the National Council of Television (1989);
- Law 19,733 on Liberties of Opinion and Information and the Exercise of Journalism (2001); and
- Law 18,168 on the General Law of Telecommunications (1982).

Construction and related engineering services

Legal frameworks in these areas are transparent and well documented. Information can be found via www.minvu.cl and www.conama.cl. An amendment to Supreme Decree No. 135 of the Ministry of Housing and Urbanism (1978) is currently under study. In principle, a special university-accredited degree from Chile is required unless a Mutual Recognition Agreement is in existence with Chile from the contractor's country of origin.

Service providers require an accredited University Architecture Degree. In the case of degrees obtained abroad or studies done abroad, the qualification mechanisms are handled by the University of Chile via its School of Architecture and Urban Development. However, for a degree acquired in a country that holds a MRA with Chile, the recognition procedure is handled by the Ministry of Foreign Affairs. No additional professional exams exist.

A bilateral MOU was negotiated between Canada and Chile for the engineering sector. Preferential treatment is granted where there is membership to one of CCPE's (Canadian Council of Professional Engineers) constituent associations or in the CICH (Colegio de Ingenieros de Chile). ✓

For Canadian engineers in Chile, licensing requires a minimum of seven years of experience after graduation, including a minimum of two years in charge of significant engineering work. Chilean engineers in Canada, and Canadian engineers in Chile, are required to pass the Professional Practice Exam, which is administered by CICH on local codes. ✓

Some restrictions exist for foreign professional suppliers in the area of research and development services.

- Foreign natural or legal persons intending to carry out excavations, surveys, probing and/or collect anthropological, archaeological and paleontological material, must apply for a permit before the Consejo de Monumentos Nacionales (Council of National Monuments). As a precondition for granting such permit, the person in charge of research must belong to a reliable foreign scientific institution and be working in collaboration with a Chilean state-owned scientific institution or a Chilean university.
- Foreign natural or legal persons intending to conduct research in the 200-mile maritime zone under national jurisdiction must obtain an authorisation from the Instituto Hidrografico de la Armada de Chile (Hydrographic Institute of the Chilean Army), in accordance with the relevant regulation.

Furthermore, national treatment limitations include the following.

- The Ministry of Public Works may authorise the participation of foreign professionals in certain contracts that involve total or partial financing by a foreign country or by international banks or organisations, when the conditions for granting the credit are so required.
- Business people or contractors hired for the execution of port works must be Chilean or naturalised citizens.
- State-owned foreign companies cannot enter into arrangements relating to integral irrigation projects financed by the state.
- Concessions to provide electric services can only be granted to Chilean citizens and juridical persons constituted under Chilean laws. Contractors of a concession must comply with the same requirements as the owner of the concession.
- Only consultants registered at the Ministry of Housing's National Board of Consultants may execute works such as studies, advice and projects required by the Ministry.
- A legal representative in Chile is required for construction services.

- To establish, build and work public services destined to produce and to distribute potable water, to collect and to dispose waste water, it is necessary to have a concession — these concessions will be granted only to legal entities that are constituted as corporations and dedicated exclusively to the provision of services.

Distribution services

There is no discriminatory treatment in distribution services. However, in addition to the certificate for 'initiation of activities', special requirements in zoning and planning laws can be demanded at the local level.

Energy services

The Chilean Constitution establishes that the state has absolute domain, which is exclusive, irremovable and does not end, over charcoal deposits, hydrocarbons and all other fossil substances among others. It points out, in particular, that substances contained in the hydrocarbon deposits are not to be used to gain concessions for exploration or exploitation. This means that these activities can only be executed directly by the state or its enterprises, or by administrative concessions or special operation contracts, with the requisites and under the conditions fixed by the President of the Republic, which is done in each case by a Supreme Decree.

The exploration, exploitation and treatment ('beneficio') of lithium can be the object of administrative concessions or special operating contracts. However, the term 'beneficio' shall not include the storage, transportation or refining of the energy material.

The production of nuclear energy for peaceful purposes may only be carried out by the Comision Chilena de Energia Nuclear or, with its authorisation, jointly with third persons.

The State of Chile has adopted the policy of promoting Petroleum Operation Contracts, where the National Enterprise of Petroleum (ENAP) can participate (or not) with the private enterprises interested in these kinds of contracts.

Chile is a net importer of hydrocarbons. Chile's economic policy entails liberty to invest, import and export solid, liquid and gas hydrocarbons.

The liquid hydrocarbons sector is formed by the National Petroleum Enterprise (ENAP) and branches that participate in petroleum exploration and exploitation, refining, storage services and transportation.

Chile has three oil refineries, all of which belong to ENAP and have a capacity of 32,600-m³/day. Besides this, there are six companies that distribute liquid fuels, six companies that distribute liquid gas, one company that distributes liquid fuels through pipes and a company that commercialises liquid gas.

IX Government procurement

APEC objectives

APEC economies will:

- develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices;
- achieve liberalisation of government procurement markets throughout the Asia Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing in the process to the evolution of work on government procurement in other multilateral fora;
- increase the use of electronic means to conduct government procurement and in so doing seek to promote the uptake of e-commerce more broadly, and
- implement and maintain standards consistent with the APEC Leaders' Transparency Standards.

Chile has an internationally recognised e-commerce platform that provides the backbone of the government procurement system, and has in the last five years introduced a stronger legal framework for public procurement.

Chile's approach to government procurement

Chile's public procurement system is regulated by the Procurement Law N° 19.886, enacted on July 2003. The Procurement Law provides the contractual framework for the purchase of goods and services and establishes the electronic procurement platform named 'Chile Compras' for all public agencies, regional and provincial governments, municipalities, armed forces and the justice sector. The procurement of public works and concessions continues to be ruled by existing and independent regulations.

The new rules on public procurement are based on the following strategic orientations.

- Open market: the system is transparent, promoting equal opportunities with no restrictions.
- Open tendering: this is the default procedure for tendering.
- The use of the electronic system is compulsory for all public entities.
- The use and operation of the system is free and non-discriminatory.
- Support and permanent training to public entities.

- Flexible legal framework: law with general rules and principles, complemented by robust regulations that cover specific issues, with a uniform ruling for all public entities.
- Autonomy and responsibility of all public entities in the procurement process.

Chile has an e-commerce platform called ChileCompra (www.chilecompra.cl), a virtual marketplace where demand meets supply with low transaction costs and high levels of transparency. This tool, designed to do business with the state, constitutes the backbone of the reformed public procurement system. Use of this platform replaces traditional one-to-one relationships, and encompasses solutions to communications, work and common forms.

In 2006, ChileCompra consolidated its operation, with:

- US\$3.5 billion traded;
- 460 000 business opportunities published;
- 1.23 million purchasing orders;
- US\$205 million traded and 180 000 purchasing orders by ChileCompra Express (e-catalogue);
- 900 purchasing entities registered;
- 65 000 suppliers sending offers;
- 43 000 suppliers awarded; and
- 1 145 million monthly average visits to ChileCompra.

In 2007, ChileCompra consolidated its operation, with:

- US\$4.5 billion traded
- 450 023 business opportunities published
- 1 491 054 purchasing orders
- US\$446 millions traded
- 285 000 purchasing orders by ChileCompra Express (e-catalogue).

During 2007, public agencies issued 1,491,054 purchase orders using the ChileCompra system, a 21 per cent increase from 2006.

ChileCompra has also received many national and international awards as a result of its support to transparency and efficiency in public procurement, such as:

- United Nations Public Service Awards 2007, in the category: 'Improving Transparency, Accountability, and Responsiveness in the Public Service';
- Excel GOB Award 2007, for transparency in electronic government, from the Latin American and the Caribbean Electronic Government Leaders' Network (RED GEALC); and
- Best Probity Practices Award 2007, from the Chilean Government.

Looking forward

Chile is well prepared to further improve transparency and widen access to government procurement information, to enhance value for money, to facilitate open and effective competition, and to institute accountability and due process. The highlights of the planned efforts include: the National Electronic Registry of Suppliers' expansion of 'Programa Acceso' to new regions and cities, improvements in 'Probidad Activa' (Active Probitiy), and achieving 100 per cent procurement through the ChileCompra System Platform.

X *Deregulation/regulatory review*

APEC objectives

APEC economies will facilitate free and open trade and investment in the Asia Pacific region by, inter alia:

- enhancing the transparency of regulatory regimes; and
- eliminating domestic regulations that may distort or restrict trade, investment or competition and are not necessary to achieve a legitimate objective.

Chile has been a leader amongst developing economies in opening up the financial sector, network industries and infrastructure to competition and private participation. It is now working on major reforms to the pension system to raise benefits, increase returns to saving and encourage participation in the formal labour market.

Chile's approach to deregulation and regulatory review

Chile's constitutional commitment to free and open markets has been reflected in its approach to privatisation, deregulation, and ongoing review and reforms of the regulatory environment. Most public utilities have been deregulated and privatised, and Chile has been actively developing and refining its pro-competitive regulatory framework to encourage private investment in all forms of infrastructure and service delivery (frequently through a system of concessions). In general, there are no direct barriers to private investment that arise from regulatory regimes, such regulations as are in place are primarily concerned to improve competition, avoid distortions to free and open trade and investment, and to ensure that prudential requirements are met and that monopoly powers are not abused.

Chile has had three major rounds of privatisation that were at the forefront of its transition from an economy with extensive state intervention. The banking and manufacturing sectors were privatised in the 1970s, telecommunications, electricity