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Abstract

This Master Thesis has in its focus to analyze the trade relations between Mexico and the EU, mainly the modernisation of the FTA. Recently, the relations between Mexico and the European Union have been significantly intensified through the upgrading of their Free Trade Agreement. This will make almost all the goods exchanged duty-free. With this, free trade will be strengthened in addition to diversifying the market and opening new opportunities for companies of both sides to export their products. Until now, there is only an “Agreement in Principle” for the modernisation of the treaty. Although there are still technical problems to solve, it can be said the bases for a long-term commercial relationship between Mexico and the European Union have been set up; likewise, it ratifies the desire to keep a position that boosts their exchange of investments and products.

The main purpose of this thesis is to provide a modest contribution to simplifying the understanding of this new and ambitious Agreement. It is also intended to provide a general overview of the progress that has been made so far, as well as the key provisions that enclose the Agreement. To achieve this, a scrupulous analysis of the structure of the current FTA; the trade results; and the rounds of negotiation is made.

To conclude, the study provides the deductions regarding the advantages and disadvantages that the conclusion of the New Agreement may bring for Mexico and the European Union. Is the New FTA truly novel? Will it benefit both Parties equally?

Abstract

Die folgende Masterarbeit setzt sich zum Ziel, die Handelsbeziehungen zwischen Mexiko und der EU mit Schwerpunkt auf die Modernisierung des Freihandelsabkommens zu analysieren. Unlängst wurden die Beziehungen zwischen Mexiko und der EU mittels des aktualisierten Freihandelsabkommens, welches es den Abkommensparteien ermöglichen soll, umfassend zollfrei zu handeln, bedeutsam intensiviert. Mit diesem Abkommen sollen der Freihandel gestärkt und der Markt diversifiziert werden, sowie Firmen neue Möglichkeiten zum Export ihrer Güter eröffnet werden. Bislang existiert lediglich eine Einigung im Prinzip für die Aktualisierung des Abkommens. Wenngleich es noch technische Herausforderungen zu überwinden gilt, kann aus den bestehenden Tatsachen geschlossen werden, dass im Zuge der Verhandlungen die Basis für eine langfristige Handelspartnerschaft gelegt wurde.

Mit der folgenden Arbeit wird beabsichtigt, den Inhalt dieses neuen Abkommens verständlich darzulegen und unter Berücksichtigung einer kritischen Perspektive sinnvoll zu erläutern. Ebenfalls soll ein genereller Überblick des bisherigen Verhandlungsablaufs gegeben werden. Hierfür wird unter Berufung auf den aktuellen Abkommenstext und relevante Sekundärliteratur eine gründliche Strukturanalyse durchgeführt sowie eine Untersuchung des derzeitigen Handelscharakters und Verhandlungsprozesses.

Anschließend liefert diese Arbeit die Schlussfolgerungen des Autors hinsichtlich Vor- und Nachteile der Aktualisierung des Freihandelsabkommens für beide Parteien. Die Fragen belaufen sich hierbei auf gleichmäßigen Nutzen und tatsächlicher Neuartigkeit.

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List of Abbreviations

APEC (Asia-Pacific Economic Cooperation Mechanism)

BIT (Bilateral Investment Treaty)

EC (European Community)

FDI (Foreign Direct Investments)

FTA EU-MX (Free Trade Agreement between Mexico and the European Union)

GA (Global Agreement)

GATT (General Agreement on Tariffs and Trade)

GATS (General Agreement on Trade in Services)

IA (Interim Agreement)

MEUFTA (Mexico-European Union Free Trade Agreement)

NAFTA (North American Free Trade Agreement)

OECD (Organization for Economic Cooperation and Development)

SME (Small and Medium-sized Enterprise)

SPS (Sanitary and Phytosanitary Measures)

TPP (Trans-Pacific Partnership)

TRQ (Tariff Rate Quota)

UNCAC (United Nations Convention Against Corruption)

WIPO (World Intellectual Property Organization Copyright)

WTO (World Trade Organization)

Introduction

Mexico is one of the most open economies in the world, being the 15th largest economies in the world. Due to its geographical proximity to the United States of America, there is extensive trade and investment relationships between the two countries (under the North American Free Trade Agreement (NAFTA)). The European Union also is undeniably a key economic partner for Mexico since 1997, year in which, Mexico signed an Economic Partnership, Political Coordination and Co-operation Agreement (also known as Global Agreement or GA) which has allowed a significant growth of bilateral trade.

The provisions of this Agreement served as the necessary basis/foundation to form a second Free Trade Agreement on trade in goods (in force since 2000) and trade in services (in force since 2001), as well as the formation of trade disciplines in different areas. What has been the evolution of the economic relationship between Mexico and the EU?

The European Union is for Mexico, the second most important export market after the US. Mexico mainly exports fuels, mining products, office and telecommunications equipment, transport equipment and other machinery to Europe. On the other side, the EU is Mexico's third largest importer after the US and China, consisting mainly (but not particularly) from machinery, transport equipment, chemical products, to fuel and mining products. The relationships are therefore crucial for both players. In matters of services, the EU exports to Mexico involve telecommunication and transport services as well as computer and information services, while the EU imports from Mexico are primarily travel and transport services¹.

The EU-Mexico Global agreement is certainly very ambitious. Nevertheless, the course of time has made this agreement somewhat archaic since it does not address the actual trade investment subjects. Eighteen years following the entry into force of the EU-Mexico FTA of 2000, globalization has naturally changed both players trade and investment patterns, resulting in the global trade to suffer significant changes. On one side, in December 2012, Mexico adopted significant reforms in vital economic sectors through the "*Pacto por México*"², focusing on

¹ 'Mexico - Trade - European Commission' (Ec.europa.eu, 2018) <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/>> accessed 26 February 2018.

² 'Pacto por México' (Pactopormexico.org, 2018) <<http://pactopormexico.org/>> accessed 1 March 2018.

refining national competitiveness in banking, taxation, energy and telecommunications sectors (among others) to create new opportunities of trade and attract foreign investment in Mexico. On the other side, the EU has also been negotiating free trade agreements with the US (Transpacific Trade and Investment Partnership, TTIPC), Canada and Japan.

Consequently, it is clear that the actual Trade Agreement as it was created was limiting EU corporations from fully enjoying these new opportunities. Therefore, in 2013, the EU and Mexico explored the possibility of modernizing the trade agreement. It was not until 2016 that proper negotiations were thrown³ and both parts entered into lengthy and intense negotiations to modernize the Global Agreement. In May 2018, the EU and Mexico reached an ‘agreement in principle’ to modernize the free trade deal, with the objective of allowing practically all trade in goods between the two countries to be duty-free, including in the agricultural sector. EU Trade Commissioner Cecilia Malmstrom said that negotiators would accelerate the pace of negotiations even further. Hopefully, an agreed text is to be expected by the end of the year.

Hence, this study traces the evolution of EU-Mexico relations over the past years. Following a brief account of the history of the EU-Mexico relationship and the nature of the current Free Trade Agreement in the first sections. The second chapter concentrates on the evaluation/results of the FTA since its entry into force, it also analyzes the particular commercial relationship of Mexico with other EU States. The third chapter focuses on the modernisation of the Free Trade Agreement, it examines key provisions of the new FTA, its purpose, as well as the process that has been carried out for its modernisation. The last chapter, contains the conclusions as an analysis of the general issues raised in the thesis. The elements of the “agreement in principle” that make it modern are evaluated. Moreover, the effects that the entry into force of the New Agreement could cause for both Parties are also provided.

³ 'Joint Press Release on The First Round of EU-Mexico Negotiations of The Global Agreement - EEAS - European External Action Service - European Commission' (EEAS - European External Action Service, 2018) <https://eeas.europa.eu/headquarters/headquarters-homepage/5001_en> accessed 1 March 2018.

Chapter 1. The EU-Mexico Free Trade Agreement

1.1. Background of the EU-Mexico FTA

The commercial relations between Mexico and the European Union did not begin with the current Free Trade Agreement but date back to 15 years before the entry into force of the FTA, in 2000. Mexico and the then European Community, signed on July 15, 1975 a Framework Agreement, which entered into force in November of the same year. For Mexico, the negotiations with the EC were made by mere coincidence, since Mexico was at the time looking to expand and diversify its international relations. The EC, on the other hand, sought to expand its international relations towards Latin America. Mexico was the third Latin American country with whom the EC signed a cooperation agreement. The Agreement was intended to develop commercial and economic cooperation between both parties.⁴

The 1975 agreement encouraged investment and technology transfers. For Mexico, the agreement meant the ideal means to increase exports to the European market, since it encouraged contact between both parties and applied the clause of the Most Favoured Nation Treatment. From the point of view of the European Union, it was a community agreement that would found the basis of an economic cooperation with enormous potential for development.⁵

Later, between 1975 and 1989, Mexico and the European Community met on various occasions to finally create in 1991, the second Framework Agreement, replacing the one of 1975. The former was signed in Luxembourg on April 26, 1991 and entered into force on the first of November of the same year. The Agreement, being at the time the most complete of any other agreement signed with a Latin American country, covered a wide range of segments and specific cooperation mechanism. In the same way, the second Framework Agreement included areas that were not contemplated in the agreement of 1975. New areas were included, such as energy,

⁴ European Commission, 'EU - Mexico Relations' (1997) <http://europa.eu/rapid/press-release_MEMO-97-107_en.htm> accessed 4 July 2018.

⁵ Antonio Manrique De Luna Barrios, 'The Free Trade Agreement Between the European Union and Mexico - Impact on Trade and Foreign Direct Investment' [2016] *Revista Chilena de Derecho*.

telecommunications, social development, health, agriculture, environment, industrial, financing and investment development (among others).⁶

Furthermore, the European Union and Mexico decided to renew their trade strategy through the negotiation of a new cooperation agreement, an even more ambitious agreement than the previous one. Therefore, on May 13, 1996, the General Affairs Council of the European Union approved the negotiating mandate to establish a free trade zone with Mexico. The project saw its conclusion two and a half years later. Finally, in December 1997, the Parties signed the Agreement on Economic Cooperation, Political Concertation and Cooperation between the European Union and Mexico. An agreement that, once it was ratified by all the parties, replaced the 1991 Framework Agreement.

1.2. Analysis of the actual EU-Mexico Global Agreement

The main objective of the EU-Mex FTA is to allow the preferential access of the goods and services offered by the exporters of the EU and of Mexico to the markets of other's party. To achieve the above, the FTA establishes:

- a) The liberalization of trade in goods and services by dismantling tariff rates and the elimination of all import and export restrictions, other than tariffs and taxes.
- b) The elimination of investment barriers by guaranteeing fair treatment for investors of the other party, in the same terms given to their own investors; ensuring that the investment will not be affected by restrictive government policies; protecting intellectual property; cooperating in competition material and by establishing a dispute resolution mechanism.

In general terms, the EU-Mex FTA inspires the confidence required by the investors of both parties to participate in companies or co-investments to make long-term investments. The FTA's structure is governed by the trade pillar of the EU-Mexico Global Agreement, which consists of two agreements. The *“Interim Agreement on trade and trade-related matters between the European Community of the one part, and the United Mexican States of the other part”* (Interim Agreement

⁶ Judith Arrieta Munguía, 'La Política Exterior De México Hacia La Unión Europea, 1990-1995' [2013] Revista Mexicana de Política Exterior<<https://revistadigital.sre.gob.mx/index.php/numeros-antteriores/152-rmpe-49>> accessed 4 July 2018.

or IA) and the Global Agreement itself, named “*Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part*”.

1.3. The Interim Agreement

The IA was signed in Brussels on 8 December 1997 and entered into force on 1 July 1998. The Agreement contained the objectives of the negotiation on trade liberalization and established a Joint Council⁷, composed of representatives from Mexico and the European Council, responsible for adopting the measures for:

- The measures and the calendar for the progressive, reciprocal and bilateral liberalization of tariff and non-tariff barriers to trade in goods, specifically in terms of tariff liberalization; rules of origin and custom cooperation; anti-dumping and countervailing measures; safeguard and surveillance measures; technical regulations and standards, sanitary and phytosanitary legislation; general exceptions justified on grounds of public morality, public policy or public security and restrictions in case of difficulty due to the balance of payments;⁸
- The gradual and reciprocal opening of public procurement markets⁹;
- Measures to avoid distortions or restrictions of competition that could significantly affect trade, through mechanisms of cooperation and coordination between their competent authorities in the matter;¹⁰
- Appropriate measures to ensure adequate and effective intellectual property protection, through a mechanism of consultation between the parties with a view of reaching satisfactory solution in case of difficulties in the protection of intellectual property;¹¹ and
- A specific procedure for the resolution of disputes related to the above topics.¹²

⁷ Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part [1998] OJ L 226/25 (Interim Agreement), Art 10

⁸ Interim Agreement, Art 3.

⁹ Ibid, Art, 4.

¹⁰ Ibid, Art 5.

¹¹ Ibid, Art 6.

¹² Ibid, Art 12.

1.4. The Global Agreement

The GA was signed together with the IA on 8 December and came into force three years later, on November 2000. The agreement consisted specifically in political dialog, cooperation and trade relations; these are known as the ‘three trade pillars of the Global Agreement’. The first pillar aims to establish lasting ties of solidarity that contribute to the stability and prosperity of their respective regions between the European Union and Mexico.

The dialogue is aimed at opening new forms of cooperation in favor of common objectives, including through joint initiatives at the international level, which will be carried out at the presidential, ministerial, and senior official levels. The Agreement also indicates the advisability of institutionalizing a political dialogue at the parliamentary level that will be accomplished through contacts between the European Parliament and the Congress of the Union of Mexico (Chamber of Deputies and the Senate of the Republic).¹³

In reference to the second trade pillar, the field of cooperation covers thirty areas ranging from industrial cooperation and the information society, to cooperation in the fight against drugs and in terms of consumer protection and data. The areas of cooperation are the following: industrial; promotion of investments; financial services; small and medium businesses; technical regulations and conformity assessment; customs cooperation; society of Information; agricultural sector; mining sector; energy sector; transportation; tourism. Other areas in different sectors were also covered such as statistics; public administration; fight against drugs, money laundering and control of chemical precursors; Science and Technology; training and education; culture; audiovisual; information and communication; environment and natural resources; fishing sector; social issues and overcoming poverty; regional cooperation; refugees; human rights and democracy; consumer protection; data protection and health.¹⁴

¹³ Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one Part, and the United Mexican States, of the other Part [1998] OJ L 276/45 (Global Agreement), art 3.

Part [1998] OJ L 276/45 (Global Agreement), art 3.

¹⁴ Ibid, Art 13-42.

Regarding commercial matters, the Global Agreement, like the Interim Agreement, establishes the bases for the negotiation of the specific disciplines. The fundamental objective is the establishment of a free trade area, which complies with the relevant WTO rules.¹⁵

The GA also establishes a Joint Council¹⁶, integrated by representatives from Mexico and the European Community which, in addition to adopting decisions on the matters covered by the Interim Agreement, is responsible for adopting the decisions that establish:

- The necessary measures for the progressive and reciprocal liberalization of trade of services¹⁷;
- The measures and schedule for the progressive and reciprocal elimination of restrictions regarding capital movements and payments between the Parties¹⁸;
- Specific measures regarding intellectual property, in particular, the relevant multilateral conventions¹⁹; and
- A specific procedure for the solution of controversies related to the previous topics.²⁰

1.5. Joint Council

The implementation of the IA and the GA are supervised by the same Joint Council, typified under Article 7 (IA) and Article 45 (GA) of their respective agreements. However, the Global Agreement, contains a provision establishing that at its entry into force, any decision taken by the Joint Council established in the Interim Agreement will be considered as adopted by the Joint Council recognized in the Global Agreement.²¹

Since the liberalization of trade in goods and services are key elements in the trade relationship between Mexico and the EU, the Joint Council's decision has extended the legal framework of the trade pillars by implementing the IA and GA. The first mentioned liberalization was under the *“Decision No2/2000 of the EC-Mexico Joint Council of 23 March”* using the IA as legal source

¹⁵ Ibid, Art 4; Interim Agreement art 2.

¹⁶ Ibid, Art 45.

¹⁷ Ibid, Art 6.

¹⁸ Ibid, Art 8.

¹⁹ Ibid, Art 12.

²⁰ Ibid, Art 50.

²¹ Ibid, Art 60.

and the second under “*Decision No 2/2001 of the EU Mexico Joint Council of 27 February 2001*” with the Global Agreement as its basis. The following decisions will be analyzed below.

1.6. Decision of the Joint Council of the Interim Agreement

On 23 March 2000, the Joint Council adopted “Decision No2/2000 of the EC-Mexico Joint Council”, which established the creation of a free trade area between the Parties based on Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT).

The Joint Council’s objectives of the IA where to i) liberalize trade in goods, in conformity with Article XXIV of GATT 1994 ii) open the agreed government procurement markets of the Parties iii) establish a cooperation mechanism in the field of competition iv) set up a consultation mechanism in respect of intellectual property matters and v) to establish a dispute settlement mechanism²². Decision No2/2000 is divided into eight titles, covering the following: General Provisions, Free Movement of Goods, Government Procurement, Competition, Consultation Mechanism for Intellectual Property Matters, Settlement of Disputes, Specific Duties of the Joint Committee with respect to Trade and other related Matters and Final Provisions.

Access to Markets

In terms of access to markets, the decision set rules for the access of products to the markets of both Parties. Here, the disparity in the level of development between the EU and Mexico was recognized and by January 1 2003, all Mexican exports of industrial products where to enter duty free and customs duties on imports into Mexico would be completely eliminated by January 1, 2007.²³

Rules of Origin

The rules of origin established the necessary requirements for the goods to enjoy a tariff preference, as agreed within the Decision. These rules specified that goods receiving preferential tariff

²² Decision No2/2000 of the EC-Mexico Joint Council of 23 March 2000 [2000] OJ L 157/10 (Decision of the Joint Council of the Interim Agreement), Art. 1.

²³ Decision No2/2000 of the EC-Mexico Joint Council of 23 March 2000 [2000] OJ L 157/10 (Decision of the Joint Council of the Interim Agreement), Art 6.

treatment must be of Mexican origin or originated in the European Union.²⁴ In other words, goods originated in the Parties range from: 1) goods entirely obtained in the territory of one of the Parties, such as fresh vegetables, live animals born and raised; 2) goods produced exclusively out of materials created in the territory of the Parties and 3) manufactured goods which mix materials not originated in the Parties' territories, provided that such materials have suffered adequate transformation in the Parties. Territory.

Customs Cooperation

A customs cooperation mechanism was established through the creation of a Special Committee on Custom Cooperation and Rules of Origin to i) ensure compliance with the customs provisions provided for in the Decision; ii) guarantee the uniform application of the rules of origin; iii) exchange statistical information; and provide a forum for consultation and discussion of all matters related to customs and rules of origin.²⁵

Measures related to standardization

The technical standards established by the parties aim for the protection of the consumer, health, the environment and public safety, among others. Their misuse can create barriers to the flow of goods and services or imply discrimination between products, producers, service providers or countries. To avoid this, the Decision establishes that the Parties confirm their rights and obligations emanating from the Agreement on Technical Barriers to Trade of the WTO. The intensification of bilateral cooperation in this area is also proposed in order to facilitate access to markets.²⁶

Antidumping and countervailing measures

The Decision establishes that the Parties must confirm their rights and obligations derived from the Agreement on the implementation of Article VI of the GATT of 1994, and the Agreement on

24 Ibid art 27, Annex I Tariff Elimination Schedule of the Community [2000] OJ L 157/10, Annex II Tariff Elimination Schedule of Mexico [2000] OJ L 157/10, Annex II Definition of the Concept of Originating Products and Methods of Administrative Cooperation [2000] OJ L 157/10 (Annexes to the Decision No2/2000 of the EC-Mexico Joint Council).

²⁵ Decision of the Council of the Interim Agreement, Art 16.

²⁶ Ibid, Art 19.

Subsidies and Countervailing Measures of the WTO, to ensure that its application is justified and transparent.²⁷

Safeguards

Article 15 of the Decision implements a safeguard clause that demonstrates to the Joint Council the fragility or vulnerability of the market.²⁸ It is an indispensable legal mechanism in trade agreements for governments to counteract emergency situations in an eventual sudden increase in imports of a product that causes serious damage or threat of serious damage to the domestic manufacture of the product. These safeguards are valid for three years and cannot be renewed until the end of this period

Sanitary and Phytosanitary measures

Sanitary and phytosanitary measures are the procedures applied in the territory of a country to i) protect the health and life of people and animals ii) to preserve plants from the risks resulting from the entry, such as the establishment or spread of pests, diseases and the risks associated with the presence of pathogenic organisms in products, food, beverages or fodder. Through the creation of a Special Committee on Sanitary and Phytosanitary Measures, the Decision demands cooperation to facilitate trade between the parties.²⁹

To achieve the latter, a clear and transparent procedure for the application of the safeguards should be carried out, which would include its temporality and the possibility of increasing tariffs at a level no higher than the one used as a basis for tariff negotiation. Likewise, a compensation mechanism is created for the party affected by the measure.

Competition

A mechanism of cooperation between the responsible authorities of Mexico and the EU is implemented. The objective of this mechanism is to promote the cooperation and coordination between the parties, to ensure the correct application and clarify differences in terms of each Parties respective competition law. Likewise, its intention is also to eliminate anticompetitive activities,

²⁷ Ibid, Art 14.

²⁸ Ibid, Art 15.

²⁹ Ibid, Art 23.

by applying the necessary legislative measures to avoid setbacks regarding the bilateral commerce.³⁰

Intellectual Property

Regarding intellectual property, the decision formed a Special Committee on Intellectual Property Matters, where the parties can reach fitting solutions for cases in which the availability, acquisition, scope, maintenance and observance of intellectual property rights are affected.³¹

Dispute Settlement Mechanism

An intense trade relationship was expected after the conclusion of this agreement. Therefore, it was necessary to establish a dispute resolution mechanism, to deal with any differences regarding its interpretation.

The objective of this state-to-state dispute settlement mechanism is to prevent or solve any conflict related to the interpretation or application of the covered legal instruments of agreement. The procedure consists of two phases. The parties shall first try to solve any dispute through consultation within the Joint Council. The latter shall issue a decision within 30 days, specifying the measures to be taken by the party concerned.³² If no solution is found, either party may request in writing to solve the dispute through arbitration. The decision of the arbitral tribunal is final and compulsory. In the event that the complained Party does not comply with its decision within the time given by the court, the complaining Party can suspend its benefits of equivalent effect.³³

The Dispute Settlement Mechanism shall not apply to controversies related to anti-dumping and countervailing measures, standards, technical regulations and conformity assessment procedures; sanitary and phytosanitary measures; balance of payments difficulties; custom unions and free trade areas and the Special Committee on Intellectual Property Issues.³⁴

³⁰ Ibid, Art 39, Annex XV [2000] OJ L 157/10.

³¹ Ibid, Art 40.

³² Ibid, Art 42.

³³ Ibid, Art 43.

³⁴ Ibid, Art, 41.

1.7. Decision of the Joint Council of the Global Agreement

The Economic Partnership, Political Coordination and Cooperation Agreement between EU Member States and the United Mexican States, creates a free trade area between the Parties based on Article V of the GATS, which forms part of the Agreement Establishing the WTO. The content of this decision is described as follows.

Services

A provision guaranteeing that none of the parties will adopt more restrictive legislation is established in this section. These provisions apply to the supplies of cross-border services and investment in this sector. However, the audiovisual and air services, including domestic and international air transportations services, aircraft repair and maintenance services, the selling and marketing of air transport services, computer reservation system services and maritime cabotage sectors were excluded.³⁵ In this way, Mexican service providers are allowed to have access to the European Union services market with the assurance that they will enjoy national treatment. They will no longer be imposed restrictions that limited the number of operators of service providers in that territory, which guarantees the same conditions granted to the providers of services established in the EU;³⁶ and they also receive the most-favored-nation treatment, which will extend the benefits that the EU grants to other countries.³⁷

In the same way, trade in services was progressively increased in a period not exceeding 10 years. Among the most noteworthy sectors are: telecommunications, distribution, tourism, energy, financial services and tourism.

Investments and Related Payments

These provisions are visible in the third title of the aforementioned decision and are applicable to direct foreign investment, real estate investment and securities transactions, in accordance with the obligations established in the Organization for Economic Cooperation and Development (OECD).

³⁵ Decision No2/2001 of the EC-Mexico Joint Council of 27 February 2001 [2001] OJ L 157/10 (Decision of the Joint Council of the Global Agreement), Art 2.

³⁶ Ibid, Art 6.

³⁷ Ibid, Art 5.

As regards payments related to direct investment, any restriction between the Parties were eliminated. In the same way, it was agreed to implement a mechanism that would promote reciprocal investment through the exchange of information to identify and provide business opportunities and the corresponding legislation of each Party. Likewise, it sought to promote an attractive and stable atmosphere auspicious to investment, through the development of a legal environment favorable to investment, through bilateral agreements for protection and the promotion of investment.³⁸

Intellectual Property

Concerning intellectual property, the Parties confirmed their rights and obligations through, for instance the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement, 1994); The Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967); Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971) among others.

In the same way, the Parties adhered to the Nice Agreement on the International Classification of Products and Services for the Registration of Marks (Geneva, 1977 and amended in 1979) and to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purpose of patent procedure (1977, modified in 1980).³⁹

Dispute Resolution Mechanism

The procedure for resolving a dispute remained equivalent as established in the Interim Agreement with one exception. Now, exceptions are made to mutual recognition agreements that the Parties may conclude with respect to services in accordance to Article VII of the General Agreement on Trade in Services of the WTO; balance of payment difficulties, international commitments on investment; and the multilateral conventions on intellectual property.⁴⁰

³⁸ Ibid, Art 28-35.

³⁹ Ibid, Art 36.

⁴⁰ Ibid, Art 37-43.

Chapter 2. EU-Mexico Trade Results and other agreements

2.1. Existing economic relations between the EU and Mexico

The commercial relations between the EU and Mexico intensified since the Free Trade Agreement of July 2000, came into force. The latter, is an instrument that has favored the growth of trade and investment flows between Mexico and the EU, since it liberalized trade in all industrial goods (mostly agricultural goods) by improving market access conditions for Mexican and European Exporters. Besides, significant investments have been made in the Mexican financial sector, as evidenced by the fact that three of the five most important banks in Mexico are European (BBVA, Bancomer, Santander, Serfin and HSBC). The FTA was the first trade agreement between Europe and a Latin America country. As a result, to the diversification of trade in goods and the liberalization of trade in services., Mexico improved its position as an exporter by improving the country's competitiveness.

Before 1995, Mexico was for the EU the main market in Latin America. However, in the years that followed, despite the significant growth of Mexican imports, Mexico slowly lost its position as the first buyer in Latin America of community products. Hence, the reason that triggered the negotiation of the FTA.

As previously mentioned, after the entry into force of the treaty, the negotiations between EU and Mexico increased considerably, to the point that in 2003, Mexico's total trade with the EU ascended 14.5 % more than in 2000. The main products exported to the EU corresponded to raw oil; tourism cars; parts and accessories for data processing machines; medicines and medical instruments and wheeled toys designed for children to ride. On the other side, the main products imported from the EU were likewise automobiles for tourism; medicines, but also parts and accessories of automobiles; emitting devices with built-in receiver; gearboxes and machines and mechanical devices with their own function. Throughout this period, most of the commercial exchange between Mexico and the EU was with Germany (8 million dollars), Spain (3.7 mmd),

France (2.3 mmd) and the United Kingdom (1.8 mmd), with a total of more than 80% of transactions.⁴¹

In 2007, bilateral trade registered 48 billion dollars, representing a growth of 162%. Certainly, the imports and exports of both parties increased. For instance, a year before the agreement, the imports and exports reached 5.2 billion dollars; while, by 2007, they exceeded 14 billion dollars, growing by 174%. Compared to the year prior to the entry into force of the agreement, Mexican imports to the EU increased by 157%, for an amount of 34 billion dollars in 2007. On the other hand, in the middle of 2008, total trade with the EU grew of 24% more than in the same period of the previous year, 9.3 billion to exports and 18.8 billion to imports (table 1).⁴²

<i>Type of operation</i>	<i>1999</i>	<i>2007</i>	<i>2008</i>	<i>increase</i>
<i>Mexican exports</i>	5.2	14.1	9.3	174%
<i>Mexican Imports</i>	13.2	34.0	18.8	157%
<i>Total trade</i>	18.5	48.2	28	162%
<i>Balance of trade</i>	-8.2	-19.8	-9.5	147%

Table 1: Bilateral trade Mexico-EU (Billions of dollars)

During this period, Germany was one of the main community suppliers of the Mexican market within the EU. Thus, the sectors that had a greater participation with respect to Mexican exports to the EU in 2008 were: petroleum, vehicles, machinery and electrical equipment, nuclear reactors, pearls and precious stones and instruments and optical devices. However, the most exported product from Mexico to the EU was petroleum, since it represented about 29% of the Mexican

⁴¹ 'Unión Europea: Código' (2018) <http://www.economia-snci.gob.mx/sic_php/pages/files_varios/pdfs/evolucion_comercioinversion_tlcuem.pdf> accessed 27 April 2018, pg 1-2.

⁴² 'Principales Resultados Del TLCUEM En El Comercio Y La Inversión Entre México Y La UE' (Sice.oas.org, 2018) <http://www.sice.oas.org/TPD/MEX_EU/Studies/Resultados_s.pdf> accessed 2 May 2018, pg 1.

sales to this commercial block, with more than 27 million dollars during the first half of 2008. Regarding non-oil exports, Germany, Spain, the Netherlands, the United Kingdom and Belgium were the main destinations of the Mexican market. Except for beer, the first fifteen non-oil products that Mexico exported to the EU block were industrial goods in the automobile, steel, electronic, medical and communication sectors. In some cases, final goods were exported, such as automobiles, computers or syringes. Likewise, there were also important Mexican exports of supplies to the EU, which reflected the economic integration promoted by the presence of community companies in Mexican territories. For example, Mexican sales of telephones parts to Finland were driven by the establishment of the Finish company in Mexican territories.⁴³

In 2010, the total volume of trade (exports and imports combined) amounted to 34.499 million euros, representing an increase of 32% compared to 2009, and almost reaching the levels of 2008. In fact, in 2008, imports and exports had similar trends, valuing exports from the EU to Mexico higher than imports from Mexico. In 2010, compared to 5.962 million euros in 2009 and 8.214 million in 2008, the trade surplus of the EU with Mexico amounted to 9.275 million of euros.⁴⁴

Machinery and transport equipment were the main exchanged product between the EU and Mexico in 2010, consisting of 45% of EU exports to Mexico and 46% of EU imports from Mexico. Alternatively, Mineral Fuels did not have the same flow, since 19% of the negotiated product consisted of Mexican imports, but only 10% of EU exports. However, taking in consideration the higher volumes of EU exports to Mexico, we can conclude that the traded values for this category were more balanced, since Mineral Fuels worth 2.520 million euros were imported from Mexico, while 2.205 million were exported to Mexico. In addition, apart from Telecommunications and sound recording equipment for imports from the EU to Mexico and Medical and pharmaceutical products, Petroleum and Road Vehicles were among the most traded products between the EU and Mexico.⁴⁵

Since its entry into force until 2015, EU exports to Mexico increased by 236%, while Mexican exports to the EU did so by 233%, as a result Mexico-EU trade growing by 235% in the same

⁴³ Ibid., page 7-10.

⁴⁴ 'Mexico-UE: Indicadores Estadísticos Básicos - Statistics Explained' (*Ec.europa.eu*, 2018) <http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Mexico-EU_-_basic_statistical_indicators/es#Comercio> accessed 2 May 2018.

⁴⁵ Ibid.

period. Nonetheless, in 2015, Mexican imports from the EU decreased by 1.3% compared to the previous year, while Mexican exports to the EU decreased by 10.5%. The latter occurred because Mexican exports to the EU exceeded 19,307 million euros, with a share of 1.1% of total EU imports. As a result, Mexico ranked as the nineteenth largest provider of the EU worldwide. The destinations of European imports from Mexico came mainly from Germany, Italy, Spain, Netherlands, France, United Kingdom, Sweden and Ireland. Approximately 77% of Mexican exports to the European Union consisted of minerals and hydrocarbons; electrical machinery and equipment; vehicles and transportation equipment; nuclear reactors and boilers; photographic and optical instruments; minerals, slag and ash, among others.⁴⁶

Correspondingly, in reference to EU exports to Mexico, the exported amounts reached 33,662 million euros, placing Mexico as the fifteenth commercial destination, with a share of 1.9% of total exports. These mainly included machinery and electrical equipment; vehicles; pharmaceutical products; minerals and hydrocarbons; plastics and derivatives, among others, which represent approximately 82% of the total number of EU-Mexico exports.

Furthermore, from 2016 to 2017, the EU became (after the US) Mexico's second most important export market. Likewise, for the EU, Mexico became (after the US and China) the third largest importer. Among the main EU exports to Mexico are transport equipment, machinery, chemical products, fuel and mining products while Mexico primary exports to EU are office and telecommunication equipment, fuels and mining products, transport equipment and other machinery. Regarding services, Mexico focal exports to EU are travel and transport services, whereas the EU significant exports to Mexico are transport services and telecommunications, computer and information services (Figure 1, 2, 3 and Table 2, 3, 4).⁴⁷

⁴⁶ BÉLGICA Y LUXEMBURGO UE and UNIÓN EUROPEA, 'Asociación Económica' (Embamex.sre.gob.mx, 2018) <<https://embamex.sre.gob.mx/belgica/index.php/en/relmex/relue?id=232>> accessed 19 April 2018.

⁴⁷ 'Mexico - Trade - European Commission' (Ec.europa.eu, 2018) <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/>> accessed 19 April 2018.

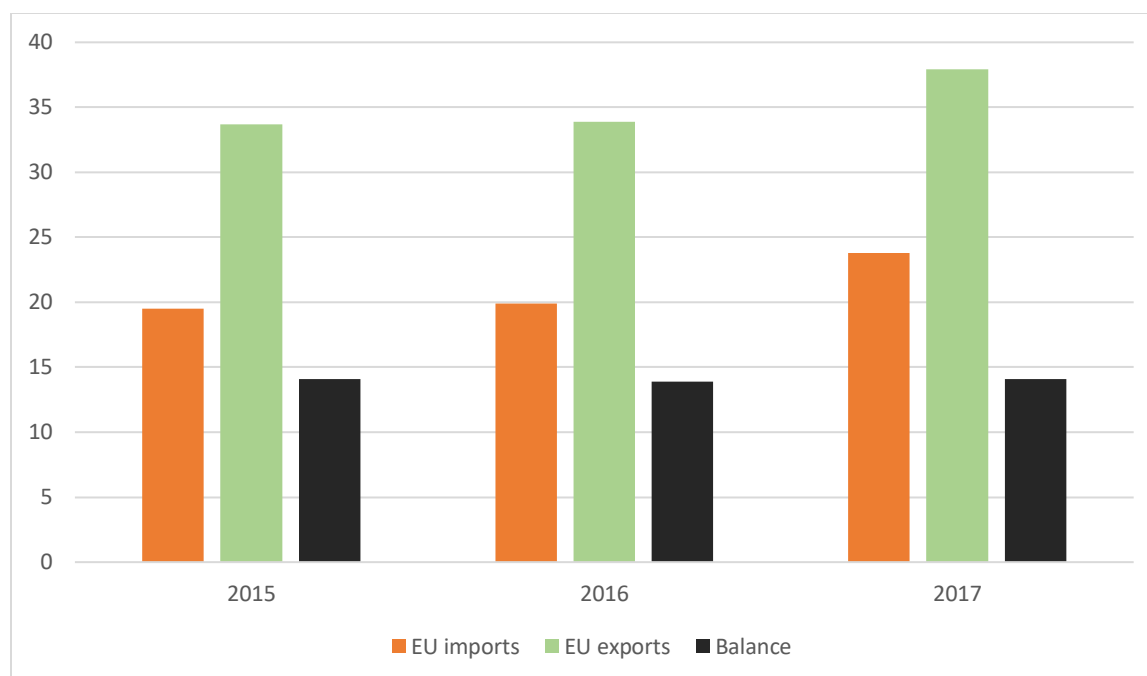


Figure 1: EU-Mexico Trade in goods

Year	EU imports	EU exports	Balance
2015	19.5	33.6	14.1
2016	19.9	33.9	13.9
2017	23.8	37.9	14.1

Table 2: Trade in goods 2015-2017

(Billions of euros)

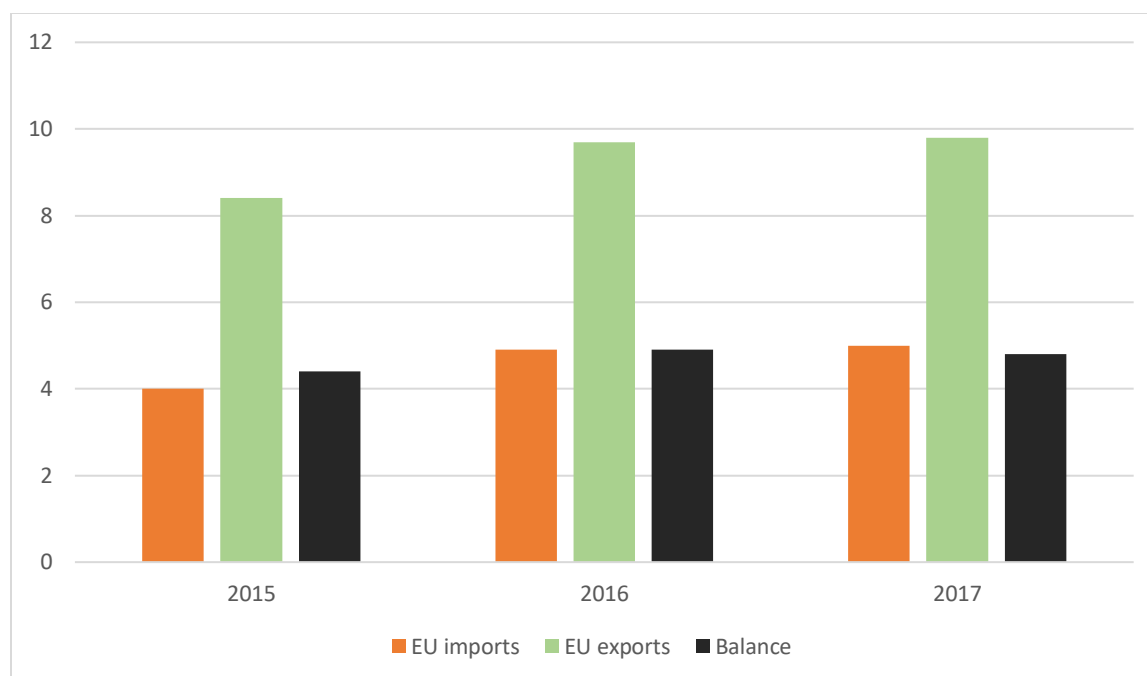


Figure 2: EU-Mexico Trade in services

Year	EU imports	EU exports	Balance
<i>Trade in services 2014-2016, €</i>			
<i>billions</i>			
2014	4.0	8.4	4.4
2015	4.9	9.7	4.8
2016	5.0	9.8	4.8

Table 3: EU-Mexico Trade in services

(Billions of euros)

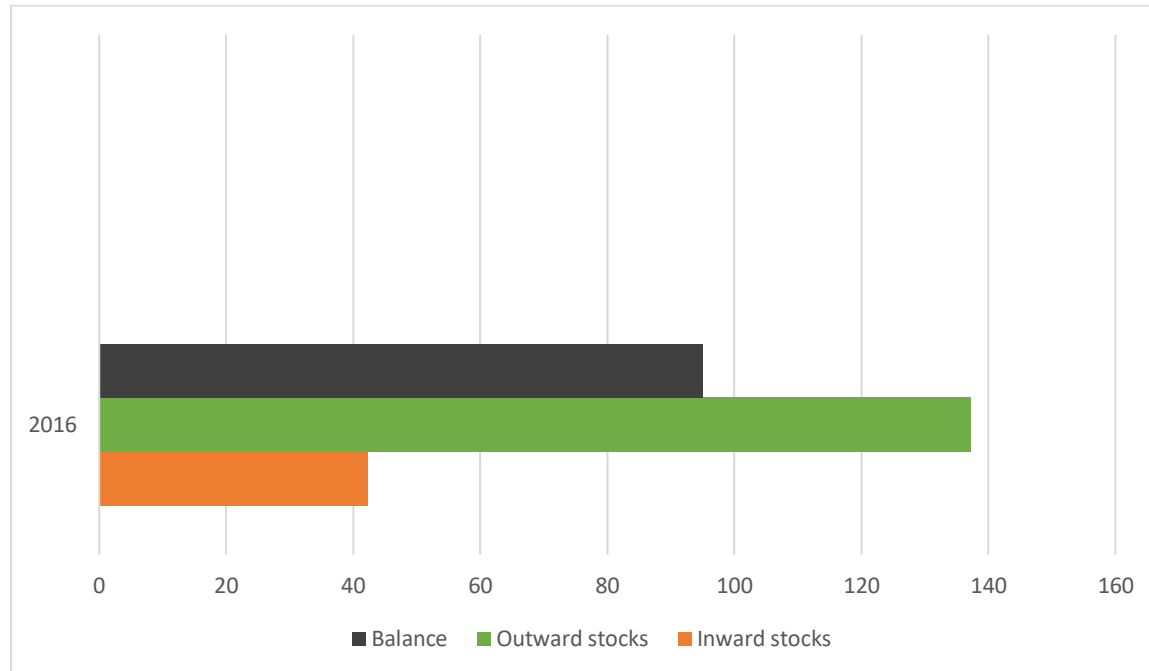


Figure 3: EU-Mexico Foreign direct investment

Table 4

EU-Mexico: Foreign direct investment

Year	Inward stocks	Outward stocks	Balance
2016	42.3	137.3	95.0

Table 4: EU-Mexico Foreign direct investment
(Billions of euros)

The foregoing shows that bilateral trade flows have been boosted thanks to the Free Trade Agreement between Mexico and the European Union. Both exports from Mexico to the community block, as well as Mexican purchases of community products, have registered significant growth rates over the years.

The composition of Mexican purchases of community products indicates that many of these are inputs, which are transformed in Mexico, in many cases, to be subsequently re-exported. This means that part of these inputs is imported into Mexico by community-based manufacturing

companies, and then processed and marketed in the Mexican and international markets. This type of imports of community products create new opportunities for Mexican exports and, consequently increasing the employment rate in Mexico.

2.2. Other treaties and inter-institutional agreements between Mexico and the European Union

Besides the FTA EU-MX, Mexico has a network of Agreements for the Reciprocal Promotion and Protection of Investments and Institutional Agreements around the European Union. Mexico also actively participates in multilateral and regional bodies and forums such as the WTO, the Asia-Pacific Economic Cooperation Mechanism (APEC) and The Organization for Economic Cooperation and Development (OECD).

Mexico has entered into numerous bilateral and cooperative and cooperative agreements, as well as agreements for the promotion and reciprocal protection of the investments with member states of the EU, not to mention treaties held with other European states. For the sake of the above, some examples will be analysed.

Agreement between the Ministry of Economy of the United Mexican States and the Ministry of Economy and Commerce of Rumania on Bilateral Economic Relations.

This Bilateral Cooperation Agreement between Mexico and Romania signed on January 22, 2007 in the city of Mexico, has the main objective to promote and develop the industrial, economic, and investment relations, specifically among small and medium enterprises for both countries.

This will be achieved by identifying business opportunities and new forms of industrial, economic and investment cooperation and through the creation of a Working Group. The Working Groups' task is to promote the exchange of information and statistics on trade, industry and investment in accordance with the legislation of each country; to exchange information and statistics related to technical regulations, sanitary and phytosanitary norms and any other measure related to traded or commercial goods between both countries; to use existing instruments such as promotion in fairs, exhibitions, seminars and workshops that contribute to the increase the mutual knowledge of the

market by companies with the purpose of increasing industrial, economic and investment relations and develop the objective of this Agreement; and any other measure agreed by the Parties.⁴⁸

Prior to the conclusion of the BCA, Mexico and Romania already enjoyed good commercial relations. In 2005, Mexican exports to Romania amounted to 56 million dollars, while Mexican imports from Rumania reached 47.7 million dollars, with a total of 103.7 million dollars. Nonetheless, the volume, dynamism and composition of their exchanges did not reach the commercial and bilateral potential that Mexico and Romania had. For this reason, in the hope that the bilateral exchange will be extended and its composition diversified, Mexico and Romania decided to sign an agreement. Meanwhile, after the conclusion of the agreement, Romania has also been able to benefit from the EU-MEX FTA, since in that same period (January 2007), Romania joined the European Union.⁴⁹

Mexico-Portugal Memorandum of Understanding

This agreement, signed on February 18, 2009, was discussed for the creation of a High-Level Working Group to help modernize and adapt the already renewed Economic and Trade Agreement between Mexico and Portugal, signed in 1981. The working group intended to deepen high-level institutional and political contacts, thus strengthening the relations between the two countries and the implementation of the bilateral legal framework in economic and commercial matters.⁵⁰

In addition, views on bilateral economic relations were exchanges as well as the possibility of promoting trade to attract investment in areas such as automotive, eolic energy, biotechnology, infrastructure and tourism services.

Portugal also benefited from the EU-MEX FTA with an increase in trade of 223% between Mexico and Portugal since its entry into force. Until November 2008, Portugal was Mexico's 12th commercial partner and the 13th largest source of investment. During this period, bilateral trade

⁴⁸ Acuerdo entre la Secretaría de Economía de los Estados Unidos Mexicanos y el ministerio de Economía y Comercio de Rumania sobre las Relaciones Económicas Bilaterales. [2007], Art 3, 4, 5.

⁴⁹ 'Secretaría De Economía - ACUERDO MÉXICO RUMANIA SOBRE RELACIONES ECONOMICAS BILATERALES' (2006-2012.economia.gob.mx, 2018) <<http://www.2006-2012.economia.gob.mx/eventos-noticias/sala-de-prensa/comunicados/5919-acuerdo-mxico-rumania-sobre-relaciones-economicas-bilaterales>> accessed 21 May 2018.

⁵⁰ Memorándum de Entendimiento entre la Secretaria de Economía de los Estados Unidos Mexicanos y el Ministerio de Economía e Innovación de la Republica Portuguesa Sobre la Creación de un Grupo de Trabajo de Alto Nivel [2009] OJ C 147/77 Art 1, 2, 3.

amounted to 600 million dollars approximately. Furthermore, the Portuguese consortium Mota-Engil and Banco Espírito Santo Group built the Perote-Banderilla road section and the Xapala highway in the state of Veracruz. Regarding Mexican investment in Portugal, companies such as Vitro and Carso-Telmex already have presence in the market.⁵¹

Mexico-Slovak Republic Memorandum of Understanding

Mexico and the Slovak Republic established diplomatic relations on January 1, 1993. Since then, the bilateral relations between Mexico and Slovakia are characterized today by the satisfactory level of relationship and do not face some sort of friction. Likewise, the bilateral relationship was strengthened following the first visit of a President of Mexico to the Slovak Republic in May 2006, during which the “*Agreement between the United Mexican States and the Slovak Republic*” was signed to avoid double taxation and to prevent tax evasion in matters of income taxes and the “*Memorandum of Understanding between the Ministry of Economy of the United Mexican States and the Ministry of Economy of the Slovak Republic for the Establishment of the Joint Commission on Economic Matters*”.⁵²

The main goal of this memorandum was the promotion and development of the economic, industrial and investment relations between Mexico and Slovakia by establishing a Joint Economic Commission that exercised the following activities: act as the consultation organ of the parties; analyse the evolution and prospects of economic cooperation; identify opportunities to strengthen economic relations between both countries; propose, evaluate and determine by common agreement the priority areas in which it would be feasible to carry out specific projects of economic and business cooperation, the resources necessary for their implementation, and the cooperation programs and projects that include strategic objectives and actions plans; pay special attention to the development of small and medium enterprises; to evaluate the implementation of this Memorandum and agreed cooperation programs and projects, and to attend to the consultations

⁵¹ 'Secretaría de Economía - FORTALECEN MÉXICO Y PORTUGAL RELACIONES ECONÓMICAS' (2006-2012.economia.gob.mx, 2018) <<http://www.2006-2012.economia.gob.mx/eventos-noticias/sala-de-prensa/comunicados/5983-fortalecen-mexico-y-portugal-relaciones-economicas>> accessed 21 May 2018.

⁵² México Y Eslovaquia' (Embamex.sre.gob.mx, 2018) <<https://embamex.sre.gob.mx/austria/index.php/es/la-embajada/mexico-y-eslovaquia>> accessed 21 May 2018.

that the Parties may raise, seeking to find solutions to any differences that may arise in bilateral economic relations.⁵³

Mexico-Germany Bilateral Investment Treaty

The entry into force of the “*Agreement between the United Mexican States and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments*”, contributed to give greater confidence to investors of the German small and medium industry, due to the economic and investment possibilities offered by Mexico.

This Bilateral Investment Treaty (BIT) of reciprocal nature, contains measures and clauses destined to protect, in the matters of international law, the investments made by the investors of each State Party in the territory of the other State Party. Its objective is to promote, admit and protect investments⁵⁴ by providing a stable and investment friendly environment that aims to reduce the political and legal uncertainty factors, which may affect the development of investment projects between Mexico and Germany.

Thanks to the BIT and the EU-MEX FTA, Mexico and Germany now enjoy an excellent economic, business, and investment relationship. In recent years, there has been a considerable rise in the transactions between the parties, both in bilateral trade and in foreign direct investments (FDI). Mexico, was therefore positioned as the most important Latin American economic partner for Germany.

During the last 3 to 5 years, important German consortiums have launched a series of projects mainly in the automotive industry in Mexico, with an investment amount of more than one billion dollars:

- On January 15, 2013, the new Volkswagen engine plant was inaugurated in Silao, Guanajuato.
- In May 2013, the construction of Audi’s first automotive plant started in San José de Chiapa, Puebla, inaugurated at the end of September 2016.

⁵³ Memorandum de Entendimiento entre la Secretaria de Economía de los Estados Unidos Mexicanos y el Ministerio de Economía de la República Eslovaca para el Establecimiento de la Comisión Conjunta en Materia Económica [2006] OJ 147/88, Art 1, 3, 5.

⁵⁴ Agreement between the United Mexican States and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments [2001] OJ C 147/26.

- On June 16, 2016, the construction for the production plant of the BMW company in San Luis Potosí commenced, and will start its production in 2019.
- In September 2015, the construction for the new joint plant between Nissan and Daimler in Aguascalientes began, producing Mercedes Benz and Infinity cars.
- In addition, Volkswagen is considerably expanding its main plant in Puebla, which is the second largest Volkswagen in the world, after its headquarters in Wolfsburg.⁵⁵

These investments have been significant for the Mexican automotive industry, due to its productions capabilities and the creation of thousands of jobs. Germany is interested in continuing to invest in Mexico, not only because of the potential of its market, but also because of its important geographical and strategic position in the global market.

Mexico-Austria Bilateral Investment Treaty

Mexico and Austria share not only a commercial and diplomatic relationship, but also a historical one. In 1938, Mexico was the only nation that raised a protest to the League of Nations due to the annexation of the Austrian territory to the German Reich by the National Socialists – the so-called “Anschluss”. Likewise, in 1952, the Government of Mexico, together with Brazil, advocated before the United Nations (UN) for the inclusion of Austria as a member of the mentioned organization and the conclusion of the State Treaty that restored autonomy and Austrian sovereignty in 1955. Since then, political relations between Mexico and Austria have traditionally developed in a favourable environment of dialogue, understanding and cooperation.⁵⁶ Thus, it was expected that a bilateral trade relation would be developed as well.

The “*Agreement between the Republic of Austria and the United Mexican States on the Promotion and Protection of investments*” signed in June 1998 expanded/allowed commercial growth for both countries, giving the necessary confidence to the corporations knowing that their investments were duly supported and protected.

Its content is very similar to the agreement held with Germany or another BIT. In order to promote investments, the Mexico-Austria BIT granted FDIs made by an investor of one Contracting State

⁵⁵ 'Embajada De México En Alemania' (*Embamex.sre.gob.mx*, 2016) <<https://embamex.sre.gob.mx/alemania/index.php/es/component/content/article/418>> accessed 22 May 2018.

⁵⁶ 'México Y Austria' (*Embamex.sre.gob.mx*, 2016) <<https://embamex.sre.gob.mx/austria/index.php/es/la-embajada/mexico-y-austria>> accessed 22 May 2018.

in the territory of the other fair and equitable treatment, protection from expropriation, free transfers of means and full protection and security.⁵⁷

After its entry into force in March 2001, bilateral trade between Mexico and Austria has been increasing, reaching the highest percentage of commercial interchange in 2015, where it stood at 9.6% higher than previous years, with a total of 1,311.4 million dollars. Imports of products from Austria increased by 4.3%, from 1,061.6 million dollars in 2014 to 1,106.8 million dollars in 2015, while Mexican exports increased by 51.2% compared to 2014, standing at 204.6 million dollars.

Among the main products that Mexico exports to Austria are engines and auto parts, machinery and electrical appliances, equipment for the optical industry, measuring devices, recording or sound reproduction devices, devices for recording or reproduction of image and sound on television, and the parts and accessories of these apparatuses, memory units and malt beer. The main products that Mexico imports are pharmaceutical products, steel products and their derivatives, aluminium and its derivatives, couché, white or coloured paper for fine printing and kraft paper for sacks (bags).⁵⁸

Concerning investments, Mexico is present in Austria through the Alfa-NEMAK Group (produces high-tech aluminium components through its subsidiary Nematik Linz) and America Movil in Telekom Austria. In turn, during 2015, Austrian investment in Mexico registered USD 77.3 million, mainly in the sectors of manufacturing, real estate and rental of movable and intangible goods and commerce.

Austria ranks as the 34th investor in Mexico worldwide and 13th in the EU. The accumulated FDI of Austria in Mexico, between 1999 and March 2016, amounted to 284.4 million dollars. This investment has been mainly destined to the manufacturing industry (85.6%), commerce (4.8%) and mining (4.0%). There are now about 196 companies in Mexico with capital from Austria.⁵⁹

⁵⁷ Agreement between the Republic of Austria and the United Mexican States on the Promotion and Protection of investments [2001] OJ C 147/71, Art 3, 5, 7.

⁵⁸ 'Relaciones Económicas' (*Embamex.sre.gob.mx*, 2017) <<https://embamex.sre.gob.mx/austria/index.php/es/la-embajada/mexico-y-austria/comercio-bilateral-e-inversiones-mexico-austria>> accessed 22 May 2018.

⁵⁹ Ibid.

Chapter 3. Modernisation of the trade pillar of the EU-Mexico Global Agreement

3.1. Modernisation of the Free Trade Agreement

For Mexico, the European Union means an important source of investment and promising market, with 28 countries and with a population of more than 500 million inhabitants. At the same time, Mexico is important for EU Member States, given the geographical position of the intermediate Latin American country with the United States and the rest of Latin America, in addition to the magnificent advantages for investment in some regions of the country.

Although the current structure of trade between Mexico and the European Union has worked properly, it was to be expected that both parties would over the years, develop contemporary trends in both the political and economic spheres. For example, in 2012 Mexico adopted the national political agreement called “*Pacto por Mexico*”, through which important reforms were carried out in vital areas such as taxes, the telecommunication and energy sector, and banking. Moreover, in 2006, the European Commission modernized its trade policy by adopting the “Global Europe” strategy, in order to deepen its agreements that covered regulatory barriers in goods, services, investments, intellectual property rights, the protection of innovation, government procurement and sustainable development matters, among other things. Accordingly, in 2015, Mexico and the European Union announced their intention to upgrade the “*Economic Partnership, Political Cooperation Agreement between the EU and Mexico*” and in particular its trade pillar. After all the preparatory work was completed, formal negotiations were launched in May 2016. Although both parties were committed to conclude the negotiations before 2017, the talks continued until 2018, where in April the ninth round of negotiations were concluded.⁶⁰

Before beginning the modernisation of the agreement, some challenges were hindering the potential conclusion of the new treaty. As mentioned in the preceding paragraphs, after the entry into force of the global agreement in 2000, there have been significant changes in the trade policies

⁶⁰ (Ec.europa.eu, 2018) <http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_trade_001_modernisation_eu_mexico_agreement_en.pdf> accessed 25 May 2018, page 1.

of both parties. For example, since the entry into force of the Treaty of Lisbon in 2009, the exclusive competitiveness of the European Union also covers investments. Moreover, it is worth mentioning that there are currently 16 bilateral treaties between Mexico and the member states of the EU, which, due to their independent level of ambition and vision, create inconsistencies in the way European Union investors are treated in Mexico.

On the other hand, Mexico joined the TPP, a trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, Vietnam and the United States. This new agreement covered much more than the GA between Mexico and the EU regarding commercial relations. This wider relationship with other trading partners, endangered the preferential place between the European Union and Mexico. Likewise, modernizing the FTA could affect the businesses of both parties, including service industries, commerce, manufacturing and consumer companies.⁶¹

3.2. Modernisation Objectives

For Mexico, the update of the EU-MEX FTA not only represented a fantastic opportunity to strengthen its commercial relations with the European Union but also served as a way to counteract the possible disadvantageous renegotiation of NAFTA, proposed by the current president of the United States, Donald Trump. Through the EU-MEX FTA, Mexico could possibly diversify its economy and be prepared in case the Republican Leader threatened to pull the United States out of NAFTA. As for the EU, the FTA would expand its access to the public procurement sector in Mexico and thus have more access to the sector of professional, maritime and transport services. Likewise, the agreement would create more investment opportunities in Mexico for the EU, with a higher level of protection and modern conflict resolution system. The European Parliament supported and gave its consent to the modernisation of the GA between Mexico and the EU.⁶²

⁶¹ Ibid, page 2-4

⁶² 'Modernisation of The Trade Pillar of the EU-Mexico Global Agreement' (*Europarl.europa.eu*, 2018) <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608680/EPRS_BRI\(2017\)608680_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608680/EPRS_BRI(2017)608680_EN.pdf)> accessed 11 June 2018.

All in all, the objective of this update is to create the conditions to boost bilateral trade and investment between Mexico and the EU, contributing to economic growth and the creation of jobs for both parts. This will be possible with the establishment of a new structure of trade that is able to adapt to the latest trends.

3.3. The rounds of negotiation, the proposals and their outcome

First round of negotiations towards the modernisation of the EU-Mexico FTA

Once both parties announced their intention to modernize their FTA in May 2015, the talks did not take long to begin. In June 2016, Brussels gave way to the first round of negotiations for this purpose. The round of talks mostly intended to establish what would the working methods be and how it would be organized. Furthermore, Mexico and the EU agreed to work in between sessions to prepare the second round of negotiations that would take place in Mexico City in November 2016.⁶³

Second round of negotiations towards the modernisation of the EU-Mexico FTA

The second round of negotiations was held at the indicated place and time, during which, in addition to the Trade Pillar, aspects related to the political and cooperation pillars of the Global Agreement were reviewed. Regarding the Trade Pillar, the delegations focused mainly on defining the working methods and interchanging general visions about the disciplines to be negotiated.⁶⁴

In this second round, the EU presented six proposals as its initial negotiation position, suggestions aimed at modernising different elements of the current EU-Mexico agreement such as the following:

- **Rules of Origin**

⁶³ European Union - EEAS (European External Action Service), 'Joint Press Release on The First Round of EU-Mexico Negotiations of The Global Agreement' (2016).

⁶⁴ Secretaría de Economía (México), Dirección General de Comunicación Social, 'Concluye La Segunda Ronda de Negociaciones para la Modernización del Pilar Comercial del Acuerdo Global México-Unión Europea' (2016) <<https://www.gob.mx/se/prensa/concluye-la-segunda-ronda-de-negociaciones-para-la-modernizacion-del-pilar-comercial-del-acuerdo-global-mexico-union-europea?idiom=es>> accessed 3 June 2018.

This protocol principally defined what both parties understood for the concept of “originating products”, separating them into two parts: a) products wholly obtained in a Party and b) products obtained in a Party incorporating materials, which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Party. The first definitions refers (among others) to the minerals extracted from the soil; plants and vegetables cultivated there; live animals born there; products derived from live animals born there; slaughtered products from animals born and raised there; products obtained by hunting or fishing there; aquaculture products born and bred there; waste and scrap resulting from manufacturing operations conducted there; products extracted from the marine soil or the subsoil there and the goods obtained from the products extracted from the ground or from the subsoil.

For the second definition, it was proposed to grant the status of originating products to insufficient working or processing operations (when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance) that ensure that the products remain in good condition during transportation and storage, breaking-up and assembling packages, washing, cleaning and removal of any covering; ironing textile articles; painting and polishing operations; husking and partial or total milling of rice; polishing and glazing of cereals and rice; the peeling of fruits, nuts and vegetables; simple packaging operations; the simple mix of products; the combination of two or more previously specified operations, among others.⁶⁵

- **Public Procurement**

This proposal aims to establish additional disciplines to the application of the articles I-IV, VI-XV, XVI.1-XVI-XVI.3, XVII and XVIII of the WTO Government Procurement Agreement, such as: local establishment; use of electronic means in procurement; single electronic access point; registration systems and qualification procedures; selective tendering; environmental and labour considerations; statistics; domestic review procedures. In addition, the rules for the modification or adjustment of its appendices were proposed. Finally, it was proposed to establish a Committee on Government Procurement

⁶⁵ Commission (EC), 'Proposal for the definition of the concept of “originating products” and methods of administrative co-operation' COM (16) Annex, November 2016.

composed of representatives of each Party, where issues related to the implementation and operation of public procurement or any other related would be covered.⁶⁶

- **Sanitary and Phytosanitary Measures**

The objective of this proposal is to establish the standards of Sanitary and Phytosanitary Measures (SPS), by ensuring that these measures do not unnecessarily limit trade between the parties. Sanitary and Phytosanitary measures shall improve the communication and cooperation of the parties in the matter of reference; improve consistency, predictability and transparency of each party's SPS; through the implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures without restricting the right of each party to achieve its own level of SPS protection.⁶⁷

Moreover, the conditions for trade were proposed with respect to the procedures and requirements of SPS measures for imports, as well as the elimination of redundant control measures, the adaptation of regional conditions for plagues or diseases, technical consultations, and animal welfare. Finally, it was proposed (among other things), to establish a Joint Management Committee for SPS measures, composed of members of each Party, whose functions would be to monitor, direct, and review the implementation of SPS measures.⁶⁸

- **Energy and Raw Materials**

As for exploring and producing energy goods and raw materials, the Commission published a text proposal to establish the cooperation measures on those subjects, defining "Energy goods", "Raw Materials", "Renewable energy" and "Energy efficiency". Likewise, the text established antitrust measures on imports or exports and limited the imposition of unreasonable prices on exports of energy or raw materials, establishing that the parties must grant the same price to those goods as if they were destined for the domestic market. Furthermore, it was also proposed to adopt the necessary measures to protect the safety and integrity of the energy equipment, as well as to promote the development of common

⁶⁶ Commission (EC), 'Proposal for the Chapter on Public Procurement' COM (16) Chapter XY, November 2016.

⁶⁷ Commission (EC), 'Proposal for the Chapter on Sanitary and Phytosanitary Measures' COM (16) Chapter XX, November 2016, art XX.1-XX.6.

⁶⁸ Ibid, art XX.6-XX.18.

standards, technical regulations and conformity assessments on energy efficiency and sustainable renewable energy.⁶⁹

- **Intellectual Property Rights**

The Commission also proposed to modernize the intellectual property rights standards, in order to facilitate their production and commercialization and achieve an adequate and effective level of protection of intellectual property rights. The proposal text further established the international agreements to which the parties will comply, being the Berne Convention, the Rome Convention; the WIPO Copyright Treaty, adopted on 20 December 1996, and the WIPO Performances and Phonograms Treaty, adopted on 20 December 1996. The terms of protection for literary or artistic work, musical composition, joint authorship, anonymous work, and cinematographic and audiovisual work were also defined. In reference to trademarks, the Commission proposed that the parties should establish a system to register themselves, in which they must notify in writing and reason, all final decisions that regards the total or partial rejection of a trademark registration, same that could be challenged by the other party.⁷⁰

Among other things, the terms of protection, the application and definition for the registration of design and geographical indications were proposed. Finally, the general rules and terms for cooperation and transparency were settled, as well as the setup of a Joint Committee composed of representatives of both parties, to strengthen cooperation and dialogue in geographical indications.⁷¹

- **SMEs**

Finally, the Commission proposed a chapter for small and medium-sized companies, which, unlike the global agreement that only contained article 17 in relation to SME, an arrangement was made for the cooperation between small and medium-sized enterprises to promote contacts between economic operators and facilitate access to finance through shared information. This proposal established, in terms of shared information, that the parties should keep relevant information in their own publicly accessible website or

⁶⁹ Commission (EC), 'Proposal for Energy and Raw Materials' COM (16), November 2016.

⁷⁰ Commission (EC), 'Proposal for the Chapter on Intellectual Property Rights' COM (16) November 2016, Art. 1 - 6

⁷¹ Ibid, Art. 7 – 8.

webpage that is relate to SME. Likewise, each party shall include all useful information to people interested in trading, investing, or doing business in that Party. This information shall include: customs regulations and procedures; regulations and procedures concerning intellectual property; a registry of technical regulations in force; sanitary and phytosanitary measures relating to importation and exportation; a database rules on public procurement; business registration procedures; all other information that the Party considers necessary to SMEs. The content of this information will have to be equivalent to that of the other party.⁷²

Third round of negotiations towards the modernisation of the EU-Mexico FTA

On February 1st, 2017, the third round of negotiations took place in Brussels, in which delegates from both sides met to discuss the negotiation process.

The negotiation paid off by advancing on the aforementioned issues and proposals, such as: access to markets and goods, facilitation of trade, competition, rules of origin, technical barriers to trade, sanitary and phytosanitary measures, intellectual property, public contracting, trade of services, investment, trade and sustainable development, regulatory improvement and improvement in the process of commercial differences, energy and raw materials and cooperation on small and medium enterprises.⁷³

Once the first round of negotiations was concluded, the Parties agreed to accelerate the negotiation process in order to try to conclude them at the end of 2017 (which unfortunately did not happen), setting the next round of negotiations to take place in Mexico City.⁷⁴

Fourth round of negotiations

On June 26, 2017, the Mexican and European delegations met to continue reaching agreements on the assorted topics previously discussed in this text. This round of negotiation, mainly sought to

⁷² Commission (EC), 'Proposal for the Chapter on SME' COM (16) November 2016.

⁷³ Secretaría de Economía (México). Dirección General de Comunicación Social, 'Concluye la Tercer Ronda de Negociaciones para la Modernización del TLC México Unión Europea' (2017) <<https://www.gob.mx/se/prensa/concluye-la-tercer-ronda-de-negociaciones-para-la-modernizacion-del-tlc-mexico-union-europea>> accessed 13 June 2018.

⁷⁴ European Commission, 'EU Trade Commissioner in Mexico: "Trade Deal Possible by Year's End"' (2017) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1659>> accessed 13 June 2018.

address issues related to access to market; identification of common provisions on trade in services, including telecommunications, intellectual property, and reaching new agreements on sanitary and phytosanitary measures.

The Secretariat of Economy (Mexico) established a forum on the modernisation of the FTA, to report on the progress of this process and to reaffirm opinions and recommendations of civil society organizations, academic institutions, chambers of commerce and industry, and economic operators. The above was done in order to help identify the areas to be improved before concluding the modernisation of the FTA.⁷⁵

EU negotiating textual proposals

From April to October 2017, the EU announced a series of proposals that would later be concluded at the end of the fifth round of negotiations for the modernisation of the EU-Mexico FTA. The proposals included the following issues:

- **Transparency**

In order to have a predictable and efficient regulatory environment for the economic operators, it was proposed that the parties should publish by any feasible and official means, everything related to the Trade part in the agreement. It was also suggested that the Parties must establish mechanisms that allowed them to respond appropriately and expeditiously, in order to clear any doubts coming from any stakeholders in relation to this part of the agreement. The same shall apply when adopting or reforming laws or regulations of typical application with respect to the chapter on Trade of FTA.⁷⁶

- **Goods**

The text intends to ensure that National Treatment is given to the trade of goods that will be given between the parties. In this way, it was proposed (except as otherwise provided in the agreement) to eliminate or reduce customs charges, so neither Party should impose or maintain any duties, taxes or any other type of charges to exports of goods from the other Party. Similar conditions will apply to repaired and remanufactured goods. Lastly, the restrictions on imports and exports, the treatment of the origin mark, the import and export

⁷⁵ Secretaría de Economía (Mexico), Dirección General de Comunicación Social, 'Inicia Cuarta Ronda De Negociaciones Para La Modernización Del TLC México-Unión Europea' (2017).

⁷⁶ Commission (EC), 'Proposal for the Chapter on Transparency' COM (17) Chapter X Transparency, April 2017.

licensing procedures, custom valuation, general exceptions and the establishment of a Trade in Goods Committee were determined.⁷⁷

- **Sustainable development**

This EU text proposal has the purpose of promoting sustainable development among the parties, by creating principles and actions in relation to labour and environmental aspects in the context of commercial investment. Later, the right to regulate and protection measures were established, which allows each Party to determine their own priorities and policies for sustainable development. Likewise, the standards for the agreements on multilateral labour and multilateral environmental governance were set. The intention is to strengthen the incorporation of sustainable development in the relationship of trade and investment of the parties.⁷⁸

- **Technical barriers to trade**

With the purpose of eliminating unnecessary barriers that may impede the commercial flow of both parties, this text proposal determines the measures for the preparation, adoption and application of standards, technical regulation and conformity assessment procedures. For example, it was proposed that the parties use international standards as a basis to implement their technical regulations, as long as these are not inappropriate or ineffective for the fulfillment of the objectives sought. It was also suggested that the Parties should organize standardization bodies within their territories; to participate in the preparation of international standards by relevant international organizations, using those international standards as a basis for the standards they develop, as well as to avoid duplication of relevant international standardization organizations.⁷⁹

- **State-owned enterprise**

It was also proposed that each party should ensure the right to establish or maintain state enterprises, companies with granted privileges or special rights as well as designated monopolies, when they carry out commercial activities. As long as they act according to commercial considerations in their purchases or sales of goods of the other Party, each

⁷⁷ Commission (EC), 'Proposal for the Chapter on Trade in Goods' COM (17), April 2017.

⁷⁸ Commission (EC), 'Proposal for the Chapter on Trade and Sustainable Development' COM (17), April 2017.

⁷⁹ Commission (EC), 'Proposal for the Chapter on Technical Barriers to Trade' COM (17), Chapter X, June 2017.

party should always give the most favourable treatment of a good or service of the other party having a similar value⁸⁰.

- **Specific provision concerning the management of preferential treatment**

This EU proposal addresses specific measures on the management of preferential treatment. It encourages the parties to grant administrative cooperation and assistance in accordance with their obligations to contribute in the detection, combat and prevention of infractions granting them with a preferential treatment.⁸¹

- **Rules of origin**

The EU proposed different topics in relation to the rules of origin, but mainly focused on the creation of a protocol for the preferential treatment of tariffs. It determined that at the time of importation, the importing party should grant a preferential tariff treatment to an originating product when the importer claims the preferential tariff treatment. The claim for preferential tariff treatment must be based on a statement of origin of the product made by an exporter. This means that the declaration must contain an information of the original status of the material used to produce the product and the exporter will be responsible for ensuring that the information given in the declaration of origin is correct.⁸²

- **Investment and trade in services**

The proposal for a legal text on investment and commercial services is one of the most complete, since it established the dealings adopted by the Parties in relation to the investments made by each Party in the territory of the other Party. Indeed, it defined the measures for government procurement, such as Market Access, National Treatment and Most Favoured Nation Treatment. Furthermore, it outlined the regulatory procedures for investment protection, ranging from investors and of covered investments, compensation for losses, expropriation, transfers, subrogation, denial of benefits and termination. In a similar vein, the proposal (among many other things) covered issues of expropriation, public debt, the procedure and alternative solutions to proceed with investment disputes.⁸³

- **Good regulatory practices**

⁸⁰ Commission (EC), 'Proposal for the Chapter on State-Owned Enterprise' COM (17), April 2017.

⁸¹ Commission (EC), 'Proposal for the specific provision concerning the management of preferential treatment' COM (17), April 2017.

⁸² Commission (EC), 'Proposal for the Chapter on Rules of Origin - Section B' COM (17), April 2017.

⁸³ Commission (EC), 'Proposal for an Investment and Trade in Services Title' COM (17), April 2017.

A legal text for good regulatory practices was also proposed by the EU, where the parties will have the freedom to determine their own approach. It is established that each party applies the regulatory measures through regulatory authorities regarding any issue that affects trade and investments. For this, it is proposed that the parties maintain internal coordination or revision processes, which serve to identify and avoid unnecessary duplications or inconsistent requirements in the regulatory measures of the parties, as well as to ensure compliance with international trade and investment obligations.⁸⁴

- **Dispute Settlement**

Something that could not be missed was to establish the procedure to be carried out for the resolution of disputes. For that, the Commission proposed to establish a mechanism for the resolution of any dispute that may arise between the parties concerning the application and interpretation of this new treaty. The legal text foresees the settlement of disputes from the consultations, panel procedures, the reasonable period of time, the rules of procedure and interpretation, the forum choice, mediation mechanisms, confidentiality, up to common provisions.⁸⁵

- **Digital Trade**

With the purpose of allowing the trade of telecommunication services or any other technology related to information and communication (such as audiovisual or broadcasting services), The European Union proposed a text for digital commerce. The latter, to ensure that the parties have the legal structure to facilitate and allow electronic commerce through procedural contracts as well as so to allow the Parties not to need prior authorization to conclude them. It also defined the measures for electronic public procurement, the understanding of computer services independently if they are delivered via network, and the cooperation in regulatory problems in reference to digital commerce.⁸⁶

- **Competition**

Due to the importance of competition for the proper functioning of the markets and the freeing of trade, the EU proposed a chapter to establish measures in relation to this issue. In the following, it recognized that the Parties may adopt or maintain a competition law

⁸⁴ Commission (EC), 'Proposal for the Chapter on Good Regulatory Practices' COM (17), April 2017.

⁸⁵ Commission (EC), 'Proposal for the Chapter on Dispute Settlement' COM (17), April 2017.

⁸⁶ Commission (EC), 'Proposal for the Title on Digital Trade' COM (17), April 2017.

applicable in all economic sectors, as well as the formation of responsible authorities with the coercive power and the necessary resources to ensure the proper application of this law. Naturally, the measures for the cooperation of competence, the confidentiality and the review matters were demarcated.⁸⁷ Similarly, a proposal for a legal text in a section for subsidies that could be granted to a company by one of the parties was attached.⁸⁸

- **Telecommunications services**

Later, in June of 2017, the European Commission issued a proposal to define the principles of the regulatory framework for the provision of telecommunications networks and services. It also ensured that the regulatory authority for telecommunication services were to be legally distinct and independent of any network of telecommunications. Likewise, interconnection rights for the Parties were granted, as well as access to the use of public telecommunication networks or services in reasonable terms and conditions. The procedures for the resolution of disputes regarding telecommunications were also established, as well as the measures to prevent the providers of telecommunication services of any of the Parties from engaging in anti-competitive practices.⁸⁹

- **Motor Vehicles**

With the purpose of preventing tariff barriers to barriers to bilateral trade, and promoting the compatibility of regulations based on international standards the EU proposed a legal text for an annex in the reference issue, where international standards are established, the products covered either by recent technologies or features and the treatment granted to the equipment and the remanufactured parts.⁹⁰

- **Wine and Spirits**

Now, as regards to agriculture, wine and spirits, the EU proposed the measures for the creation, authorization, definition, and importation of wine from both Parties. Moreover, the requirements for the labeling of wines and liquors, the measures for the certification

⁸⁷ Commission (EC), 'Proposal for the Chapter on Competition' COM (17), April 2017.

⁸⁸ Commission (EC), 'Proposal for the Chapter on Competition – Section on Subsidies' COM (17), April 2017.

⁸⁹ Commission (EC), 'Proposal for the Services Chapter' COM (17), June 2017.

⁹⁰ Commission (EC), 'Proposal for the Annex on Motor Vehicles and Equipment and Parts thereof' COM (17), October 2017.

and documentation of wines and liquors imported by one Party and placed in the market of the other and its applicable rules were stated.⁹¹

- **Exceptions**

The last proposal by the EU presented for discussion with Mexico was to include a legal text under “Exceptions”. This proposal established that only in cases in which one of the Parties is going through extreme financial difficulties, it may be a safeguard measure, restrict the movement of capital, and the payments or transfers. The latter, as long as it is a temporary measure and it does not unnecessarily damage the trade and financial interests of the other Party. The security exceptions for the agreement are also demarcated, permitting the Parties to contain information that they consider contrary to their essential security interest.

Fifth round of Trade Negotiations

The fifth round of negotiations between Mexico and the EU took place at the end of September, where 21 negotiation groups met to discuss issues related to the trade chapter between the European Union and Mexico. They also discussed issues regarding the market access offers on goods, services and public procurement that were exchanged by both Parties. Although not all groups advanced at the same pace, it can be said that in total, this round had significant progresses regarding the aforementioned issues.⁹²

The EC also presented to its Mexican interlocutors its offers on wines and spirits, and motor vehicles, as well as on the exceptions that can be invoked to restrict trade. For example, for security reasons or health. At the end, the results were published with the aim of finally concluding the Agreement by the end of 2017. The dates for the sixth round of negotiations that took place in Mexico City from November 25 to December 1 were agreed.

Sixth round of negotiations to modernize the EU-Mexico FTA

Over the course of the sixth round of negotiations, held from November 25 to December 1 in Mexico City, topics on energy, raw materials, trade measures against corruption were discussed. However, the utmost progress was made in vital areas such as in sustainable development, trade,

⁹¹ Commission (EC), 'Proposal for the Trade in Goods- Section on Agriculture and Section on Wine and Spirits' COM (17), October 2017.

⁹² European Commission, 'EU and Mexico Conclude Fifth Round of Trade Negotiations with Good Progress Made' (2017) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1732>> accessed 18 June 2018.

the investment court system, access to markets for goods, as well as services and public procurement. Finally, the dates for the next round of negotiations were agreed.⁹³

Seventh round of negotiations to modernize FTA

In December 2017 in Brussels, the seventh round of negotiations was concluded. The joint effort of the Secretary of Economy of Mexico, the Trade Commissioner of the European Union and the Commissioner of Agriculture and Social Development, contributed to achieve key commitments in strategic chapters such as in competition, SMEs, transparency, SPS, good regulatory practices, and trade and sustainable development. The progress made was added to the six chapters concluded in the previous rounds. It was agreed to resume negotiations after the winter recess, to seek the conclusion of the process.⁹⁴

Eighth round of negotiations to modernize FTA

From January 8th to the 17th 2018, the eighth round of negotiations kicked off. Several substantive advances were achieved in the areas of market access, rules of origin, technical obstacles to trade, intellectual property, public contracting, and state-owned companies; subsidies, trade in services, investment, improvements in the process of settlement of commercial disputes, and legal and institutional aspects were added to these issues. Mexico and the European Union agreed on holding technical meetings on February 5 with the purpose of moving towards the conclusion of pending issues.⁹⁵

Ninth round of negotiations to modernize FTA

In February 2018, the final round of negotiations was concluded, adding five more chapters, to the eleven chapters of the agreement. Different issues were exhausted, such as: Technical barriers to trade, State-owned enterprises, Subsidies, Trade in services, regarding national regulations, maritime transport and delivery services and Anti-corruption. Equally, progress was also made in

⁹³ European Commission, 'EU and Mexico Conclude Sixth Round of Trade Negotiations' (2017) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1764>> accessed 27 June 2018.

⁹⁴ European Commission, 'EU and Mexico Complete Seventh Round of Negotiations' (2017) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1775>> accessed 27 June 2018.

⁹⁵ Secretaría de Economía, 'Concluye La Octava Ronda De Negociaciones Para La Modernización Del TLC Entre México Y La Unión Europea' (2018) <<https://www.gob.mx/se/prensa/concluye-la-octava-ronda-de-negociaciones-para-la-modernizacion-del-tlc-entre-mexico-y-la-union-europea>> accessed 27 June 2018.

the texts of the Trade in Goods, Rules of Origin, Public Procurement, Investment, Intellectual Property and Legal and institutional aspects.⁹⁶

3.4. The new Global Agreement

After an extensive period of negotiations and with a view to reaching a broader and more contemporary agreement, on April 21, 2018, the European Union and Mexico finally concluded the new agreement on trade. Although the previous GA always had positive results, increasing approximately by 8% in trade in goods per year since its entry into force in 2000, there was still a large area for improvement.⁹⁷ Consequently, the new Global Agreement, by allowing all trade in goods to be free of taxes, will be the new basis for future commercial relations between Mexico and the EU.

Even though the key areas of this new agreement have already been covered, there are still chapters that need to be detailed. Therefore, negotiators from both sides will resume their efforts to complete the remaining technical work. Even though, the EU and Mexico have until now concluded, an “agreement in principle”; additional technical issues are planned to be fixed by the end of 2018, while the publication of the new agreement on the European Commission’s website is still pending. In the same way, once the negotiations have finished, the document of the agreement will also be translated in in all official languages of the EU, as well as with the legal verification. The agreement will later be sent to the EU Member States, to the European Parliament (possibly also to the national parliaments of the member states) and to the Mexican Senate, for its approval, signature and ratification; which is planned to begin in early 2019.⁹⁸

Through the elimination of nearly all trade barriers, the New Agreement aims to introduce relations between the European Union and Mexico into the contemporary era. This is a big step for both

⁹⁶ Secretaría de Economía, 'Concluye La Novena Ronda De Negociación Para La Modernización Del Tratado De Libre Comercio Entre La Unión Europea Y México' (2018) <<https://www.gob.mx/se/prensa/concluye-la-novena-ronda-de-negociacion-para-la-modernizacion-del-tratado-de-libre-comercio-entre-la-union-europea-y-mexico>> accessed 27 June 2018.

⁹⁷European Commission, 'EU and Mexico Reach New Agreement on Trade' (2018) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1830>> accessed 28 June 2018.

⁹⁸ Ibid.

Parties, since giving mutual access to government contracts in the market of public procurement to their companies, will place them in an equal position.

3.5. The Agreement in Principle

In view of the Commission's transparency policy and due to the increased public interest that the negotiations caused, the Commission decided to publish the modernized "EU-Mexico FTA in principle". The "Agreement in Principle" gives us a perspective of what the new trade agreement will be. However, the outcome of the agreement may vary, depending on what may happen in the final negotiations.

Until now, the "Agreement in principle" only serves for informative purposes, because (as explained in the paragraph above) it does not represent the final document of the negotiations. Nevertheless, the text contains the results of all the negotiations of the proposals that have been given until April 2018, to modernize the trade part of the new GA. Once the agreement enters into force, it will benefit the companies and consumers of both sides. Likewise, it will send a message to the world that Mexico and the European Union are open for business and against tariff barriers. In view of the above, the most essential elements of the agreement in principle will be analysed below in comparison to the original GA.

Trade in Goods

Regarding the trade in goods, since the GA of 1997 did not have many of the provisions for rules of trade that are now mandatory in trade agreements, the remaining custom duties were eliminated. As well, missing products categories in agriculture and fisheries were also covered. For example, the complete liberalization of more than 85% of lines of products was achieved (except for some products from the sugar sector). Likewise, a partial liberalization was agreed for all the remaining products, as can be seen below.⁹⁹

Liberalization on Mexico's side:

- On poultry, except for chicken breast and egg products, Mexico obtained full liberalization.

⁹⁹ Commission, 'New EU-Mexico Agreement, The Agreement in Principle' COM (18) April 2018, page 1-3.

- On bananas, once the agreement enters into force, exports of Mexican bananas will be adjusted to the preferential price as for the other preferential exporter of bananas.
- On pork, except for frozen ham, Mexico also obtained total liberalization.
- On honey products, Mexico will reach complete liberalization in 7 years.

Liberalization on EU's side:

- On cheese products, preferential access for many types of cheese is available. Ensuring an export volume of 20,000 tons of mature cheeses and 5,000 tons of fresh cheeses after 5 years of the entry into force.
- On dairy products, a considerable volume of milk powder exports was also secured. Starting with 30,000 tons from the entry into force, up to 50,000 tons 5 years later.
- On pork, the conditions for exports of pork products are substantially improved. Except for loins, all pork products were liberalized.

Now, concerning fruits, the remaining products such as apples and tin peaches are liberalized. The former will be duty-free 10 years after the entry into force and the latter in 7 years after.

Moreover, the liberalization of industrial products, such as chemicals, plastics, cosmetics and clothing was agreed. Lastly, the continuous trade of wine and spirits, pharmaceutical products and motor vehicles was also guaranteed.

Rules of Origin

The chapter concerning rules of origin is divided into three General Provisions being: 1) "Section A: Rules of Origin, 2) Section B: Origin Procedures and 3) Section C: Miscellaneous". The first section establishes important provisions for preferential rules of origin in trade agreement such as the absorption rule, the principle of territoriality, cumulation, insufficient operations and the non-alteration rule. The second provision establishes that the preferential tariff treatment must be based on a declaration of origin by the exporter or producer. In addition, direct visits by the customs authorities to the territory of the exporter/ producer Party for verification are prohibited. The customs authorities can, however, demand cooperative administration in the territory of the exporting Party to obtain information. On the third segment, temporary provisions are included, as

well as the regulation of the functions of the Committee. Provisions for Ceuta, Melilla, Andorra and San Marino are also specified.¹⁰⁰

Trade Remedies

The chapter of Trade Remedies has been modified in order to bring clarity and specificity in its diverse provisions and the circumstances for its implementation. The chapter is comprised of a bilateral safeguard measure (to remedy economic damage cause by unforeseen increase of preferential imports) and two WTO instruments, anti-dumping and global safeguards.¹⁰¹

Sanitary and Phytosanitary Matters

While in the previous agreement, only a single article was dedicated for SPS measures, the New agreement devotes a broad chapter to it, improving transparency, the exchange of information, intensifying cooperation as simplifying the process of approval. The foregoing will allow the parties to determine the level of protection they consider convenient. The purpose is for the Parties to trade more safely and without having to face unnecessary SPS restrictions.¹⁰²

Energy and Raw Materials

Concerning the provisions for ERMs, these are shown as complements in the provisions of other chapters applicable to ERMs. The modernisation of the treaty enhanced the access market as a measure to guarantee fair and non-discriminatory access to energy and raw materials. Also, transparency and licensing processes for hydrocarbons and electricity were increased.¹⁰³

One of the main objectives of this chapter is to eliminate restrictions in the sectors of energy and raw materials, to guarantee access to the recently liberalized (through the “pacto por México”) Mexican hydrocarbons and energy markets.

Technical Barriers to Trade

In this chapter, in addition to reiterating its commitment to establish its technical regulations based on international standards, the Parties recognize their different approaches in relation to

¹⁰⁰ Ibid page 3-4.

¹⁰¹ Ibid, page 5-6.

¹⁰² Ibid, page 6-7.

¹⁰³ Ibid, page 7-8.

compliance advice and trade facilitation measures. Furthermore, to increase transparency, the parties agree to comply with the recommendations derived from the WTO TBT agreement. Finally, the chapter contemplates obligations in relation to public consultations or trade concerns, marking and labelling provisions, as well as provisions for the exchange of information and technical discussions to deal promptly and expeditiously with trade irritants.¹⁰⁴

Services

With a view to facilitating all trade in services, the New Agreement establishes rights and provisions that will allow the Parties to regulate their own services. It will allow them, for example, to oppose privatizing public services at the national or local levels, allowing the Parties to independently regulate their services such as healthcare, education, etc.

The agreement also establishes provisions that ensure the movement of company personnel for business purposes and the access to telecommunication services to all service providers; it also includes obligations to maintain non-disciplinary access to international maritime transport services. Lastly, it set out the rules for digital commerce to remove unnecessary barriers to trade in electronic media, to provide legal certainty to the companies and to deliver a safe online environment.¹⁰⁵

Investment

The chapter for the protection of investments is primarily composed of two types of provisions: a) provisions for the liberalization of FDI, to facilitate the establishment of companies in the territory of each Party; and b) provisions for investment protection of investments, based on precise standards that guarantee non-discrimination, no expropriation without compensation, fair and equitable treatment and physical security. Also, the most contemporary mechanisms for investment dispute resolution will be implemented. The disputes that arise will be solved in a completely Independent Investment Tribunal System to deal with first instance, and an Appeal Tribunal for second instance. Proceedings before the Tribunal will be carried out in a transparent manner, further allowing interested third parties to submit present submissions.¹⁰⁶

¹⁰⁴ Ibid, page 8-9.

¹⁰⁵ Ibid page 9-10.

¹⁰⁶ Ibid, page 10-11.

Public Procurement

In the new FTA, Mexico agreed to give preferential treatment to the European Union in relation to public procurement. Mexico also agreed to negotiate with the Mexican States to facilitate access to EU buyers for public goods or services, in exchange for access to EU work concessions.

Now, with the objective of reinforcing the access of European companies (including SMEs) to the Mexican market, Mexico is committed to making the bidding process more transparent by publishing all its public offers on a specific website of the subject.¹⁰⁷

Transparency

The assertion for transparency can be denoted throughout whole the Agreement. However, a chapter for transparency is included that contains provisions for the publication, administration, review and appeal of measures of general application with respect to any matter covered in the Agreement.¹⁰⁸

Good Regulatory Practise

In this chapter, the parties agreed to implement Good Regulatory Practices when developing regulations. The objective of this chapter is to ensure that the Parties are well informed of the most important regulatory activities that are being carried out. The interested Parties will be provided with sufficient information about the activities that the regulators are planning so that they can make their necessary considerations. The Parties also agree to evaluate the results of their regulations, to determine if they achieved their intended purpose.¹⁰⁹

Small and Medium Enterprises

Due to the importance of SMEs for both the European Union and Mexico, as they represent most of the companies in both territories, the new agreement devotes a complete chapter to regulate the SMEs.

¹⁰⁷ Ibid, page 11-12.

¹⁰⁸ Ibid, page 16.

¹⁰⁹ Ibid, page 16.

Similar to the chapter on public procurement, this chapter contains provisions for both Mexico and the EU to establish a website that provides information for the SMEs of both Parties. These should contain the requirements that SMEs need to access the market of the other part.¹¹⁰

The provisions of this chapter are also designed to facilitate exports and imports between Mexico and the EU, eliminating tariffs and simplifying custom procedures. The latter will improve the participation of SMEs in electronic commerce, services, supply chains and public procurement.

Anti-Corruption

The new GA includes different measures to combat and prevent corruption in trade and investment. Being the first of its kind for the EU, this chapter aims to combat corruption through the implementation of internal control measures, external audits, and financial reports. In the same way, international instruments will be applied, essentially the UNCAC. In addition, it is also planned to combat money laundering. This means, that the relevant authorities will be able to obtain access to banking information to prevent corruption. .¹¹¹

Finally, consultations mechanisms for anti-corruption provisions will also be established, where the Parties can resolve any dispute regarding the interpretation or implementation of this chapter.

Dispute Settlement

Lastly, the chapter on dispute resolution mechanisms that may occur between Mexico and the European Union was included in the new GA. The procedure for the dispute resolution can be described as follows:

1. If one of the Parties fails to comply with the obligations established in the New Agreement; the Parties shall first try to resolve the dispute amicably through consultation or mediation mechanisms.
2. If the above fails, the Party who considered itself to be affected, may require a panel of arbitrators to rule the matter in an impartial and transparent manner. The arbitration panel must be composed of three arbitrators with expertise in the field of trade and international law.

¹¹⁰ Ibid, page 16-17.

¹¹¹ Ibid, page 17.

3. Both Parties will have the right to present their arguments during the proceedings. Third parties may also attend hearings and can even make their own submissions to the panel.
4. The decision of the panel must be respected by both Parties as being final and cannot admit an appeal.

Chapter 4. Conclusions

4.1. Conclusions

The achievements of the “Agreement in Principle” for the modernisation of the Free Trade Agreement between Mexico and the European Union comes at the right moment for both Parties. In less than two years, negotiators from Mexico and the European Union achieved a very novel agreement, modernizing commercial chapters and including entirely new chapters; accomplishing the absence of tariffs for almost all goods.

However, the entry into force of the new agreement will not be effective until the approval of the representatives of both sides is received. As already mentioned, the negotiators of both Parties will continue their work to resolve pending technical issues and finalize the legal text, to allow citizen and companies of Mexico and the EU to benefit from the Agreement as soon as possible.

The Agreement itself is a message to the world against protectionism. Mexico and the European Union have reaffirmed their commitment to free trade as opposed to the protectionist doctrine of US President Donald Trump.

The announcement of the “Agreement in Principle” came together with Mexico’s renegotiation of its agreement with the United States and Canada. This served as the perfect response to the hostile environment that Mexico is going through with its northern neighbours. Even though the US has relaxed its demands in the renegotiation of the NAFTA, there is still the possibility that the Republican president will fulfill his threats to nullify the agreement.

4.2. Where is the novelty of the New FTA EU-MX?

Eighteen years ago, the Free Trade Agreement between Mexico and the European Union was by then, the first of its kind, and was therefore very innovative. Today, the New Agreement, undoubtedly surpasses the previous one. With its modern features, it manages to adapt to the current business and commerce.

The novelty of the New Agreement is not only about the total elimination of tariffs for chocolate and pasta, the increase in the quota for pork products or milk powder or about the access to preference for European cheeses, but, that it also includes binding commitments for the protection of environment, workers' rights and the fight against climate change, to name a few.

The New Agreement also includes (for the first time in all EU agreements) measures to combat corruption in trade and investment, to avert this from being an obstacle to business projects. The above will be achieved through the strengthening of controls, external audits and financial reports. It is also planned to combat money laundering.

Lastly, the New Agreement includes contemporary provisions to free transport, telecommunications, financial and electronic commerce services. However, it should be mentioned that so far, there is only one "Agreement in principle", hence, many instruments for the proper implementation of these measures are yet to be elaborated. In addition, the New Agreement is very novel by including a chapter dedicated to the transparency of small and medium enterprises, as well as a chapter for trade and sustainable development; where the creation of an international body is proposed to mediate the conflicts between the State and the investor.

4.3. Will the New Agreement benefit both Parties?

The European Union has around 400,000 jobs that are linked in one way or another to the relationship with Mexico, for whom the EU is its third commercial partner. For the EU, Mexico represents the second commercial partner in Latin America, after Brazil.¹¹² With the New Agreement, public purchases will be possible both at the national and regional level. This will be achieved through the negotiation that Mexico makes with its States, so that they reform their legislation to allow European companies to participate in public tenders.

On the EU side, this is excellent news; for each billion euros more in exports, the EU estimates that approximately 14,000 more jobs will be created in the European territory. Consequently, the

¹¹² European Commission, 'Key Features of the EU-Mexico Trade Agreement' (2018) <http://europa.eu/rapid/press-release_MEMO-18-1447_en.htm> accessed 6 July 2018.

entry into force of the New Treaty will benefit enterprises, workers and consumers around all Europe.¹¹³

On the other hand, Mexico still faces serious problems in the macroeconomic growth: it is estimated that 52.3% of children between 0 and 11 years of age are living in poverty. Of these, 42.6% are in conditions of poverty, while 9.7% live in extreme poverty. In the same way, 48% of adolescents between 12 and 17 years old live in the same situation.¹¹⁴ Therefore, the modernisation of the FTA itself will not be the cure to solve poverty in Mexico (no agreement is). Nevertheless, the New Agreement will undoubtedly help in the creation of employment sources that will allow hundreds of thousands of Mexicans to have work in areas related to production and exports to the EU.

Unfortunately for Mexico, the New Agreement does not guarantee for itself a lower dependence on the United States. Although, as already mentioned, Mexico is the second most open economy in the world in commercial terms, with 12 FTAs in 46 countries; nonetheless, the US remains by far the main destination of Mexican products abroad.

The modernisation of the Free Trade Agreement between Mexico and the European Union is in any case, a warning also for the US. Mexico is now facing rough negotiations to reform the North American Free Trade Agreement and wants to demonstrate to the Republican President, Trump and his advisers, that Mexico does not bed on protectionism and that it will maintain its trade policy of openness. Where the United States builds a wall for Mexico, the European Union has built a bridge.

¹¹³ Ibid

¹¹⁴ Diana Rojas, 'Gobierno Reconoce que la mitad de los niños y adolescentes de México vive en la pobreza' *El Dictamen* (2018) <<https://www.eldictamen.mx/2018/05/nacional/gobierno-reconoce-que-la-mitad-de-los-ninos-y-adolescentes-de-mexico-vive-en-la-pobreza/>> accessed 6 July 2018.

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