

Annex 16 referred to in Chapter 11
General Notes of Mexico

Section 1
Transitional Provisions

Notwithstanding any other provision of Chapter 11, Annexes 11 through 14 are subject to the following transitional provisions:

PEMEX, CFE and Non-Energy Construction

1. Mexico may set aside from the obligations of Chapter 11 for each calendar year following the date of entry into force of this Agreement the respective percentage specified in paragraph 2 below of:

- (a) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by PEMEX in the year that are above the thresholds set out in Annex 15;
- (b) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by CFE in the year that are above the thresholds set out in Annex 15; and
- (c) the total value of procurement contracts for construction services procured in the year that are above the thresholds set out in Annex 15, excluding procurement contracts for construction services procured by PEMEX and CFE.

2. The percentages referred to in paragraph 1 above are as follows:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
<u>45%</u>	<u>40%</u>	<u>35%</u>	<u>35%</u>	<u>35%</u>
<u>Year 6</u>	<u>Year 7</u>	<u>Year 8 and</u>		
<u>30%</u>	<u>30%</u>	<u>thereafter</u>		
		<u>0%</u>		

3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2 above. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in Chapter 11.

4. Mexico shall ensure that the total value of the procurement contracts under any single FSC class (or other classification system agreed by the Parties) that are set aside by PEMEX or CFE under paragraphs 1 and 2 above for any calendar year does not exceed 15 per cent of the total value of the procurement contracts that may be set aside by PEMEX or CFE for that year.

5. Mexico shall ensure that after 31 December of the fourth year following the date of entry into force of this Agreement, PEMEX and CFE each shall make all reasonable efforts to assure that the total value of procurement contracts under any single FSC class (or other classification system as agreed by the Parties) that are set aside by PEMEX or CFE under paragraphs 1 and 2 above for any year does not exceed 50 per cent of the total value of all PEMEX or CFE procurement contracts under that FSC class (or other classification system as agreed by the Parties) for that year.

6. Until the fourth year after the date of entry into force of this Agreement, Parties may enter into consultations concerning the transitional provisions agreed in Paragraph 2 above. Parties in these consultations will consider an effective access to the suppliers from each Party to the government procurement of the other Party.

Pharmaceuticals

7. Until 1 January of the ninth year following its entry into force, Chapter 11 shall not apply to the procurement by the Secretaría de Salud (Ministry of Health), IMSS (Mexican Social Security Institute), ISSSTE (Social Security and Services Institute for Government Workers), Secretaría de la Defensa Nacional (Ministry of National Defense) and the Secretaría de Marina (Ministry of Navy) of drugs that are not currently patented in Mexico or whose Mexican patents have expired. Nothing in this paragraph shall prejudice protection of intellectual property rights.

Section 2
Permanent Provisions

1. Chapter 11 does not apply to procurements made:
 - (a) with a view to commercial resale by government owned retail stores;
 - (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements);
 - (c) by one entity from another entity of Mexico; or
 - (d) for the purchase of water and for the supply of energy or of fuels for the production of energy.
2. Chapter 11 does not apply to public utility services (including telecommunication, transmission, water and energy services).
3. Chapter 11 does not apply to any transportation services including: land transportation (CPC 71); water transport (CPC 72); air transport (CPC 73); supporting and auxiliary transport (CPC 74); post and telecommunication (CPC 75); repair services of other transport equipment, on a fee or contractual basis (CPC 8868).
4. Chapter 11 does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
5. Chapter 11 does not apply to financial services; research and development services; and management and operation contracts awarded to federally funded research and development centres or related to carrying out government, sponsored research programs.
6. Notwithstanding any provision in Chapter 11, Mexico may set aside procurement contracts from the obligations of Chapter 11, subject to the following:
 - (a) the total value of the contracts set aside may not exceed the Mexican peso equivalent of:
 - (i) 1.0 billion United States dollars, in each year until 31 December of the seventh year following the date of entry into force of this Agreement, which may be allocated by all entities except PEMEX and CFE;

- (ii) 1.8 billion United States dollars, in each year beginning 1 January of the eighth year following the date of entry into force of this Agreement, which may be allocated by all entities;
- (b) no entity subject to subparagraph (a) may set aside contracts in any year of a value of more than 20 per cent of the total value of contracts that may be set aside for that year.
- (c) the total value of the contracts set aside by PEMEX or CFE may not exceed the Mexican peso equivalent of 720 million United States dollars in each calendar year, beginning 1 January of the eighth year following the date of entry into force of this Agreement.

7. Beginning January of the next year of the date of entry into force of this Agreement, the dollar values referred to in paragraph 6 above shall be adjusted annually for cumulative inflation from the date of entry into force of this Agreement, based on the implicit price deflator for the United States Gross Domestic Product (USGDP) or any successor index published by the Council of Economic Advisors in "Economic Indicators".

The dollar values adjusted for cumulative inflation up to January of each year following 2000 shall be equal to the original dollar values multiplied by the ratio of:

- (a) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of January of that year, to
- (b) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of the date of entry into force of this Agreement,

provided that the price deflators under subparagraphs (a) and (b) above have the same base year. The resulting adjusted dollar values shall be rounded to the nearest million dollars.

8. The national security exception provided for in Article 126 covers procurements made in support of safeguarding nuclear materials or technology.

9. Notwithstanding any provision of Chapter 11, an entity may impose a local content requirement of no more than:

- (a) 40 per cent, for labour-intensive turnkey or major integrated projects; or
- (b) 25 per cent, for capital-intensive turnkey or major integrated projects.

For the purpose of this paragraph, a "turnkey or major integrated project" means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity with respect to which:

- (c) the prime contractor is vested with the authority to select the general contractors or subcontractors;
- (d) neither the Government of Mexico nor its entities fund the project;
- (e) the person bears the risks associated with non-performance; and
- (f) the facility will be operated by an entity or through a procurement contract of that entity.

10. Notwithstanding the thresholds set out in Annex 15, Article 120 applies to any procurement from locally-established suppliers of oil and gas field supplies or equipment by PEMEX at any project site where it performs works.

11. In the event that Mexico exceeds in any given year the total value of contracts it may set aside for that year in accordance with paragraph 6 or paragraphs 1, 2 and 4 of Section 1, Mexico shall consult with Japan with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of any Party under the Chapter 15.

12. Nothing in Chapter 11 shall be construed to require PEMEX to enter into risk-sharing contracts.

13. Goods and services procured with a view to resale or use in the production of goods for sale are not subject to Chapter 11.

14. Chapter 11 does not apply to contracts which the entities award for the purpose of daily profit making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of Chapter 11.

15. Chapter 11 does not apply to contracts to be awarded to cooperatives and rural or urban unprivileged groups that the government branch or entity agreed directly with them in accordance with laws and regulations existing at the time of the entry into force of this Agreement.

16. For the procurement of Mexico, procurement does not include:

- (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or state, provincial and regional governments; and
- (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.