



MEXICO: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

**APPLICATION OF THE CONVENTION ON COMBATING
BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL
BUSINESS TRANSACTIONS AND THE 1997 REVISED
RECOMMENDATION ON COMBATING BRIBERY IN
INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 4 April 2007.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. Mexico presented its Written Follow-Up to the Phase 2 Report,¹ outlining its response to the 22 recommendations (and two follow-up issues), at the October 2006 meeting of the Working Group on Bribery. Since its evaluation under Phase 2, Mexico has made clear progress in the implementation of most of the recommendations made by the Working Group.

2. Mexico undertook several initiatives to increase the awareness of the public and private sectors on bribery in international business transactions. For instance, various ministries and governmental agencies developed brochures and e-mail notices on this topic. Of particular interest is the initiative taken by the Ministry of Foreign Affairs to disseminate information on the Convention to all its employees in Mexico, embassies and consulates, which in turn disseminated information to all Mexican companies operating in the foreign markets. Similarly, the Tax Administration Service published a “Manual for Tax Examiners to detect national and transnational Bribery” as an internal guideline to be used during tax audits.²

3. However, other initiatives have been flawed in certain important respects. Some brochures focus on the passive side of foreign bribery (*i.e.* on bribery of Mexican public officials by foreign companies) with inadequate attention to the bribery of foreign public officials by Mexican companies. The Working Group was particularly concerned about certain mistakes on the interpretation of the offence and its scope of application in documents used for these initiatives. The Mexican authorities undertook to check all the existing documents, correct possible mistakes, address the imbalance between the active and passive sides of foreign bribery, and re-disseminate the corrected versions. In addition, these awareness raising initiatives have not yet reached the States and municipalities, although some co-operation agreements are under development with States and the National Conference of Attorneys General. (Recommendations 1a, 1b, 1c, partially implemented)

4. Legal, accounting and auditing professionals made little progress on the fight against bribery of foreign public officials. The Ministry of Public Administration organised awareness raising seminars and placed articles in publications for the accounting and auditing profession. These have not yet been complemented by technical training session, planned for 2007 (Recommendation 1d, partially implemented). Moreover, inadequate efforts to ensure that accountants and auditors are bound by an obligation to report suspicions of foreign bribery to the law enforcement authorities is reflected in the continuing reluctance of the auditing profession to make such reports. (Recommendation 3b, not implemented)

¹ The Phase 2 Report of Mexico was approved in September 2004.

² *Manual del Auditor para la detección del Cohecho Nacional e Internacional*. This manual is based on the OECD Bribery Awareness Handbook for Tax Examiners available on www.oecd.org/ctp/nobribes

5. On the preventive side, Mexico created partnerships with the business sector which resulted in a comprehensive booklet on integrity tools and best practices on anti-corruption policies. (Recommendation 2a, implemented)

6. The Mexican authorities considered establishing a blacklist of companies that have been involved in foreign bribery and making it available to all public contracting authorities. However, they concluded that for the time being such a measure is not appropriate. In any case, such an initiative might be developed in the context of the reform of the liability of legal persons. (Recommendation 2b, implemented)

7. The Mexican authorities reported noteworthy developments concerning the detection of foreign bribery; in particular a broad campaign has been undertaken to raise the awareness of most public officials and the general public of their respective obligations to report suspicions of bribery to the public prosecutor (Recommendation 3a and 3c, implemented). On the other hand, the export credit agency (Bancomext) remains reluctant to require details on agents' commissions when providing support, arguing that its clients deal mainly with foreign private entities and rarely with foreign public officials. Mexico is recommended by the Working Group to review this position in light of the 2006 Recommendation on Bribery and Officially Supported Export Credits, point 1e which refers to agents' commissions. (Recommendation 2c, not implemented)

8. As concerns the protection of whistleblowers, mechanisms have been developed for protecting employees in the public sector, but not yet for employees in the private sector. Some recent governmental initiatives on integrity programmes are intended to encourage the private sector to introduce codes of conduct, compliance committees and the protection of whistleblowers, but implementation in practice by companies has not yet occurred. Therefore, Recommendation 3d is considered as partially implemented. Moreover, for several years a Bill introducing witness protection in investigations of foreign bribery has been blocked in Parliament (Recommendation 5e, not implemented).

9. The Working Group welcomed the legislative amendments to the foreign bribery offence in order to expressly cover the case where a bribe benefits a third party (and not only the foreign public official him/herself) and to make the definition of foreign public officials autonomous *vis-à-vis* foreign laws (i.e., whether a person is considered a foreign public official in Mexico for the purpose of the foreign bribery offence is no longer dependent on the status of that person under the law of his or her country) (Recommendation 5b, implemented). In parallel, internal guidelines have been developed for the use of the police and prosecutors that highlight the differences between the offences of bribery of Mexican public officials and bribery of foreign public officials, and these have been complemented with training seminars (Recommendation 5a, implemented).

10. With respect to legal persons (e.g., corporations), the Working Group welcomed the modification of the method for calculating the fine applicable to legal persons. Since the new method is based on the income of the company, it could be potentially very high. However, since it has not yet been applied in practice, the Working Group is not sure about its effectiveness. In addition, a Bill for the reform of the liability of legal persons has been blocked in Parliament, and in any case addresses only the part of the recommendation of the Working Group that recommends the deletion of the requirement that the legal person provided the means for committing the foreign bribery offence "for such purpose". The Bill does not (i) eliminate the requirement of the conviction of a natural person; (ii) apply the offence to state-controlled and state-owned entities (Recommendation 5c, not implemented, except on sanctions); or (iii) introduce additional sanctions against legal persons (Recommendation 5d, not implemented).

11. Important improvements have been made with regard to the institutional framework for the investigation and prosecution of the offence of bribery of foreign public officials. A sub-unit has been established within the federal agency of investigation (AFI) and will specifically deal with cases of bribery

of federal and foreign public officials. Whether adequate resources are devoted to foreign bribery investigations depends on the level of funds to be allocated to the special sub-unit by the Ministry of Finance (Recommendation 4a, partially implemented). In addition, the police and prosecutors received training on “transparency and the fight against corruption” to increase their proactivity regarding foreign bribery, and participated to a seminar involving members of the Working Group and the OECD Secretariat. Efforts have been made on intelligence gathering, including the detection through cases of money laundering and tax crimes. (Recommendation 4b, implemented)

12. In order to improve the prevention and detection of money laundering offences including those involving the proceeds of foreign bribery, Mexico created a new financial intelligence unit and improved anti-money laundering measures, including by: (i) broadening the categories of persons bound by the regulations; (ii) streamlining and accelerating the process for making suspicious transaction reports; (iii) issuing a guide to improve the quality of the reports; and (iv) enhancing co-operation and information sharing between the new FIU and Prosecutor General of the Republic (PGR), Ministry of Economy, National Migration Institute, and commissions regulating financial institutions. However, the analysis of the offence of money laundering and possible amendments envisaged in 2004 have not yet taken place. (Recommendation 2d partially implemented, Recommendation 4c, implemented)

13. The Mexican authorities reviewed the system of access to bank information and as a result articles 117 and 118 of the Credit Institutions Law have been amended, now allowing the PGR (and further investigating institutions) to request financial information directly from financial institutions, based on a judicial order, or through the supervisory commission, as previously. The Mexican authorities indicated that the reform has already proved fruitful since delays in obtaining financial information have been reduced by half. (Recommendation 5f, implemented)

14. The Mexican authorities reconsidered the current practice of providing mutual legal assistance based on reciprocity in the absence of bilateral agreements, and considered that such practice was consistent with Article 9 of the Convention, since the United Nations Convention against Corruption, which is considered by Mexico as a MLA treaty, now entered into force, would supersede the absence of bilateral agreements in this respect. In addition, the Mexican authorities highlighted that no request has been rejected nor is pending because of the condition of reciprocity. (Recommendation 5g, implemented)

15. Mexico has not recorded any investigations or convictions for foreign bribery offences. Due to this absence of cases, Mexico was not in a position to effectively address all the follow-up issues contained in the Phase 2 Report of Mexico. Continued follow-up is therefore required.

b) Conclusions

16. Based on the findings of the Working Group with respect to Mexico’s implementation of the Phase 2 recommendations, the Working Group reached the overall conclusion that Recommendations in paragraphs 2 a and b, 3 a and c, 4 b and c, 5 a, b, c (as concerns sanctions only), f and g, have been implemented satisfactorily. Recommendations 1 a, b, c, and d, 2 d, 3 d, 4 a, have been partially implemented. Recommendations 2 c, 3 b, 5 c (except the point on sanctions), d and e, have not been implemented.

17. The Working Group invites the Mexican authorities to report orally on the implementation of the Recommendations not (yet) fully implemented to the Working Group, within one year.

WRITTEN FOLLOW-UP TO PHASE 2 REPORTS

Name of country: Mexico

Date of approval of Phase 2 Report: 2 September 2004

Date of information:

Ministry of Foreign Affairs (SRE)
Ministry of Public Administration (SFP)
Tax Administration System (SAT)
Financial Intelligence Unit (FIU)
Office of the Federal Attorney General (PGR)
National Foreign Trade Bank (Bancomext)

Part I: Recommendations for Action

Recommendation 1a):

With respect to awareness raising, the Working Group recommends that Mexico:

In addition to the broad awareness raising campaign on corruption in general, undertake targeted actions to raise the level of awareness of the transnational bribery offence and the Convention, focusing on the obligations of Mexican companies that invest and export abroad; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

As reported to the Working Group on June 2004, during phase II progress review, the Mexican Government had launched a campaign to create awareness of the costs of corruption and to publicize the Convention's guidelines and recommendations. The campaign continues to date with the same allies.

Distribution of the general OECD poster:

Regarding this item, on May 23, 2006, the Ministry of Public Administration (SFP for its initials in Spanish) sent a communication, both in writing and electronically, to the 33 Ambassadors of all the OECD member countries with diplomatic representation in Mexico for the purpose of requesting their support for distribution of an electronic poster whose purpose is to disseminate the Convention's guidelines and invite the players involved in their compliance to report corrupt acts. On August 17 a reminder was sent to them, accompanied on that occasion by the poster in English and in Spanish, as well as an introductory paragraph in both languages, with the request that they be published on their websites.

As a result of this distribution effort, to date the Embassies have reported that the information has been sent to more than 13 thousand addressees.

In addition, as part of the work with chambers of commerce and industry and public and business organizations through the Embassies in Mexico, the magazine "AmCham Egale", the official publication of the *American Chamber of Commerce* (which is distributed to more than 12,000 Chamber members), in July 2006 published an article entitled "Mexico and the Fight Against Corruption", that discussed the work done by Mexico in the fight against corruption and its participation in complying with the OECD's Convention against Bribery.

Bancomext information campaign

On August 29, 2005, the SFP gave a workshop in the offices of the National Foreign Trade Bank (Bancomext for its initials in Spanish), on "The Impact of Commitments Against Corruption in the Business Community". There were a total of 46 participants, who were given a set of brochures: "Clear Rules, Transparent Business", "Transparent Company", "Building an Integrity Program" and "Ethics are Good Business". In addition, the 2005 *Cineminutes* were shown at the beginning of the lecture.

On the subject of training, Bancomext has assigned resources and efforts to educating and continuously updating its personnel through specialized training programs in the field of prevention and money laundering that allow them to increase their knowledge and skills in order to improve their performance.

In this same context and in keeping with the provisions of Article 115 of the Credit Institutions Law, Bancomext has been giving all of its personnel courses related to the subject of "Prevention and Detection of Operations with Funds of Illegal Origin."

On the subject of "Prevention and Money Laundering", in 2003 Bancomext provided training to its employees in the credit area, which is considered to be "high risk"; in 2004 and 2005 this provision was extended to all of the Bank's personnel.

This course forms a part of Bancomext's overall strategy to prevent money laundering and its principal topics are: definition of money laundering, legal framework, social impact, types of operations, identify your customer, know your customer, and regulatory compliance.

This course is permanently available on Bancomext's Intranet and is personalized based on the Manual of Policies and Procedures to Prevent and Detect Money laundering and Financing Terrorism. It contains a module for giving an examination to the institution's personnel in order to determine their level of knowledge of the subject and the results are submitted to the Communications and Control Committee. (The link for access to the course on Bancomext's Intranet is <http://cursopld.bancomext/pld2004/introduccion.htm>)

Updating the OECD microsite:

In May 2006 the SFP redesigned the OECD microsite (www.funcionpublica.gob.mx/ocde), including a restructuring of the sections and the information it contains, as well as giving it a new image. The information in the section on businessmen's obligations has been updated continuously.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 1b):

With respect to awareness raising, the Working Group recommends that Mexico:

Further develop targeted programmes for the agencies and other governmental bodies most likely to come into contact with companies engaging in business abroad, such as Bancomext and Mexican embassies and strongly encourage such institutions to play a more active role in raising awareness among Mexican companies about the Convention. In this respect, the Working Group acknowledges the initiatives of the Ministry of Foreign Affairs, following the on-site visit, aiming to raise awareness of Mexican embassies and encourages Mexico to pursue its efforts; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

Continuing with activities initiated on April and June 2004, the Foreign Affairs Ministry instructed Mexican embassies and consulates throughout the world to renew the awareness raising campaign on the Convention. Likewise, the Ministry instructed them to stress to anyone concerned that the Mexican is totally commitment to the full and effective implementation of the Convention.

Trough official messages OEM-03563 (06/6/2006), OEM-03852 (06-13/2006), OEM-03872 (06/16/2006), OEM-04422-OEM-04423 (07/11/2006) OEM-04356-OEM-04357 (07/31/2006), OEM.- 04608 (19/07/2006), and OEM.- 04909 (31/07/2006), the Foreign Affairs Ministry instructed 70 embassies and 66 consulates to disseminate a package of printed and electronic information on the Convention and the policy of the Mexican Government concerning its full implementation. The contain of said package was prepared by the Ministry of Public Administration with the purposes of alerting business organizations to such policy and helping them adopt ethical codes and mechanisms to promote integrity and transparency.

List of documents and information:

- “Clear Rules, Transparent Business”. Its purpose is to reiterate to private and public organizations, as fundamental part to its fulfillment, the content, reaches and purposes of the Convention.
- *“Integrity Tools to Cement Business Competitiveness. Published by the Business Coordinating Council (CCE) and Business Confederation of Mexico (COPARMEX). It addresses the importance of adopting basic principles of integral and responsible corporate culture.*
- “Transparent Transactions, Steps to its Construction”. This document invites companies operating in Mexico to join the construction of proper business spaces and transparent activities.
- “Building an Integrity Program, The Role of Conduct Codes”. Explains the importance of business integrity, the parts that conforms it, the objectives pursued with their implementation, and its

usefulness for all kind of commercial organizations.

- “Mexico’s Oral Report”. Presented to the Working Group (WGB) on October 2005, informing on the ongoing administrative and legal activities, as well as the remaining challenges of Mexican government.
- Information on the electronic course “Integrity as Strategy to be Profitable”, designed by the Instituto Tecnológico de Estudios Superiores de Monterrey (ITESM): www.ruv.itesm.mx:9090/portal/promocion/cms/ecenlinea, This electronic course explains step by step how to create a business integrity program.
- Website information. Designed by the Ministry of Public Administration for the dissemination of the Convention objectives and recommendations, that underlines moral and legal responsibilities of each social participant. The site provides technical tools and supporting information. www.funcionpublica.gob.mx/ocde.

The Foreign Affairs Ministry instructed Mexican embassies and consulates to distribute such documents and information to all their personnel, particularly to officials involved in economic and commercial affairs; that is, the officials more likely to come into contact with companies conducting business abroad. Moreover, the documents and information in question were sent to Chambers of Commerce, as well as to Mexican companies and foreign companies with investments or business in Mexico.

These actions address the recommendation of the WGB on the necessity to rise the level of awareness concerning the offence of transnational bribery. Likewise, in order to guarantee fair and healthy business competition regarding public procurements, they are intended to underline that in international business transactions any bribe or attempt to commit bribery constitutes a punishable offence.

Mexican embassies and consulates promptly and duly responded to the aforementioned instructions. Likewise, on timely manner, they provided information about the actions taken in the country or city where they are located.

Complementing these actions, on June 27, 2006, the Ministry’s Internal Comptroller’s Office (which is part of the Ministry of Public Administration), also sent to all Ministry’s personnel in Mexico and diplomatic and consular offices abroad, information on the Convention and its mandatory obligations for all Mexican public servants, to enhance awareness on the transnational bribery offence. This information was received by approximately 3,669 employees.

As of October 2004, together with Bancomext, we added a chapter on the Convention and its recommendations to the “Exporters Basic Handbook”, which will be published in December of this year.

In its loan contracts, Bancomext inserted a special clause stating that any company receiving financial support shall refrain from bribing public officials in the country where its products are sold. Doing so would be sufficient cause for denial of financial support, or for the early cancellation of a standing loan.

The Ministry of Public Administration trained Bancomext corporate personnel including its commercial counsellors abroad, on the Convention’s scope and recommendations and on the tools that should be adopted by companies to prevent acts of corruption and bribery in particular.

The Ministry of Public Administration, in coordination with the business sector, opinion leaders, lawyers, the Committee for National Productivity and Technological Innovation (known as Compite) and other

agencies, such as the Ministry of the Economy, set out to discuss, develop and define integrity criteria and regulations to encourage companies to adopt ethical standards to prevent corruption and national and transnational bribery. This effort resulted in the publication of guidelines for the implementation of social responsibility management systems as well as of technical bulletins for financial executives. All of these publications quote the Convention's criteria and promote the adoption of integrity and transparency tools.

The Ministry of Public Administration, in an effort to create awareness of the business perspective to prevent corruption, commissioned the Private Sector's Centre for Economic Studies to design and conduct a special survey to measure corruption from the perspective of the business sector.

The survey analyzes two types of corruption, capture of the state and bureaucratic-administrative corruption on three levels: national, by state, and by type of company. There were domestic and foreign companies included among the polled.

Compared to a similar survey conducted by the Monterrey Technological Institute in the year 2002, we detect substantial changes: the percentage of companies that acknowledged making unofficial payments to influence the content or approval of laws decreased from 39.14% in 2002 to 20% in 2005. In 2002, 39% of domestic companies acknowledged making this type of payments and only 19% did so in 2005. Foreign companies that acknowledged making payments to influence the content or approval of laws went from 42% in 2002 to 28% in 2005.

The amount of money companies spend today in bureaucratic-administrative corruption and for capture of the state. Represent each around 6% of their revenues.

The study was conducted during the second half of 2006.

If no action has been taken to implement recommendation 2, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1c):

With respect to awareness raising, the Working Group recommends that Mexico:

Enhance awareness of the transnational bribery offence by ensuring that federal policies and initiatives are channelled to lower levels of the administration, States and municipalities;
(Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

a) Work done with the Permanent State-Federal Controllers' Commission.

This Commission, in which the heads of State and Federal control organisms participate, agreed to include

in its working agenda for 2005 activities directed towards giving more publicity to the commitments made under the various international instruments signed by our country in the field of preventing and combating corruption. In this regard, the participants in the meeting agreed to carry out the following actions within the scope of their respective jurisdictions:

- Determine the national and international indices in the areas of transparency, state of law, competitiveness and corruption, for the purpose of taking actions for improvement that would make it possible to raise the ratings obtained by our country as a whole and the states in particular.
- Distribute to the players and institutions responsible for compliance with international commitments against corruption the guidelines and recommendations derived from the Conventions Against Corruption and coordinate activities in their states to ensure their compliance.

Some of the actions undertaken to meet these objectives were participation by the SFP's Transparency Networking Unit (UVT for its initials in Spanish) in more than 10 regional meetings of the Permanent Commission between 2005 and the first half of 2006 to present areas of opportunity by state, and in turn to create awareness among their authorities of the importance of their participation in complying with the international conventions against corruption of which our country forms a part -*Inter-American Convention against Corruption, the OECD Convention against Bribery of Foreign Public Officials and the United Nations Convention against Corruption*-.

In May 2006, within the framework of the work of the Legal Committee of the Permanent Controllers' Commission, a proposal was presented to allow the legislatures of the states to incorporate bribery of foreign public officials into their penal legislations based on a model text agreed upon by the state controllers. A note was included giving the legal arguments, which touched on the compulsory nature of the International Conventions adopted by our country and in consequence the need for the states to participate in their compliance. This material was distributed to serve as support for the state controllers in transmitting to local authorities the need to work on compliance with international commitments.

National Diagnosis and Model Program.- In coordination with the Permanent Commission, a questionnaire was designed to develop a **national diagnosis** regarding transparency and combating corruption, whose objectives are:

- Determine the level of information possessed by the states regarding indices, studies and international conventions against corruption that rate our country in the area of transparency, good government and competitiveness.
- Generate a diagnosis of the legal framework and the measures implemented by the state governments to combat corruption in the terms stated in the international conventions.
- Identify the existence of communications strategies that contribute to improving perceptions regarding the national effort in the area of combating corruption and fostering transparency in public administration.

This questionnaire was distributed to the controllers' offices of the 32 states. In December 2005, the diagnosis was put together from the contents of the replies made by practically all of them (29 states), which will be updated during the second half of 2006.

In September 2005 a working group was formed with the controller's offices of Aguascalientes, Sonora and Zacatecas to develop a "**manual**" with specific lines of action to support the states in strengthening their programs and actions to combat corruption. These three states will also participate as "pilot states" in the implementation of this program.

This manual of recommendations seeks to have the states adopt legal reforms or administrative measures that guarantee that Mexico as a whole complies with the recommendations issued by the Working Group on Bribery.

Based on the Federal Government's experience, recommendations by various international organizations and the experience of the states themselves, it was proposed that a manual be developed with recommendations for the states to improve their position in the various evaluations with regard to transparency, competitiveness and state of law, and contribute to complying with the guidelines and recommendations of the International Conventions against Corruption of which Mexico forms a part.

This manual is structured around six topics:

1. Legal framework.
2. Professionalizing the civil service.
3. Improving processes and services.
4. Government purchases.
5. Transparency and accountability.
6. Preventive and networking measures.

To date, five chapters of the manual have been completed and the sixth that refers to strategies for making government purchasing and procurement processes more transparent is about to be completed.

During the XXXV National Meeting of the Permanent Commission (November 24 and 25, 2005, Puerto Vallarta, Jalisco) the preliminary results of the **National Diagnosis** were presented and a proposal was made to the state controllers for 2006 that included the initiative to prepare this Manual with Recommendations for States and to put together a **Catalogue of Successful Experiences**.

Catalogue of Successful Experiences. - This initiative consists of compiling the best state practices regarding transparency and combating corruption and is available on the Internet at www.funcionpublica.gob.mx/micrositios/estados to receive contributions from the states and for consultation. With this catalogue, the intention is to generate a space for sharing experiences from which the states can adopt the successful practices of other states. In addition, this catalogue will serve as input for the preparation and updating of the Model Program.

Interinstitutional Working Sessions. - As reported previously, meetings have been held with the heads of the State Controller's Offices, Ministries of the Interior, Education, and the Attorney General's Offices to present indices/conventions and specific areas of opportunity for the state, and with the heads of Integral Family Development (DIF for its initials in Spanish) and Ministries of Education and Culture in order to share tools for networking with citizens.

In addition, workshops have been held for public officials and representatives of civil organizations to promote Citizen Monitoring exercises. In 2005, 68 presentations on monitoring were made to organizations, public officials of federal, state and municipal governments and other members of society, with the idea of publicizing the tool and raising awareness among the participants so that based on access to the information, they will promote projects for the evaluation of public services with high social impact for the purpose of identifying areas of opportunity and proposing improvements that contribute to raising the standard of living of communities. These workshops were given in 16 different states in the Republic.

In 2005 and 2006, meetings have been held with officials of the following states:

1. Aguascalientes

2. Baja California
3. Campeche
4. Chiapas
5. Chihuahua
6. Distrito Federal
7. Durango
8. Guerrero
9. Jalisco
10. Nayarit
11. Nuevo León
12. Michoacán
13. Oaxaca
14. Puebla
15. Quintana Roo
16. San Luis Potosí
17. Sinaloa
18. Sonora
19. Tabasco
20. Tlaxcala
21. Veracruz
22. Yucatán
23. Zacatecas

b) Inclusion of a new clause in the Coordination Agreements entered into with the states.

One of the commitments assumed by the states has been strengthened with the inclusion of a new clause in the Coordination Agreements entered into by the Federal Executive Branch and each of the states to conduct a program entitled “Strengthening the state system of control and evaluation of public administration and collaboration in the field of transparency and combating corruption”.

The inclusion of this new clause will facilitate compliance with the international conventions against corruption and improve the national and international indices by committing the states of the Republic of Mexico to establishing a work program that allows them, within the sphere of their jurisdictions, to comply with the commitments derived from these international instruments, including the OECD Convention against Bribery of Foreign Public Officials in International Commercial Transactions, and to report periodically on the specific actions implemented.

To date, clauses have been included in the agreements signed with the States of Campeche, Chihuahua, Colima, Guerrero, Hidalgo, Michoacán, Veracruz, Tabasco, Tlaxcala, and Zacatecas.

c) Work done in collaboration with the Federal Attorney General’s Office, *-the agency that coordinates the work of the Attorney General’s Offices at the national level-*.

In this regard, the Ministry of Public Administration, through the Transparency Networking Unit and in coordination with the Office of the Deputy Attorney General for Legal and International Affairs of the Federal Attorney General’s Office (PGR), pressed to have the National Law Enforcement Conference include in its 2005 work agenda specific commitments to publicize the guidelines and recommendation of the OECD Convention against Bribery and the Inter-American Convention against Corruption among the 32 State Attorney General’s Offices, for the purpose of carry out improvement actions that permit full adoption of both conventions.

For this purpose, a working group was set up with participation of the Attorney General’s Offices in Nuevo

León, Morelos and Tamaulipas that, in coordination with the Office of the Deputy Attorney General for Legal and International Affairs (SJA I for its initials in Spanish) and the UVT, designed and distributed to the State Attorney General's Offices a questionnaire from which to prepare a **National Diagnosis** of progress made on law enforcement issues, and specially to appraise their efforts to combat transnational bribery.

The objective is also to generate a model program that the states can use to strengthen the work they are doing on issues related to the guidelines of the International Conventions.

National Diagnosis in the field of Law Enforcement.- The diagnosis was put together with information from the 27 states that responded to the questionnaire designed and distributed in coordination with the National Law Enforcement Conference.

The results of this diagnosis, including the charts and principal findings, are being studied by the PGR in order to develop an action plan to improve the programs for preventing and combating national and transnational corruption, which will be sent to the Attorneys General of Nuevo León, Morelos and Tamaulipas as members of the Committee on Combating Corruption and Impunity of the National Law Enforcement Conference for their feedback and validation, so that it can later be shared with all the State Attorney General's Offices in order to promote its adoption.

This diagnosis, together with the one constructed from the responses given by the state control organisms, gives us a clear, overall idea of the areas that we should strengthen as a country in order to comply with the WGB's recommendations.

The PGR's General Directorate for Crime Prevention and Community Services (DGPDSC for its initials in Spanish) reported that in October 2005, under the sponsorship of the company, Intelli Impresores, S.A. de C.V., 4,000 posters were printed with the legend, "If it looks crooked to you, together we will straighten it out", corresponding to the topic of corruption; in November 2005, 1,000 publicity copies were obtained with the legend, "Make the best decision, don't be corrupt"; and in February 2006, the company, Ganaderos Productores de Leche Pura S.A. de C.V., sponsored 5,000 posters with the legend, "The best remedy against corruption...reporting it".

In addition, in May 2006 5,000 more posters were distributed in the 32 states of the Republic with the legend, "A good judge begins at home", and in June 2006, 53,800 polyethylene bags were made with the same text printed on them.

With this kind of publicity, the Attorney General's Office tends to promote clean governmental, business and commercial transactions in order to prevent national and transnational bribery.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 1d):

With respect to awareness raising, the Working Group recommends that Mexico:

Encourage the accounting, auditing and legal professions to develop a core of specific courses and training to raise the level of awareness and knowledge on the offence of bribery committed by Mexican individuals and companies abroad, and of Mexican multinational companies in particular, in view of their increasing role in international business transactions. (Convention, Article 8; Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

With regard to encouraging accountants and auditors to develop training programs and raise the level of awareness and knowledge on the crime of bribery committed by individuals or companies, the Ministry of Public Administration has been working with the Mexican Institute of Public Accountants (IMCP for its initials in Spanish) and its affiliated societies, with the principal accounting firms and the National Association of Internal Auditors, to share with their audiences the results of phase II evaluation, its general recommendations as well as those that apply particularly to accountants and auditors.

In order to continue creating awareness of the guidelines in the OECD Convention against Bribery in the accounting profession, the Transparency Networking Unit has given presentations on this subject within the framework of the regional meetings of presidents of the Accountants' Professional Societies that have been held throughout the year.

These have included attendance at: the Regional Meeting of Presidents of Accountants' Professional Societies of the Northwestern Zone on last February 2 in Hermosillo, Sonora; the Second Municipal Transparency Week on May 17, 2006, in Mérida, Yucatán; the Governing Council of the Accountants' Professional Society of the Central Isthmus Peninsular Region held on June 16 in Ciudad del Carmen, Campeche; and the Regional Meeting of Presidents of Accountants' Professional Societies of the Northeastern Zone on last July 26 in Durango, Durango.

In addition, as part of the Cooperative Agreement with the Mexican Institute of Public Accountants (IMCP for its initials in Spanish), since January 2005 the Transparency Networking Unit has published an article every month in the journal *Public Accounting*, for the purpose of informing the members of this profession of the principal causes and consequences of corruption, and in particular the guidelines and obligations derived from the Convention against Bribery, for the profession.

Furthermore, through the IMCP's *Folio* system, on January 31, 2006 a brochure was sent electronically to accountants registered in the Institute's data base (approximately 6,000), entitled "*Clear Rules, Transparent Business*", and in the near future another brochure will be distributed in the same way entitled "*Integrity Tools to Strengthen the Competitiveness of Businesses.*" and the sample presentation.

Within the framework of the Collaboration Agreement on transparency signed in 2001 between the Ministry of Public Administration and the Mexican Bar-College of Lawyers (BMA for its initials in Spanish), the SFP has carried out diffusion actions geared towards sensitizing the lawyers' community on the costs of corruption and the role of their profession in its combat, as well as the international conventions in the matter and the specific recommendations for lawyers. The aforementioned has been accomplished through specialized publication spaces provided by the BMA, as well as courses jointly

organized with the Nation's Supreme Court of Justice in the years 2005 and 2006. These will be further discussed in the 5a recommendation.

On the other hand, it is important to mention that the Tax Administration Service (SAT) of the Ministry of Finance (SHCP for its initials in Spanish), specifically the General Administration of Federal Tax Audit and the Audit Areas of the General Administration of Large Taxpayers have, among others, the following responsibilities:

1. Verify the fulfillment of the fiscal obligations of the taxpayers through fiscal audits, visits on site, inspections, surveillance acts, and verifications, among others, in accordance to fiscal and customs legislation.
2. Request data, reports or documents from taxpayers, persons who are jointly and severally liable or third parties, as well as to plan and program tax audits.
3. Verify the fulfillment of regulations and non tariff restrictions on goods imported or exported to Mexico, including Mexican Official Standards.
4. File reports before the Fiscal Federal Prosecutor's office.

For those purposes, these General Administration Offices have specialized areas according to the following taxpayer's classification:

- Companies with Consolidated financial results
- Financial System
- Government Sector
- International Operations

One of the SAT's main functions is to audit taxpayers, which implies auditing national and foreign businesses with fiscal obligations in Mexico. Hence, the training offered to fiscal auditors is crucial.

The General Administration of Large Taxpayers has developed a permanent training program in International Bribery. This program is directed to the personnel of the Tax Administration Service, specifically in the audit areas, and its main objective is to create awareness in this subject. This training program is integrated by several courses on topics such as the concept of International Bribery, adequate procedures for conducts that may imply International bribery, the Convention on Combating Bribery of foreign public officials in international business transactions of the Organisation for Economic Co-operation and Development (OECD), and the Bribery Awareness Handbook for Tax Examiners, amongst other subjects. In this matter, during the second semester of 2004, 5 courses in International Bribery were imparted. Additionally, on September 20, 2006 a video conference on International Bribery was broadcasted.

The object of this training program is to provide information on the changes in the current internal guidelines related to Bribery of foreign public officials. Such guidelines are compulsory and are to be applied in the fiscal audits regarding deductions of expenses derived from international bribery. The audit programs of large taxpayers have emphasized the identification and rejection of fiscal deductions of expenses derived from bribery, based on a strict application of the Income Tax Law. The latter is due to the different changes in the corresponding legislation.

In this matter, the Bribery Awareness Handbook for Tax Examiners of the OECD was implemented as an internal guideline applicable during fiscal revisions of the taxpayers, with a strict observance of the politics and criteria established by the international organization, and is known in Mexico as the "*Manual del Auditor para la detección del Cohecho Nacional e Internacional.*"

It is important to mention that there is a possibility of developing a training program during 2007 directed to Public Accountants, Lawyers, and Auditors.

If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 2a):

With respect to other preventive measures, the Working Group recommends that Mexico develop specific tools for the prevention of bribery of foreign public officials directed at Mexican companies exporting and investing abroad, and in particular:

Further develop its partnership with business with the aim of identifying and disseminating “best practices” concerning anti-corruption policies to better prevent transnational bribery; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding measures to prevent transnational bribery among exporting companies or those that invest abroad, in addition to the joint information campaign with Bancomext mentioned previously in this report, we have been working on the identification and dissemination of anti-corruption practices on bribery prevention.

As a result of this effort, the Business Coordinating Council (CCE for its initials in Spanish), the Confederation of Employers of the Mexican Republic (Coparmex), and the Ministry of Public Administration presented (jointly) in June 2006 the brochure entitled “*Integrity Tools to Strengthen the Competitiveness of Businesses*”. This publication forms part of a set of actions and efforts that the three institutions have promoted jointly in order to foster the adoption of the best corporate practices by the Mexican business community, and to disseminate the commitments to transparency and combating corruption that our country has adopted within the framework of international conventions and forums.

The central purpose of “Integrity Tools” is to create tangible incentives, based on a self-diagnosis, so that all types of companies will adopt these best practices as part of their strategies for improving their competitiveness.

Joint publication of this brochure by the three institutions involved has meant a joint distribution effort. In the cases of the CCE and Coparmex, 10 thousand and five thousand copies were printed and sent to each organization, respectively, to be distributed directly by them among their affiliates and members (companies) throughout the country. In addition, the SFP has complemented this effort for dissemination of this material in the Mexican business community by having sent out since May 2006 248 communications (each one had a copy of the brochure attached) addressed not only towards businessmen but also the communications media, state ministries of economic development and controller’s offices,

business schools and other multiplying partners of the SFP. An example of the actual distribution process for this material through our multipliers was sending 130 additional copies to the Mexican Institute of Public Accountants (in July 2006) for distribution among the member societies. In total, almost 3,000 copies of this brochure were sent to various public and private institutions throughout the country.

In addition, as part of this dissemination effort, it should be mentioned that in August 2006 the brochure was uploaded onto the E-Mujeres Page in the Economy and Work Section. This is within the framework of the Cooperative Agreement signed by the Ministry in the area of Transparency and Combating Corruption.

In July 2006, a new joint edition of the brochure was agreed upon (1,000 copies) between the Global Compact Mexico and the SFP as part of the promotion that the Government of Mexico gives to compliance with the tenth principle of this initiative regarding companies' combating all forms of corruption, including extortion and bribery. Distribution of this joint edition of "Integrity Tools" began in July 2006 to more than 300 companies that have adhered to the Global Compact in Mexico and to the rest of the companies that have adhered to the Pact in Ibero-America.

In addition, international distribution of this joint edition has begun within the framework of the Global Compact in Barcelona and will soon be uploaded onto the Internet page of the Global Compact Mexico, together with the electronic brochures, "Clear Rules, Transparent Business", "OECD Convention against Bribery of Foreign Public Officials in International Commercial Transactions", "Building an Integrity Program: the Role of Codes of Conduct," "A Transparent Company, Steps for Building It", "Ethics are Good Business", and the link to the virtual course, "Integrity as a Strategy for Profitability".

As part of this effort, in the communication sent last August 17 to the Embassies that was mentioned at the beginning of this report, the Ambassadors were also requested for their support to disseminate among companies with which they have contact the brochure on *Integrity Tools to Strengthen the Competitiveness of Companies* and the link to the virtual course, "Integrity as a Strategy for Profitability."

With regard to the free virtual course, "Integrity as a Strategy for Profitability", in 2005 its contents were updated. This course is organized by the SFP in coordination with the Virtual University of the Monterrey Institute of Technology. As of April 2006, more than 30 thousand people had participated in this course. This initiative is directed towards disseminating the international commitments adopted by our country in the area of combating corruption and providing the business sector with practical instruments, as well as integrity and transparency criteria that can help them to promote programs against corruption in their companies.

In addition, *Compite* will publish a book on Business Social Responsibility that will be launched and distributed within the framework of the IV International Congress of Social Responsibility and Integrity to be held on October 25, 2006. The SFP contributed a chapter to this book that summarizes part of the brochure, "Integrity Tools to Strengthen the Competitiveness of Companies".

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2b):

With respect to other preventive measures, the Working Group recommends that Mexico develop specific tools for the prevention of bribery of foreign public officials directed at Mexican companies exporting and investing abroad, and in particular:

Consider establishing a list of companies having been involved in bribery, including companies involved in transnational bribery and circulating such list to all federal agencies in order to inform them of the potential risk of dealing with these companies, as well as for the possible application of additional non-criminal sanctions, as recommended in recommendation VI, d) (Revised Recommendation Article VI)

Actions taken as of the date of the follow-up report to implement this recommendation:

In regard to the advisability of creating a list of companies that have been involved in acts of bribery and distributing it to federal institutions so that they avoid dealing with them, the Ministry of Public Administration publishes a list of companies that have been disqualified for breaching the Procurement and Public Works Laws (Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público and the Ley de Obras Públicas y Servicios Relacionados con las Mismas). (This list can be consulted at www.funcionpublica.gob.mx/unaopspf/unaop1.htm).

It should be pointed out that in the above-mentioned list, no warning is given of the risks of contracting these companies, inasmuch as this would be a violation of the individual rights of these people and doing so might lead to suits against the Federal Executive Branch by private parties.

In addition, with regard to crimes of international bribery committed in contracting regulated by the Procurement and Public Works Laws, which do not explicitly recognize any penalty whatsoever, since this crime is prosecuted by the penal system, nevertheless if there is evidence of the offence, this could be penalized by assimilating it to the suppositions of intention or bad faith covered in Section IV of Articles 60 and 78 of the Procurement and Public Works Laws, that establish:

“Anyone providing false information or **acting intentionally or in bad faith in a contracting procedure, when entering into a contract or during the time it is in force**, or in the presentation or processing of a complaint in a conciliation or non-conformity hearing”.

In addition, the initiative to amend and add various articles to the Federal Criminal Code and the Federal Code of Criminal Procedures considers sanctions applicable to legal persons for the commission of illegal acts, including bribery of foreign public officials, and also temporary ineligibility to perform certain operations related to the crime committed. Therefore, the legal person will not be able to perform the activities related to its corporate purpose and would not be able to participate in public tenders or receive public supports of any kind.

At the same time, on July 8, 2005 various amendments and additions to the Procurement and Public Works Laws were approved by Congress and went into effect. those of interest to this group are:

- 1 The terms of tender are modified in order to prevent companies or individuals from evading disqualification orders by creating new companies or by having partners participate in bids.

- 2 Participants in a contracting procedure have to make a sworn statement that no natural or legal persons that have been disqualified under the terms of these laws are participating.
- 3 Bids may not be submitted or contracts signed by natural or legal persons that have used confidential information provided improperly by public officials or their family members by blood or by affinity, or in-laws, or anyone contracted for advisory, consulting or support services, if proved that all or part of the remuneration paid to the service provider is transferred to public officials or to third parties.

The purpose of this last provision is to sanction acts such as those that occurred in one of the international bribery cases presented and prosecuted by Mexico.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Besides the list of alleged foreign bribery cases distributed by the Working Group of Bribery, we do not have any other listing of acts of bribery committed by Mexican companies.

Text of recommendation 2c):

With respect to other preventive measures, the Working Group recommends that Mexico develop specific tools for the prevention of bribery of foreign public officials directed at Mexican companies exporting and investing abroad, and in particular:

Encourage Bancomext to require details on agents' commissions when providing support, in view of the fact that such commissions are commonly used to disguise bribes to foreign public officials; (Revised Recommendation, Article II v)

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding the work done by Bancomext to require details about commissions paid to intermediaries, we refer to the statement and clause included in their credit and support contracts with Mexican exporting companies, mentioned above.

In the area of financing, Bancomext has a wide range of financial products and services for adequately carrying out the foreign trade projects of small and medium-size companies in order to incorporate a growing number of small and medium-size companies into exporting activities. Most of Bancomext's customers are small and medium-size companies that sell directly to private parties and not to governments.

For the purpose of ensuring that loans granted by Bancomext are not used for purposes other than the objective of promoting Mexican exports, and also to prevent their misuse, prior to a customer's contracting for any Bancomext financial service a "Customer Identification" file is assembled. This policy is established in the Policies Manual, in order to prevent, detect, and report money laundering and financing terrorism.

This “Customer Identification” file usually contains copies of the following documents:

- a) “Customer Identification and Information” form, with the signature of the applicant for the business or financial service or its legal representative, as the case may be.
- b) Internal questionnaire for Customer Information, in the event that they are high-risk customers.
- c) Identification documents for the customer, such as: official identifications, proof of domicile, tax identification credential, charter of incorporation and powers of attorney.

In addition, Bancomext has a Communications and Control Committee that is the collegiate body in charge of overseeing compliance with the Provisions of a General Nature referred to in Articles 115 of the Credit Institutions Law and 124 of the Law on People’s Savings and Credit, published on May 14, 2004, in the Federal Official Gazette (DOF, for its initials in English) to prevent, detect and report acts, omissions or operations that might facilitate, provide aid, assistance or cooperation of any kind for the commission of the crime stated in Article 139 of the Federal Penal Code, or that might fall under the suppositions of Article 400 Bis of that same law.

Bancomext has the obligation of reporting to the Ministry of Finance, through the National Banking and Securities Commission, any operations made by its customers that are considered to be unusual, or any operations or acts carried out by its employees or officials that might be considered as causing concern.

An unusual operation is understood to be: any operation, activity, conduct or behavior that does not coincide with the history or known activities of the customer or those stated by it, or with its habitual transactional behavior with regard to the amount, frequency, type or nature of the operation in question without a reasonable justification for such behavior, or any that for any other cause the financial entity considers that the funds might be intended to facilitate, provide aid, assistance or cooperation of any kind for the commission of the crime stated in Article 139 of the Federal Penal Code, or that might fall under the suppositions of Article 400 Bis of that same law; or any performed by the user when it is considered that the funds might be intended to facilitate the commission of the crimes indicated in this paragraph and that there are sufficient elements to make the report.

An operation causing concern is understood to be: any operation, activity, conduct or behavior by the executives, officials, employees and legal representatives, respectively, of financial institutions that because of its characteristics might contravene or violate the application of the provisions of the Credit Institutions Law and the General Provisions referred to in Article 115 of that law.

It is pertinent to comment that Bancomext’s Communications and Control Committee is the organism that is empowered to determine what operations should be reported to the authorities as unusual or causing concern.

Within this framework, Bancomext reviews in detail all applications for loans and export loan guarantees, as well as the applicant’s reputation, so the possibility of the commissions of acts of corruption such as those indicated in the OECD Convention is very small.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2d):

With respect to other preventive measures, the Working Group recommends that Mexico develop specific tools for the prevention of bribery of foreign public officials directed at Mexican companies exporting and investing abroad, and in particular:

Undertake strategic analysis on the characteristics of the offence of money laundering in order to assess areas for possible improvement in its prevention and detection. (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

In order to assess areas for improvement in the prevention and detection of bribery, the Attorney General Office, with the participation by high-level officials from the U.S. Treasury Department, has been training agents from the Prosecutors Office on bribery and money laundering.

On May 7, 2004, the Ministry of Finance amended its internal regulations to create the Financial Intelligence Unit (FIU) which concentrates under one roof all departments in the Ministry dealing with money laundering and financing terrorism. In this regard, it was provided with the necessary human resources and infrastructure to perform effectively the activities of prevention, coordination, and oversight in this area, so that at present it has sufficient human resources and infrastructure to carry out these duties.

The FIU has amongst its responsibilities to:

- Receive and analyze financial transactions reports (SAR, CRT, etc..).
- Request information directly from financial institutions regarding transaction reports.
- Subscribe agreements for the exchange of financial intelligence information.
- Prevent and detect acts or operations related to terrorism financing.
- Submit intelligence reports or file complaints on cases related with money laundering and terrorism financing before the competent authorities.

The General Provisions on Money Laundering and Terrorism Financing published in May 2004 incorporated unlicensed foreign exchange and money remittances companies to the money laundering and terrorism financing preventive regime.

In addition, the terms for reporting transactions were shortened and the new reporting stands as follows:

- 1 Relevant transactions: no later than 10 business days after the last month of the quarter concerned (before: 20 business days).
- 2 Unusual/suspicious and concerning transactions: within the following 30 calendar days starting from the day the transaction is detected by the institution's system, model, process or the institution's employee, whichever comes first (Before: 3 days after being evaluated by the Communications and Control Committee).

It is important to point out that since the creation of the Financial Intelligence Unit, intelligence reports are prepared and sent to law enforcement authorities in a proactive, permanent way.

The Financial Intelligence Unit (FIU) of the Ministry of Finance (SHCP) constantly performs strategic analyses of the characteristics of money laundering, in order to evaluate areas for possible improvements in its prevention and detection.

In order to train public officials involved in the prevention, detection and investigation of the crime of money laundering, the FIU made a legal study of the elements of a criminal nature that is currently in the printing stage and whose publication and distribution to the competent authorities in this area will be done soon.

The FIU operates with strict adherence to the international standards issued by specialized organizations such as the Egmont Group of Financial Intelligence Units and the Financial Action Task Force (FATF), so its intervention and powers regarding the Convention are consistent with the international effort to combat bribery in international commercial transactions.

In 2004, a set of regulatory provisions was published in the DOF that have led to a thorough updating of the responsibilities and obligations of the members of the financial system in the area of prevention and detection of the crimes mentioned in previous paragraphs, as well as of the corresponding legal framework, the most important of which are the following:

- Modification of various financial laws (Article 95 and 95-bis of the General Law on Credit Organizations and Related Activities, Article 112 of the Federal Law on Bonding Institutions, Article 140 of the General Law on Insurance Institutions and Mutual Societies, Article 52 bis-4 of the Securities Markets Law, Article 115 of the Credit Institutions Law, Article 124 of the Law on People's Savings and Credit, Article 108 bis of the Retirement Savings Systems Law, and Article 91 of the Investment Companies Law).
- Incorporation of new obligated entities (exchange houses, money senders).
- Publication of new General Provisions (GP's).
- Publication of the form for reporting large or unusual operations or those
- causing concern.

On December 23, 2005, a decree was published in the DOF with amendments, additions and revocations of various fiscal provisions, among them the Income Tax Law, for the purpose of establishing the obligation to report operations performed in cash for more than \$100,000 pesos Mex. Cy., for certain non-financial activities and professions. In this regard, taxpayers who engage in activities such as auctions, trade in precious stones and metals, art and real estate brokers, pawnshops, non-profit organizations, as well as notaries, accountants, customs agents, lawyers and public brokers, must report such operations to the FIU through the Tax Administration Service.

The GP's in the area of money laundering and financing terrorism published in the DOF on May 14, 2004, include provisions applicable to politically-exposed persons (PEP's), considering in this category "any individual who performs or has performed important public functions in a foreign country or within the nation's territory, including among others, chiefs of state or government, political leaders, high-ranking government, judicial or military officials, senior executives of state-owned companies or officers or important members of political parties".

In this regard, the GP's establish that the obligated entities must: "develop mechanisms for determining the degree of risk of operations carried out with PEP's, and for this purpose will determine whether the transactional behavior corresponds reasonably to their functions, level and responsibility". In addition, they establish the obligation to establish a system of alerts in order to detect changes in their transactional behavior and report the operation as unusual, if that is the case.

For the purpose of facilitating and giving greater efficiency to the work of the entities obligated to comply

with the provisions, the SHCP prepared an initial list of national PEP's, made up of the positions held by public officials covered in Article 110 of the CPEUM. It should be mentioned that this list is illustrative rather than exhaustive, since it should be defined by each obligated entity.

On September 11, 2003, the Federal Executive Branch presented an initiative for a decree to amend and add various articles of the Federal Penal Code and the Federal Code of Penal Procedures in the area of money laundering and bribery of foreign public officials in international commercial transactions that proposes, among other things, to amend Article 400 bis of the Federal Penal Code in order to increase the verbal definitions of the crime of money laundering and the incorporation of money senders and exchange houses as members of the financial system.

The initiative is pending a ruling by the Senate's Joint Commissions on Justice and Legislative Studies, First, although there is already a draft ruling prepared by these Commissions that is being analyzed by the member legislators.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3a):

With respect to the reporting of transnational bribery to the appropriate authorities, the Working Group recommends that Mexico:

Ensure that all public officials are made aware of and comply with their duty to report transnational bribery offences pursuant to article 117 of the Federal Criminal Procedure Code (FCPC), and consider introducing specific sanctions for breaching the obligation under article 117 FCPC; (Convention, Article 3, Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

Under date of June 26, 2006, the Transparency Networking Unit of the Ministry of Public Administration sent a communication to the 214 heads of the Internal Control Organisms (ICO's) in the federal public administration (FPA)'S agencies and entities and to the 70 regional internal controller's offices of the IMSS, ISSSTE and CFE, requesting their support for dissemination of an electronic poster on the duty of public officials to report national and transnational acts of bribery. In addition, on last August 4 they were sent a reminder, reiterating to them the importance of complying with this obligation.

At the end of August, the Ministry of Public Administration sent a letter to the Governors of the 32 States and the Executive Officers of agencies and entities of the FPA, requesting that information be disseminated among state and federal public officials, respectively, about their duty to reports acts of bribery.

In addition, on September 5 the poster on reporting wrongdoing intended for public officials was sent to

the 32 State Comptrollers.

Moreover, the printing of lottery tickets for the October 1 edition will include publication of a text on the obligation to report the crime of bribery.

In the near future, this Ministry's General Directorate of Responsibilities and Patrimonial Situation will prepare 20,000 triptychs in which it will inform public officials of the obligation to report the crime of bribery of public officials, which will be distributed at the entrance to the Ministry.

It will also draft a communication in which public officials will be reminded of their duty to report the crime of bribery of foreign public officials described in Article 222bis of the Federal Penal Code, which will be sent by electronic mail to the ICO's of the agencies and entities of the FPA and the Federal Attorney General's Office so that in coordination with the appropriate administrative units of those public institutions this communication can be distributed to the public officials employed there.

In addition, in order to facilitate the reporting of transnational bribery cases, the Attorney General's Office is strengthening the prevention campaign begun in 2002 with the publication and distribution of posters and brochures, the issuance of its own Code of Conduct and the replication of these efforts at the state level.

In this regard, it is pertinent to take into consideration the statements in Section 1c) of this document regarding the measures adopted by the PGR's General Directorate for Crime Prevention and Community Services (DGPDSC for its initials in Spanish).

In addition, the CAIA asked the PGR's General Directorate of Regulatory Affairs and the Special Prosecutor's Office to Combat Corruption in the Federal Public Service to prepare an Information Manual that would serve to provide internal guidelines for the use of the police and the Public Prosecutor's Office highlighting the differences between bribery of Mexican public officials and foreign public officials.

For its part, the General Directorate of Regulatory Affairs informed the Special Prosecutor's Office to Combat Corruption in the Federal Public Service, in communication DGN/365/06, that in the opinion of that General Directorate, it would not be suitable to prepare an "Information Manual", but that this should be a communication in which the Special Prosecutor's Office would indicate the differences between bribery of national public officials and foreign public officials, so a document was sent containing an analysis in which the respective differences were highlighted.

On the other hand, Bancomext has also participated in the information campaign about the Convention, distributing the electronic poster that not only tells about Mexico's participation in complying with the Convention, but also encourages reporting acts of bribery by citizens and public officials. This poster was distributed electronically on July 7, 2006, to 22 thousand of the Bank's customers.

Campaign entitled "Actions that leave their mark"

Regarding the work done in this area by the SAT, the objective of the campaign is to encourage SAT public officials and citizens in general to report acts of corruption that occur in the institution, for which there are telephone lines and an electronic mailbox to receive reports.

From 2002 to date, approximately 3.5 million diptychs and 30 thousand posters about the campaign have been distributed in and outside the SAT's offices throughout the country.

In 2005, 30 partnerships were formed with organizations in the public and private sectors, with the result that 3,772 posters and 18,070 diptychs were delivered to them for distribution to their members.

From January to March 2006, the following printed materials were distributed outside the institution: 2,191 posters, 500 diptychs distributed through 12 partnerships: 1 formed with a public agency, 3 with private companies, and 8 with organizations, chambers of commerce and/or associations.

If no action has been taken to implement recommendation 9, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 3b):

With respect to the reporting of transnational bribery to the appropriate authorities, the Working Group recommends that Mexico:

Ensure that the duty to report offences pursuant to article 116 of the FCPC (obliging citizens to report any crime to the authorities) extends to accountants and auditors, and ensure that professional rules on confidentiality do not contradict the FCPC;³ (Convention, Article 8; Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

With regard to ensuring compliance with the duty of accountants and auditors to report acts of corruption, and in particular cases of bribery, accountants reiterate to us that they are bound by the rule of confidentiality in professional practice and that the Code of Ethics establishes the obligation to reject work that violates ethical standards and that they would commit breaches of professional honour and dignity by intervening in affairs of this type (Rule VII). The Code of Ethics also defines the sanctions for accountants who violate these provisions (Article 5.03 of the Code of Ethics). It should also be mentioned that a public accountant should not request nor accept commissions or obtain direct or indirect economic advantages for recommendations he may make of professional services or products of the company or agency in which he is employed (Article 3.04 of the same Code).

The Mexican Institute of Public Accountants has an Auditing Standards and Procedures Commission whose fundamental purpose is to determine the recommended auditing procedures for examining financial statements submitted for certification by the public accountant. This Commission issues bulletins that can be classified as auditing standards, auditing procedures or other statements. A series of bulletins is mentioned below related to the guidelines and recommendations in the OECD's Convention against Bribery:

Bulletin 3020 on "Quality Control" stipulates in paragraph 27 that in its policies for evaluating acceptance and retention of clients, the firm should obtain information from lawyers, credit institutions, chambers of

commerce and industry, as well as other media, and from the previous auditor, if any, regarding the reputation of customers requesting their services, in order to avoid as far as possible establishing professional relations with entities or individuals whose management lacks moral integrity. In addition, periodic evaluations should be made of each of the firm's clients in order to judge the advisability of continuing with them or not (paragraph 29).

Bulletin 3070 on "Fraud considerations that should be included in an audit of financial statements", took effect on March 2004, establishing that audits to all entities in the public administration subject to external financial audits must include, as a compulsory product, the issuance of a fraud risk assessment report.

The purpose of the bulletin is to regulate and provide guidance for fraud detection, and in cases in which the auditor has evidence of fraud, he must communicate this to the management, auditing committees and any other interested parties. In the case of public entities, the report is sent to the Ministry of Public Administration, which in turn shares it with the entity's internal comptroller for follow-up and the initiation of administrative or criminal procedures, as the case may be.

Bulletin 3110 on "Letters of agreement", establishes in paragraph 7 that a "letter of agreement for professional services" should include as a minimum one of the following aspects: Statement that even though the purpose of the audit is not to detect irregularities or frauds, in the event that they are detected, this will be communicated to the appropriate levels of the entity. In this regard, it should be established in the letter that the auditor will reach an agreement with the entity's senior management, its Board of Directors, its Auditing Committee or some other similar organism as to who will be the proper person to receive his communications regarding:

- Evidence that an irregularity or fraud exists, even though the issue might be considered not to have any important consequences.
- Identification of risks of significant distortions in the financial statements due to fraud or weaknesses in the controls designed by the entity to reduce the risk of irregularities or frauds that the auditor considers represent situations that should be reported.
- Treatment of specific circumstances that, if such be the case, will oblige the auditor to reveal to parties outside the entity his findings regarding irregularities or frauds.

Bulletin 3130 on "Effect on the audit of non-compliance by an entity with laws and regulations" establishes in paragraph 21 that the auditor's obligation for confidentiality does not allow him to report non-compliances to a third party. However, under certain circumstances the authorities can request the auditor for information which if given may be contrary to this confidentiality obligation. In these cases, it may be necessary for the auditor to seek legal counsel, giving due consideration to his responsibility for the public interest.

Bulletin 6080 on "Help to prevent, dissuade and detect fraud" indicates that it is the entity's responsibility to create a culture of honesty and ethics and communicate clearly to each employee what is acceptable conduct, as well as the expectations it has from him. This culture is founded on a strong set of basic values (or value system) that defines for employees the way in which the entity conducts its business. It also allows the entity to develop an ethical framework that covers (1) issuing fraudulent financial information, (2) embezzlement or theft of assets, (3) and corruption, among other topics. Creating a culture of honesty and ethics should include the following:

- a. Setting a good example to follow at the top levels of the entity
- b. Creating a positive working environment
- c. Hiring and promoting appropriate employees
- d. Training
- e. Discipline

In its appendix on "Ethical principles for financial executives", Article 1.8 stipulates that a public

accountant must not accept or receive extraordinary attentions or gifts or any that are out of the ordinary that could establish commitments or influence their decisions or judgment.

In addition, through the Ministry of Public Administration, the Federal Government has just updated the guidelines for the appointment of external auditors who certify the financial statements of public entities, in order to generate reliable information for the Ministry of Finance, the Banking and Securities Commission, the National Insurance and Bonds Commission, the World Bank, and the Inter-American Development Bank.

These guidelines make the procedures for selecting and appointing external auditors more transparent, define their evaluation criteria and clarify the requirements to avoid conflict of interest.

In order to further encourage the reporting of bribery cases identified by auditors and accountants, the Ministry of Public Administration, the Ministry of Finance and the Banking and Securities Commission signed the General Bases for Coordination in matters related to Auditing and Internal Control of Public Financial Entities.

The entities subject to these General Bases are development banks such as Bancomext, Nacional Financiera and Banobras, as well as public trusts, who are implementing the following measures:

- Transforming their Control and Auditing Committee into an Auditing Committee, made up by at least three members, one of which must be independent.
- Guaranteeing that their internal controls system fully meet their objectives.

For their part, starting in 2003 the International Affairs Coordinating Office, the Special Prosecutor's Office to Combat Corruption in the Federal Public Service, and the PGR's General Directorate for Crime Prevention and Community Services have conducted an information and educational campaign directed both towards public officials and the public in general in order to encourage reporting acts of corruption.

- The above is being done through:
- Distribution to the 32 states of the spot produced by the SFP (2003) to publicize the Convention against Bribery and call the attention of the public and private sectors and the accounting and legal professions in this country so that they will participate in complying with the Convention's guidelines and recommendations;
- Insertion of messages on the subject in local newspapers and magazines;
- Distribution starting in 2003 of posters, publicity material, and polyethylene bags throughout the country encouraging the reporting of acts of corruption.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 3c):

With respect to the reporting of transnational bribery to the appropriate authorities, the Working Group recommends that Mexico:

Facilitate the reporting of transnational bribery cases and provide reporting channels equivalent to those available for domestic bribery; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

The Attorney General's Office has established new methods for reporting transnational bribery cases.

In addition to the normal reporting procedures, anyone inside Mexico or abroad may also report these crimes anonymously through the official web page, by placing a report in a complaint box or by dialling a 1-800 number.

The official web site allows reporting bribery cases by submitting a complaint, where the complainant can specify if this crime was committed by a public officer of PGR or by any other federal public officer. Reports of an individual or legal person, who has committed national or transnational bribery, can also be made by using this web site.

Once a report is submitted, a public official prepares a preliminary statement, and proceeds with the investigation. If he finds evidence supporting the report, an official investigation is initiated. The same procedure applies to national bribery as well as to any other crime.

In the case of the PGR, the same channels are used for reporting both national and international bribery:

- Through an agent of the Federal Public Prosecutor's Office;
- By telephone 53-46-13-03 and by telephone at the number that each of the PGR's delegations has made available to citizens.
- By internet to the electronic mail address spsppc@pgr.gob.mx

In addition, in the SFP cases of international and national bribery can be reported by the same channels, that is, identical means and places for submitting them.

Indeed, the Guidelines and Technical and Operating Criteria, which is the regulatory document issued by the Ministry of Public Administration to regulate the procedure for Attention to Citizens in the Internal Control Organisms of the Federal Public Administration provide that the places for receiving citizens' complaints, reports of wrongdoing and petitions are the Office of the Presidency of the Republic; the agencies and entities of the Federal Public Administration, as well as the Federal Attorney General's Office; the National Human Rights Commission; the Federal Legislative and Judicial Branches; the State and Municipal Governments; Mexico's Embassies and Consulates abroad; the Office of the Secretary of Public Administration; the Office of the Assistant Secretary for Attention to Citizens and Regulatory Affairs; the General Directorate for Attention to Citizens; the Internal Control Organisms and the Regional Supervisory Offices that are located in various states of the Republic (Baja California, Chiapas, Chihuahua, Federal District, Jalisco, Quintana Roo, Sonora and Tamaulipas).

In addition, Article 10 of the Federal Law on Public Officials' Administrative Responsibilities provides

that in the agencies and entities of the Federal Public Administration there shall be specific units to which the public has easy access, so that any interested citizen or public official can present complaints or reports of failure to comply with the obligations of public officials.

In addition to this direct medium, there are four more alternative media:

Telephone: The General Directorate for Attention to Citizens, an agency of the Ministry of Public Administration, has established a Telephone System for Attention to Citizens (SACTEL for its initials in Spanish) that has three dedicated lines to cover the local, national and international levels that are open 24 hours a day, 365 days a year (Local: 1454-2000; National: 01 800 112-0584; International: 1 800 475-2393).

Electronic: The Ministry of Public Administration has a website www.funcionpublica.gob.mx and two electronic addresses (quejas@funcionpublica.gob.mx and sactel@funcionpublica.gob.mx to receive complaints and reports of wrongdoing from citizens and public officials that report cases related to bribery and any other presumed irregularity committed in the public service, and it is up to the General Directorate of Attention to Citizens to review on a daily basis what is received by these media and support this information in a data base for follow up and control.

Mail: Both the General Directorate of Attention to Citizens and each Internal Control Organism publishes a mailing address for receiving complaints and reports of wrongdoing by correspondence or courier service.

Mailbox: In places where there are no Internal Control Organisms, there are mailboxes for receiving complaints and reports of wrongdoing, where messages are picked up periodically to be handled promptly.

In all cases of complaints and reports of wrongdoing presented by citizens or public officials that provide complete information as to their location, they are sent a communication acknowledging receipt of their complaint or report of wrongdoing and informing them of the outcome.

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 3d):

With respect to the reporting of transnational bribery to the appropriate authorities, the Working Group recommends that Mexico:

Welcoming the consensus existing between the business sector, public officials and civil society, consider the adoption of general whistleblower protection sufficient to protect employees from dismissal or other forms of retaliation in respect of the reporting of foreign bribery. (Convention, Article 5; Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

This will apply to public officials:

Regarding additional actions that might be taken to comply satisfactorily with the WGB's recommendation, there is a draft law before the Federal Congress to create the Federal Law of Administrative Justice for Public Officials that provides in Article 12 that in the event that complaints or reports of wrongdoing are presented, the head of the agency or entity in question will take the necessary measures in order to ensure that the working conditions of the public official, complainant or whistleblower do not suffer any effect whatsoever; likewise, that during the investigation there should be secrecy regarding the complainant's or whistleblower's identity, in cases in which there is the possibility of endangerment for the person, spouse, common-law spouse and relatives up to the fourth degree.

As for the advisability of adopting a scheme to protect whistleblowers, on March 2004, the Federal Executive submitted **an initiative to amend the Public Safety and Criminal Justice System**, which proposes the creation of a new professional Federal Police integrated into a single institution that can exercise its power effectively and transparently.

As a consequence, the Organic Law for the Federal Police will include, among others, police force powers to investigate presumable criminal acts detected through the various reporting and complaint mechanisms.

This will apply to citizens::

In addition, **the above-mentioned initiative** provides for issuance of a new Federal Penal Procedures Code, in which the legal figure of citizens' reports of wrongdoing to the federal police is included, so that the latter can confirm the facts and, when that is the case, file formal charges with the Federal Public Prosecutor's Office, at the same time that police protection for witnesses is considered.

This initiative is pending a ruling in the Senate's Joint Commissions on Justice, Legislative Studies, Human Rights and Constitutional Points.

Today, the Federal Law against Organized Crime provides support and protection to judges, experts, witnesses, victims and other people who intervene in procedure arising from crimes referred to in the law.

If no action has been taken to implement recommendation 12, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 4a):

With respect to other measures to improve detection, the Working Group recommends that Mexico:

Ensure that adequate resources be devoted to investigation and prosecution of bribery of foreign public officials, and consider the setting up of a specialised unit dealing with bribery of foreign public officials; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding other measures to improve detection of bribery cases, on August 2004, the Attorney General created the Special Prosecutor's Office to Combat Corruption in the Federal Public Service.

In this regard, in decree A/107/04 (DOF 2 Aug. 2004) the Federal Attorney General created an area that, in principle, would specialize in the investigation of bribery of foreign public officials, the Special Prosecutor's Office to Combat Corruption in the Federal Public Service, which, in addition, would have jurisdiction for receiving information and investigating acts of corruption in the federal public service.

In another decree, A/151/04 (DOF 17. Dec. 2004) this Special Prosecutor's Office was assigned organically and functionally to the Unit Specializing in the Investigation of Crimes Committed by Public Officials and against Law Enforcement, an agency of the Office of the Assistant Attorney General Specializing in Federal Crimes.

The Attorney General has formally requested the Ministry of Finance for additional funding to strengthen the structure of this Office.

If no action has been taken to implement recommendation 13, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 4b):

With respect to other measures to improve detection, the Working Group recommends that Mexico:

Ensure that the police and prosecutors become more proactive, in particular by relying on different detection tools in addition to reports by complainants, continue to improve their training, and develop analytical tools and financial investigation techniques; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

An effort has been made both by the Attorney General's Office and the Ministry of Finance to collect higher quality information and to use it intelligently in detecting and prosecuting bribery crimes.

The Attorney General's Office is using the existing intelligence gathering systems as a basis for launching bribery investigations.

On the other hand, by concentrating powers on money laundering and financing of terrorism previously scattered among various administrative units, the Financial Intelligence Unit has been able to achieve better understanding and coordination with the Federal Attorney General's Office. The Financial Intelligence Unit proactively presents to the Attorney General's Office intelligence reports and complaints using the information contained in its data base.

Since 2004, the General Administration of Large Taxpayers has been promoting, amongst its auditors and employees, the regulations to detect bribery of foreign public officials, the criteria to deny tax deductions from expenses that constitute bribery as well as the Convention's guidelines.

Training workshops on international bribery were held in the General Administration of Large Taxpayers.

For its part, the Coordinating Office for International Affairs and Attaché Offices in the Federal Attorney General Office, through the General Directorate of Regional and Multilateral Economic Organisms of the SRE, invited OECD evaluators and experts specializing in this subject to give a course on "Effective Investigation of Foreign Bribery" directed toward federal investigation agents and agents from the Federal Public Prosecutor's Office, which was held on October 25 and 26, 2005. In this regard, by giving this course it is expected that the best international investigation practices will be implemented in our country for the purpose of improving the detection and prosecution of transnational bribery.

If no action has been taken to implement recommendation 14, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 4c):

With respect to other measures to improve detection, the Working Group recommends that Mexico:

Accelerate and streamline the processing of suspicious transaction reports in respect of suspected money laundering. (Convention, Article 7; Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

Mention should be made of the FIU's actions to accelerate and simplify the processing of reports of unusual operations probably linked to money laundering. The reports are received on an obligatory electronic form, with broad security and confidentiality measures.

There are two memoranda of understanding with the PGR. The first, signed in June 2004 establishes the bases for protecting information that is sent to the ministerial authority, and the second, signed in October 2005, spells out the way in which the daily interaction between the two institutions should take place. These memoranda have been distributed among the agents of the Federal Public Prosecutor's Office, members of the Office of the Assistant Attorney General Specializing in Organized Crime, and follow-up meetings have been held regarding attention to the agreements they contain.

These instruments have been essential, both for handling the information contained in the intelligence reports prepared by the FIU and for timely granting of the processibility requisition (report of wrongdoing). Prior to the creation of the FIU, such requisitions were granted, on the average, within the term of a year; now, a response is given to the PGR within a term of five working days.

Similarly, the judicial authority has constant interaction with the FIU through information requisitions and appearances in penal processes. Each request has been duly attended to and thus the FIU has cooperated with law enforcement, within the sphere of its jurisdiction, substantially reducing the times for attending to requisitions formulated by that authority.

In 2005, for the purpose of providing the FIU with useful sources of information for carrying out its responsibilities, negotiations were begun to obtain access to the data bases of various public administration agencies.

These negotiations resulted in the signing of bases for cooperation with the Ministry of Economy in order to have access to the data base of the Public Commercial Registry. In addition, the FIU is engaged in final negotiations with the National Migration Institute in order to have access to the data base of the Integrated Migratory Operation System. Both legal instruments will make it possible to gather complementary information for the preparation of intelligence reports and filing charges.

In addition, in March and May 2006 the FIU signed bases for cooperation with the National Banking and Securities Commission and the National Insurance and Bonding Commission, respectively, in order to consolidate and strengthen coordination in actions within the jurisdiction of each in the area of prevention of the above-mentioned crimes. At present, the FIU is in the final phase of negotiations with the National Retirement Savings Systems Commission and the Tax Administration Service.

In the month of February 2005, in order to support the obligated entities with useful tools for preparing reports of operations, the FIU prepared 10 typologies on money laundering, which were distributed to the supervisory bodies for them to pass on to those under their supervision.

In addition, for the purpose of improving the quality of the reports that the obligated entities send to the FIU, a Guide of Unusual and Suspicious Operations was developed, which was distributed in the month of October of the same year to the supervisory bodies for them to pass them on to the obligated entities.

The FIU has also initiated a program for rating reports of unusual operations and those causing concern in order to identify the performance level of each of the obligated entities, providing feedback to the entities

that prepare them.

In order to minimize the risk of not receiving, attending to and analyzing in time information containing warnings of operations related to money laundering, terrorism and its financing, and having a history of problems with the quality and quantity of reports received, the FIU prepared a draft homogeneous Risk Model that permits uniformity and clarity in reporting operations.

A presentation of the draft was made to the banking sector, also with participation by the National Banking and Securities Commission and the law enforcement authorities (PGR), where the way these institutions operate was evaluated, the problems were identified and possible solutions proposed.

As a result of the Working Group, a document was prepared in May 2006 in which the best practices for evaluating monitoring alerts for the above-mentioned crimes and putting together and formulating reports were defined. This was presented to the banking institutions, which submitted it in the month of June of this year for approval by their executive committees for its immediate application.

As part of this exercise, the draft was presented to the exchange houses sector, which agreed on its adoption in the month of August.

The adoption of these practices will allow the FIU to focus its analytical efforts on those reports that are really related to the crimes mentioned, sending the corresponding intelligence reports and accusations promptly and completely to the appropriate authorities.

If no action has been taken to implement recommendation 15, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5a):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

Provide internal guidelines for the use of the police and prosecutors – and encourage the judiciary to issue interpretative criteria – that highlight the differences between the offences of bribery of Mexican public officials and bribery of foreign public officials; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding the need to provide internal guidelines for the police and prosecutors to distinguish between domestic and transnational bribery, the Federal Attorney General's Office, has trained and updated public officials on the scope of the Convention.

Both Patrick Moulette, Head of the Anticorruption Division of the OECD and Martin Poilane, UK Delegate for the Working Group on Bribery, participated in the training program for federal investigation agents and prosecutors, that took place on October 25th and 26th 2005.

To implement this recommendation in the case of the Judiciary, the Ministry of Public Administration signed a cooperation agreement with the Supreme Court of Justice, in order to publicize the Convention's recommendations. From 20th October to 24th November 2005, a special twice-a-week, two months course, jointly organized by the Ministry of Public Administration, the Supreme Court of Justice and the Mexican Bar Association, was offered to judges, magistrates and personnel of the Federal Judiciary and to the legal community in general (state courts and lawyers).

The course was transmitted via satellite from January 16 to 30, 2006, to the Cultural Centres of the Federal Judicial Branch located in 34 cities throughout the country. During the retransmissions of the course, an average attendance of 922 persons was recorded.

In addition, from October 4 to November 8, 2006, a second edition of this course will be given that will be retransmitted on this occasion simultaneously to the Cultural Centres of the Federal Judicial Branch throughout the country.

It is also pertinent to consider for this recommendation the statements contained in the reply to Section 3a of this document regarding the actions undertaken by the PGR'S Coordinating Office for International Affairs and Attaché Offices.

If no action has been taken to implement recommendation 16, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5b):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

Amend article 222 bis of the Federal Penal Code in order to ensure that third party beneficiaries are covered and that the definition of foreign public officials is in line with the autonomous definition of the OECD Convention;⁴ (Convention, Article 1)

Actions taken as of the date of the follow-up report to implement this recommendation:

We are happy to report that the amendments to the Federal Penal Code on Bribery of Foreign Public Officials submitted by the Executive on December 2003, ensuring the coverage of third party beneficiaries

and complying with the foreign public officials definition set by the Convention, were approved by Congress in July 2005 and published in the Federal Official Gazette on August 23 of the same year.

If no action has been taken to implement recommendation 17, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5c):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

In order to meet the standard of other Parties to the Convention, revise the current provisions on legal persons to:

- eliminate the prerequisite of the conviction of a natural person,
- eliminate the prerequisite that the offence must be committed by means provided by the legal entity “for such purpose”, and
- ensure that State-owned and State-controlled entities are subject to liability under the transnational bribery offence,
- increase significantly the level of sanctions; (Convention, Articles 2 and 3; Phase 1 Evaluation).

Actions taken as of the date of the follow-up report to implement this recommendation:

We can also report substantial progress in the establishment of criminal responsibility for legal persons. The initiative submitted to the Senate on September 2003 was the subject of recommendations by this Working Group.

During the legislative process, Congress, the Ministry of Public Administration, the Attorney General’s Office and the Ministry of Finance, all agreed on the need to improve the text of this initiative in order to comply with the Working Group’s recommendations.

The new text already eliminates the need to convict a natural person as a prerequisite to sanction a legal person.

Notwithstanding, the authority will be able to acknowledge a crime committed by a legal person precisely after taking notice of the criminal conduct displayed by the natural person.

Nevertheless, the imposition of a sanction to the legal person will not be subject to the sanction imposed to

the natural person.

The new text also complies with the recommendation to delete the phrase “for such purpose” from the text that originally read “the bribery offence must have been committed with means provided by the legal person **“for such purpose”**”.

The new text also contemplates imposing the following sanctions on the legal person: monetary; seizure of objects, crime proceeds or assets; special publication of sentence; dissolution and/or suspension of business; dismissal of the administrator or administrative entity, and the prohibition to do certain transactions.

On September 11, 2003, the Federal Executive Branch presented an initiative for a decree to amend and add various articles to the Federal Penal Code and the Federal Code of Penal Procedures regarding money laundering and bribery of foreign public officials in international commercial transactions establishing regulation of legal persons’ penal responsibility.

The initiative is pending a ruling by the Senate’s Joint Committees on Justice and Legislative Studies, First, although there is already a draft ruling prepared by these Committees that is being analyzed by the member legislators.

The PGR, the SFP and the SHCP agreed not to push for suppression of the requirement of the conviction of natural persons, that in a way is parallel, and to present the more detailed establishment of legal persons’ criminal responsibility as an advance, since the recommendation would mean a different system of penal responsibility for legal persons, which could encounter even more opposition than the proposal by the Federal Executive Branch, without lessening the fact that legal persons always act through natural persons.

Elaborating further on this, and with regard to the recommendation made by the Group to the effect that our country should ensure that State-owned or State-controlled companies are subject to responsibility for the crime of transnational bribery, it should be mentioned that according to our national legal system, State agencies and State-owned or controlled companies are liable for the reparation of damages caused by illegal acts incurred by public officials (article 32 of the Federal Penal Code). The payment of damages is not only a remedy for any harm that may have been caused, but also a penalty under our criminal code.

The damages comprise a payment of a monetary amount to those affected by the crime and is awarded only after the state employee is found guilty by a judge in a criminal procedure.

If no action has been taken to implement recommendation 18, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5d):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

Consider the introduction of additional sanctions on legal persons, such as the temporary or

permanent disqualification from participation in public procurement and public works, and a general exclusion from entitlement to public benefits or aid; (Convention, Article 3; Phase 1 Evaluation, paragraph 3)

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding the possibility of establishing additional sanctions for legal persons, such as temporary or permanent disqualification from participation in public contracting, this Group is reminded that the amendments and additions to certain articles of the Federal Penal Code and the Federal Code of Criminal Procedures regarding funds of illegal origin and bribery of foreign public officials in international commercial transactions mentioned previously by the Attorney General's Office representative, allow us to comply fully with this recommendation.

In addition, we have cited here some of the amendments to the Procurement and Public Works Laws with regard to impediments for participating in public contracting.

If no action has been taken to implement recommendation 19, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5e):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

Pursue its efforts to introduce witness protection for investigations of transnational bribery within the framework of judicial reform; (Revised Recommendation, Article I)

Actions taken as of the date of the follow-up report to implement this recommendation:

With regard to the need to provide witness protection for investigations of transnational bribery, we have already indicated that Congress is discussing an initiative to reform the Public Safety and Criminal Justice System introducing witness protection for ordinary crimes. We also mentioned the provisions of the Federal Law on Organized Crime.

This initiative is pending a ruling by the Senate's Joint Committees of Justice, Legislative Studies, Human Rights, and Constitutional Points.

In addition, on March 30, 2005, the Federal Executive Branch submitted an initiative for a decree to amend and add various provisions of the Federal Law on Organized Crime, the Federal Penal Code, the Federal Code of Penal Procedures and the Federal Judicial Branch Organic Law, which includes regulation of the Witness Protection Program, which would be applied whenever a crime covered in the Convention is related to the offence of organized crime or money laundering is committed under this scheme.

The initiative was submitted on September 21, 2004, is currently in the stage of study and a ruling in the Justice and Human Rights Committee in the Chamber of Deputies, and there is a possibility that it may be approved during the current period of sessions in its Chamber of origin, while it is still to be taken up in the reviewing Chamber.

Its purpose is to amend various provisions of the Federal Penal Code in the area of crimes committed against the public administration. If approved, the crime of bribery would not be punishable for private parties who report the criminal conduct within the grace period established in its contents (15 calendar days).

As another additional measure, mention can be made of an initiative that was submitted to the Chamber of Deputies of the Federal Congress on September 21, 2004, the purpose of which is to amend various provisions of the Federal Penal Code in the area of crimes committed against the public administration and which proposes amending Article 222 of the law in order to include a measure that would facilitate reporting wrongdoing and protection for private parties in cases of bribery in the following terms:

“CHAPTER X
BRIBERY

Article 222.- This crime is committed by:

I.- Any public official who himself, or through another person, requests or receives for himself or for another, money or any other gift, or accepts a promise to do or fail to do something correct or incorrect related directly or indirectly to his duties, except for the remunerations inherent in his job, position or commission, and

II.- Anyone who spontaneously gives or offers money or any other gift to any of the persons mentioned in the previous paragraph so that a public official will commit or fail to commit a correct or incorrect act related directly or indirectly to his duties.

In the case of paragraph I, the conduct of a private party who delivers money or gifts or makes promises would not be punishable if he reports the facts within fifteen calendar days following commission of the illegal act.

A spontaneous offer or delivery is understood to mean any that take place without the intervention of an express or tacit request. Spontaneity does not exist if the offer or delivery takes place as the consequence of fear, disadvantage, pressure, or ignorance.”

If no action has been taken to implement recommendation 20, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5f):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

Review the current system of access to bank information with a view to ensuring prompt and effective access; (Convention, Articles 5, 9; Revised Recommendation, Article VII)

Actions taken as of the date of the follow-up report to implement this recommendation:

On December 14, 2005 the Federal Congress approved an amendment to Article 117 of the Credit Institutions Law, for the purpose of empowering the Public Prosecutor's Office to have access to information related to trusts through the National Banking and Securities Commission. The amendment was published in the Federal Official Gazette on December 30 of that same year.

This initiative allows the Banking and Securities Commission to issue general provisions to allow credit institutions to identify and provide the requested information, including the time frame to provide it.

It should be pointed out that the initiative amended Articles 117 and 118 of the Credit Institutions Law in order to give uniformity to financial regulation of banking and trust secrets and establish the same requirements for releasing information protected because of secrecy obligations.

The principal objective of the amendment was to allow the judicial authorities to request financial institutions, directly or through the National Banking and Securities Commission, for financial information deemed necessary, and to allow the PGR to request financial information directly from financial institutions, based on a judicial order.

In addition, other authorities were included so that they, in carrying out their investigative powers or in law enforcement, or for reasons of transparency, would also have access to information protected by such secrecy.

If no action has been taken to implement recommendation 21, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5g):

With respect to investigation, prosecution and sanctioning, the Working Group recommends that Mexico:

Reconsider the current practice of providing mutual legal assistance based on reciprocity in the

absence of bilateral agreements, in order to ensure that such practice is consistent with article 9 of the Convention. (Convention, Article 9; Revised Recommendation, Article VII)

Actions taken as of the date of the follow-up report to implement this recommendation:

With regard to mutual legal assistance, Mexico has been providing effective assistance regardless of reciprocity. The Attorney General's Office has concluded two cases where support was requested from the Swiss Government to obtain information and documentation related to bank accounts in which the funds deposited were presumed to be the product of bribes paid to Mexican officials. There are 21 cases where Mexico is also requesting assistance and 12 more where other countries have requested our assistance. None of these requests have been denied.

Furthermore, it can be mentioned that our country, in addition to multilateral or bilateral treaties in force in this area, has also provided effective mutual legal assistance to other countries, based on the principle of international reciprocity.

In Mexico, reciprocity consists of a unilateral declaration of willingness on the part of the enjoining State in which it agrees to act in the same manner in similar cases in which the Mexican State requests legal assistance.

This principle, having been adopted by the Mexican authorities to respond to requests for international legal assistance, is a part of the national legal system since it is recognized for other areas in various laws, such as Article 27, Section I, second paragraph, of the Political Constitution of the United Mexican States, which states that, "The State, in accordance with internal public interests and the principles of reciprocity, may, at the discretion of the Ministry of Foreign Relations, grant authorization to foreign States for them to acquire private real estate property needed for the direct service of their embassies or legations in the permanent place of residence of the Federal Branches."

Another example of this, is Article 10, Section I, of the International Extradition Law establishes as a requirement for processing an extradition, a commitment on the part of the Requesting State that if the case arises it will grant reciprocity.

Having said that, on November 25, 2003, the Federal Executive Branch submitted an initiative for amendments and additions to the Federal Code of Penal Procedures, which recognizes the principle of reciprocity, which is applied by *facto*, for processing requests for international legal assistance. This initiative was approved by the Senate on October 4, 2005, and is pending a ruling by the Justice and Human Rights Committee in the Chamber of Deputies.

It should be mentioned that entering into international treaties the principle of good faith prevails, therefore it should be presumed that if no international treaty exists on the subject of international legal assistance, the States parties should be willing to comply with such instrument and a manifestation thereof is the commitment to act in the same way in similar cases in which the Mexican States is the enjoiner.

Furthermore, it can be mentioned that close cooperation with foreign authorities involved in the prevention and prosecution of the aforesaid crimes is one of the principal lines of action for the FIU.

From September 2005 to July 2006, 18 memoranda of understanding were signed for exchanging intelligence information between Mexico's FIU and the FIU's of the following countries: United States of America, Guatemala, Honduras, El Salvador, Spain, Dominican Republic, Paraguay, Bolivia, Brazil, Chile,

Ukraine, Andorra, Russia, Dutch West Indies, Korea, Indonesia, Israel and Aruba, which are added to those existing previously with Canada, Colombia, Peru, and five treaties signed with Panama, Guatemala, France, Spain and the United States of America. In this regard, it is important to point out that new memoranda are in an advanced stage of negotiations with Argentina, Singapore, Sweden, Italy, Bahamas, Malaysia, Holland, France, Portugal and Australia.

If no action has been taken to implement recommendation 22, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up 6:

In light of the small number and nature of cases of bribery at the federal level and the absence of case law concerning bribery of foreign public officials, it is not possible to clearly assess how the Mexican legislation will be applied in practice. The Working Group will therefore revisit the case law in a general way as it develops.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 6a):

In light of the small number and nature of cases of bribery at the federal level and the absence of case law concerning bribery of foreign public officials, it is not possible to clearly assess how the Mexican legislation will be applied in practice. The Working Group will therefore revisit the case law in a general way as it develops. This concerns in particular:

The application of the offence to bribes given directly or through the foreign public official to third party beneficiaries and the interpretation of the term “foreign public official”; (Convention, Article 1; Phase 1 Evaluation, paragraph 2)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 6b):

In light of the small number and nature of cases of bribery at the federal level and the absence of case law concerning bribery of foreign public officials, it is not possible to clearly assess how the Mexican legislation will be applied in practice. The Working Group will therefore revisit the case law in a general way as it develops. This concerns in particular:

The application of sanctions with a view to determining whether they are effective, proportionate and dissuasive to prevent and punish the offence of transnational bribery, particularly: the basis on which intangible bribes are quantified in respect of natural persons, and the practical application of fines both to natural and legal persons. (Convention, Article 3; Phase 1 Evaluation, paragraphs 3, 4)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Regarding the coverage of third party beneficiaries and the definition of foreign public official, we reiterate that the amendments to the Federal Penal Code on matters related to Bribery of Foreign Public Officials were approved by Congress last July.

Monetary sanctions were increased with the publication, last August, of the decree amending the Federal Penal Code.

In the legislative area, the recommendation was attended to with the amendments to the Federal Penal Code published in the Official Federal Gazette on August 23, 2005, since they provide for an increase in monetary sanctions.

GENERAL COMMENTS

This last section gives, on the one hand, an overview of the awareness raising campaign and training on corruption in general carried out by the SFP, Bancomext, SAT and PGR; on the other, the status of specific cases of transnational bribery; and finally, a response to the questions formulated by the WGB in the Mid Term Study Review (DAFINVBRWD (2005) 19REV6).

Awareness raising campaign and training on corruption in general:

***Cineminutes* Campaign:**

In the year 2002, the SFP developed the concept of movie shorts as a vehicle for giving society the message about rejecting corruption and its role in promoting integrity and transparency.

With the support of the Mexican Cinema Institute (IMCINE for its initials in Spanish), these *Cineminutes* have been produced every year, and have been distributed throughout the country, with the participation of government and private institutions, with a message, not from the government but from the principal members of the country's movie industry. This material has had a very good reception and based on two

surveys conducted, has been very well assimilated by citizens, who feel that the shorts have made them reflect on their role in combating corruption.

This year five new movie shorts were produced, of one minute each. The series goes by the name of "**Citizens on Stage: Cineminutes**".

In addition, as part of the strategy for the information program, the heads of the Internal Control Organisms (OIC's for their initials in Spanish) in the FPA's agencies and entities were asked for their support in publicizing these *Cineminutes* among public officials of the FPA's agencies and entities.

As part of the information campaign conducted by Bancomext in coordination with the SFP, in mid June 2006 the latest version of the *Cineminutes*, "Citizens on Stage", was shown on Bancomext's website, as well as the general OECD electronic poster designed by the Ministry. Both of these can be seen at the following electronic address:

<http://www.bancomext.com/Bancomext/portal/portal.jsp?parent=6&category=3900>.

In addition, a Code of Conduct has been established for Bancomext's personnel in order to encourage ethical behavior and performing every action from the standpoint of integrity.

Since Evaluation of Phase 2, the Tax Administration Service (SAT) considered, in a first stage, to disseminate actions and initiatives to promote transparency and no tolerance of corruption acts, including the offense of national bribery of public officials that could be presented in this institution. In this sense, the SAT periodically informs, through its web page, which is among the most visited in México, the accomplishments and the main officials guidelines of the Convention in order to achieve a greater awareness among physical and juridical persons.

The taxpayer's perception on the frontal combat against corruption by tax authorities inhibits, to a certain extent, taxpayer's possibility to bribe such authorities.

In a second stage of publishing that will begin in 2007, the SAT will organize a dissemination campaign that will approach the issue of international bribery.

In order to increase the level of awareness of national public official in this institution, the following actions have been implemented.

Code of Conduct:

In 2005 the Tax Administration System combined the SAT's Code of Conduct for Public Officials into a single document, since previously there had been one for each General Administration. It was distributed on the Intranet system, and to ensure that everyone knew about the Code, the General Administration for Innovation and Quality asked the SAT's officials to give a sworn statement that they were aware of its contents and scope.

Through the SAT's internal network, the Code of Conduct was incorporated into the Virtual Collaborative Learning Environment (VCLE), a part of the SAT's Virtual Tax and Foreign Trade University, so that the SAT's officials can study it and evaluations of its contents are made. In 2005 there was participation by 25,021 public servants.

Distribution of the Code of Conduct continues in 2006 on the internal network in order to facilitate access to it by employees and it is available for study at any time by using the VCLE. In the first quarter of 2006 this training was given to 177 people.

Integrity recognition program:

In addition, in order to encourage transparency and give recognition to public officials who have demonstrated honest, honorable, responsible, loyal behavior, the SAT continued its *Program for Recognition of Outstanding Behavior*, which was announced on the IntraSAT website. In 2004, 18 public officials received this recognition and in 2005, 5 public officials were recognized.

This program will continue in 2006 with publication of the call for nominations.

Training in values:

As a strategy to strengthen senior management skills and encourage institutional values, the SAT Executive Training Program was designed. This was made up of diploma courses on “Executive Management” and “Management Skills”. Both diploma courses included a collaborative learning activity - forum- that allows the participants to analyze the SAT’s values and value-focused leadership.

In the year 2004, a total of 2,064 officials at the manager or assistant manager level were registered.

In 2005, 3,623 public officials were given training in the Value Forming Program. In addition, as a part of the Platform Project, training was given in all areas of the SAT on the following subjects: Federal Law on Public Officials’ Administrative Responsibilities (3,924), SAT Code of Conduct (4,357) and the SAT Law and its Regulations (3,932).

The activities carried out to provide information and training on the subject of values included workshops to foster participants’ identification of the institution’s values based on their operational definition, in order to achieve a reflection and analysis of the importance of these values in the performance of their work. In this context, 26,451 attendees participated in the workshops, a figure that represents 81% of the SAT’s active personnel (32,649).

As part of the values communication phase in the year 2005, the institution’s employees were given separators with the SAT’s values, and posters containing this information were displayed.

In addition, 3 video lectures on values were transmitted:

1. - “Reinforcing Institutional and Personal Values”, with the participation of 3,909 attendees.
2. - “The Value of Living Values”, with the participation of 3,565 attendees.
3. - “A Reflection on the Essence and Existence of Values, with the participation of 2,823 attendees.

In the first quarter of 2006, designing the logistics of the training strategies to be used was initiated.

Information on values training is given on the SAT’s internal and external electronic media.

Battery of selection values:

The SAT’s recruiting and selection process includes administering a test to identify the values of 100% of the candidates to be newly hired, as well as 100% of promoted personnel.

During the year 2004, a total of 9,010 tests of values (AMITAI) were administered, of which 5,666 corresponded to candidates to join SAT, 3,045 to officials proposed for job promotions, and 299 for diagnostic detection administered to officials on the job.

In 2005, 6,278 tests were administered, of which 804 corresponded to promotions and 5,474 to new hirings.

During the first quarter of 2006, 3,578 tests were administered, of which 261 corresponded to promotions and 3,317 to candidates to join this decentralized organism.

International Day Against Corruption:

The SAT holds information events, including the “International Day Against Corruption”, which was held in the SAT on December 9, 2004, alluding to the first anniversary of the signing of the United Nations Convention Against Corruption, with the participation of representatives of national and international agencies.

In 2005, the second anniversary was publicized through the print and electronic media inside the institution, such as the “SAT Community Magazine” and its information bulletin “SAT AVISA”, and externally through the SAT’s website.

Exposition of the achievements of the Intersecretarial Commission for Transparency and Combating Corruption 2004 and 2005.

The SAT has participated in the exposition of achievements in this field that is held annually by the Intersecretarial Commission for Transparency and Combating Corruption in the Juarez Plaza of the Ministry of Public Administration’s headquarters building. The first exposition was held November 5 to 12, 2003, and the second exposition was held October 31 to November 4, 2005.

In the 1st exposition, progress made by the SAT and its most important results in the areas of transparency and combating corruption in the years 2001 to 2003 were shown.

Similarly, in the 2nd exposition, the most outstanding achievements in this field made by this institution from 2001 to 2005 were shown, such as strengthening transparency, the Virtual Office, Your Signature@, the System for Validation of Oversight Orders (SIVAOF), the SAT website, the Key to Confidential Electronic Identification (CIEC), the positive results of the General Corruption Perception Index, which was 55% in October 2003 and 30% in September 2005, the Program for Updating the Tax ID, etc.. In addition, activities for preventing, detecting and combating corruption were presented, such as the campaigns and workshops to foster institutional values, submitting reports of wrongdoing, and promoting administrative and/or penal responsibilities, among others.

The institution’s participation was published internally in the December 12, 2005 issue, No. 23, of the “SAT Community Magazine”.

“Posters for Transparency” Exposition

In coordination with the University of the Valley of Mexico (UVM), from April 24 to 28, 2006, the SAT presented an exposition on the esplanade of the Bancen Complex in the Federal District entitled “Posters for Transparency”, in which selected works made by students of that university were exhibited.

This was publicized internally in the April 24, 2006, issue, No. 40, of the “SAT Community Magazine”, with a link so that the posters could be seen throughout the country.

General Index of Corruption Perception in the SAT

The efforts to create awareness of corruption among SAT employees are reflected in the “General Index of Corruption Perception in the SAT” that is produced on a quarterly basis through surveys of users. In October 2003, when its application began, the index was 55%; in the second quarter of 2006, the index was at 24%, which represents an improvement of 31 percentage points.

This index is published on the SAT’s various internal and external communications media.

Internal information mechanisms

The SAT has the following internal information mechanisms:

- The electronic magazine "SAT Community Magazine", which is published weekly and delivered by mail to all of the agency’s approximately 32,000 public officials.
- Internal information media of the SAT’s head office, “*SAT AVISA*”, by which top management transmits messages such as the invitation to comply with the obligation to submit the annual tax declaration and also the net worth declaration.
- Internal information network, IntraSat, on which messages are placed in a banner format.
- The SAT’s web page, as a mechanism for providing information to taxpayers and citizens in general.
- Magazine “*Exprésate*”, an information magazine for internal distribution in the SAT (discontinued in 2005).
- “*Una Sola Hacienda*”, an information magazine for internal distribution in the SHCP. It is published monthly and the SAT’s public officials receive a copy of it.

Regarding progress in information efforts made by the Federal Attorney General’s Office (PGR for its initials in Spanish), the Coordinating Office for International Affairs and Attaché Offices requested the General Coordinating Office for PGR Delegations and the General Directorate of Police Planning of the AFI to instruct the personnel of the Regional Offices of the Federal Agency of Investigation (AFI), and also the personnel of the Delegations of the Federal Attorney General’s Office to be present in the offices to which the course on “Transparency and Fighting Corruption, the Role of the Legal Community”, organized by the Mexican Bar Association, the Federal Supreme Court and the SFP was retransmitted.

In addition, on September 28, 2005, the PGR inserted permanently on its page on the Internet the link to the OECD microsite designed and updated by the SFP.

Status of cases of transnational bribery:

The Special Prosecutor’s Office to Combat Corruption in the Federal Public Service has two cases of domestic bribery under investigation. A third case was concluded when a Federal Judge gave on June 2005 a guilty verdict for bribery to Jorge Blasco Ruiz, a former public official of the entity known as Pronósticos para la Asistencia Pública who solicited money from a private company to help it win a public tender.

With regard to the sanctions for the companies, Alstom T & D, S. de C.V. (now known as Areva) and Alstom International we report that:

a) Areva Case

- In July 2004 the maximum penalty provided for in the Procurement Law in force at the time of the violation was applied to this company, that is, disqualification for participating in public tender

procedures.

- Not being in conformity with this ruling, the company entered a petition for injunction, which was decided in its favor due to a technicality in the procedure.
- However, since the judicial authority did not give a ruling on the irregularities committed by the company with regard to Luz y Fuerza del Centro for awarding various contracts and considering that the powers of the Ministry of Public Administration to sanction that company had not expired, in September 2005 a new administrative procedure was instituted in order to determine its responsibility for the alleged acts of corruption.
- As a consequence of the above, in this administrative procedure it was determined that a new administrative sanction should be imposed, which was published in the Official Federal Gazette on December 8, 2005.
- The Areva Company entered a new petition for injunction against the new administrative sanction in the Second District Court for Administrative Matters in December 2005.
- This injunction petition was decided against the Areva Company in a ruling on March 28, 2006.
- In spite of the above, not being in conformity with this ruling and making use of legal means recognized by the Law, the Areva Company entered an appeal for review of the above-mentioned ruling.
- The appeal for review was decided on June 22, 2006, overturning the ruling given previously and remitting the matter to the Nation's Supreme Court of Justice since the unconstitutionality of Article 60 of the Federal Administrative Procedures Law was alleged.
- The Nation's Supreme Court of Justice gave a decision on this issue, ruling that Article 60 of the Administrative Procedures Law does not violate the constitutional guarantees established in Articles 14 and 16 of the Constitution and therefore it is proper to proceed with the new administrative procedure proposed against the AREVA Company to determine its possible responsibility for the alleged acts of corruption.

b) Alstom International Case:

- In July 2004 the maximum penalty provided for in the Procurement Law in force at the time of violation was applied to this company, that is, disqualification for participating in public tender procedures.
- Not being in conformity with this ruling, the company entered a petition for injunction identified with the file number P. - 555/2006-II, which was decided against it in August 2006.
- Not being in conformity with this ruling, the company Alstom International on August 28, 2006, entered an appeal for review, which is pending a ruling.

c) Penal matters:

Regarding the penal proceeding instituted and progress made in the preliminary investigation, at this time the proceeding is still in process, and therefore the information presented to the WGB in the Oral Report of October 2005 still stands.

In addition, in November 2005, the SFP imposed a sanction on SIEMENS, S.A. de C.V., consisting of disqualification for three years and nine months and a fine of 948 thousand 375 pesos, for having violated Article 32-D of the Federal Fiscal Code regarding the Juarez Hospital de Mexico. This shows the SFP's commitment to promote the establishment of a dynamic, simplified, modern legal-administrative framework in the federal government in the area of procurement and services and to guarantee proper application of the regulations in force.

Although the Siemens case is not related to an act of bribery, we believe it is important to share the Mexican experience in having applied the Procurement Law during bidding processes.

Similar information to report is that in mid December 2005, three former public officials of the Ministry of Communications and Transportation were convicted of committing irregular acts in the public service; in one of the cases, the crime was bribery and in the other two, it was falsifying documents, usurpation of profession and improper exercise of public service.

Replies to the comments made by the WGB in the *Mid Term Study Review*:

- With regard to the WGB's observation in the Mid Term Study to the effect that in Mexico more discretion is applied to legal persons in comparison with natural persons, it is appropriate to make the following comments:

This observation is incorrect, inasmuch as Articles 59 and 60 of the Law on Procurement, Leasing and Services in the Public Sector and 77 and 78 of the Law on Public Works and Services Related Thereto, establish that: "**Bidders or contractors** (vendors, in the case of purchases) who commit violations of the provisions of this Law will be sanctioned by the Controller's Office with a fine equal to an amount from fifty to a thousand times the monthly minimum wage in effect in the Federal District on the date of the violation" and "The Ministry of Public Administration, in addition to the sanction referred to in the previous article, shall temporarily disqualify from participation in contracting procedures or entering into contracts regulated by this Law, **any persons** who fall under any of the following suppositions, respectively.

As can be seen, these laws do not distinguish between types of persons, since those who commit violations of the above-mentioned laws can be natural or legal persons.

Now then, a case might occur in which the persons being sanctioned are predominantly legal persons, but this is not due to discretionary treatment, but rather is the result of the fact that in contracting procedures it is mainly legal persons that participate rather than natural persons, since it is easier for the former to meet certain of the requirements in the terms of tender, which are, among others, a minimum corporate capital to be able to participate, legal incorporation, the commercial or industrial activity in which they are engaged, etc.

- In note 143, page 41, the WGB wishes to know how this Ministry distributes the list of companies disqualified because of violations of the Procurement and Public Works Law to all the agencies and entities of the Federal Public Administration, and whether it emphasizes the potential risk of having dealings with these companies; and whether in the event that the crime of transnational bribery is proved, this is clearly considered to be a violation of the aforesaid laws.

The means for disseminating the list of persons penalized for violations of the Laws on Procurement, Leasing and Services in the Public Sector and Public Works and Services Related Thereto are the Official Federal Gazette and the Ministry's electronic page at this address, <http://www.funcionpublica.gob.mx/unaopspf/unaop1.htm>, in the section on penalized vendors and contractors.

In this publication, no specific warning is given of the risks of contracting these companies, since that would be an attack on the individual rights of these legal persons, which could generate suits for injunctions against the Federal Executive Branch. In spite of the above, the publication made in the Official Federal Gazette establishes the obligation for public institutions to abstain from contracting disqualified persons, in addition to serving as a preventive instrument, since it refers to improper behavior of the companies penalized in the sphere of state contracting, and it can be consulted by the public in general.

Regarding crimes of transnational bribery committed in contracting regulated by the above-mentioned Laws, the latter do not explicitly recognize any sanction whatsoever, since this is prosecuted by the penal route; nevertheless, if there is evidence of the crime, it could be penalized by assimilating it under the suppositions of intention and bad faith covered in Section IV of Articles 60 and 78 of the Procurement and Public Works Laws, which establish:

*“Anyone providing false information or **acting with intention or bad faith in a contracting procedure, in entering into a contract or throughout its duration**, or in the presentation or handling of a complaint in a conciliation or non-conformity hearing.”*