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DOING BUSINESS *IN MEXICO*

2020

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POLICY FOR THE MANUFACTURING INDUSTRY INTRODUCTION

As a result of Mexico's Trade and Investment Promotion Agency -PROMEXICO– extinguishment, **Vázquez Tercero & Zepeda (VTZ)** seeks to fill that void and promote Mexico as a business destination.

This is why **VTZ** has developed the guide **Doing Business in Mexico 2020**, which is divided into the following seven chapters:

1. *Why Invest in Mexico?*
2. *Foreign Investment.*
3. *International Trade Policy.*
4. *Policy for the Manufacturing Industry.*
5. *Creating a Company in Mexico.*
6. *Taxation.*
7. *Labor & Migration.*

In line with our values, our chapters seek to provide relevant business and legal information in an honest, practical, and concise manner. This chapter, *Policy for the Manufacturing Industry in Mexico*, **Mariana Malváez** and **Alejandro Martínez** will provide a general overview of the programs that promote the Mexican manufacturing industry, including the requirements and benefits to obtain various programs.

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4. Mexican Policy for the Manufacturing Industry

The export manufacturing industry represents one of the most important pillars of Mexico's economy. Once characterized for being in the northern border, the manufacturing industry has spread and established itself as well in the center of the country. As noted in **Chapter 2 - Foreign Investment**, about half of foreign investment inflows are destined for the manufacturing sector.

Within the manufacturing industry, the automotive sector is the most economically important, followed by the food, chemical, and basic metal sectors. The success of the automotive industry is largely explained by the integration of supply chains that began with the entry into force of the North American Free Trade Agreement (NAFTA). As noted in **Why Investing in Mexico?** Mexican manufacturing exports have left behind agricultural, extractive, and oil exports, which for many years were the most important in the Mexican economy.

During the economic crisis due to the COVID-19 pandemic, Mexico is committed to the opportunities offered by the USMCA so that the maquiladora industry can innovate and add more added value to manufactured goods.

As explained in the following lines, Mexico has created different international trade promotion policies specifically designed for the manufacturing industry. These policies aim to facilitate international trade operations, create economic incentives, and provide legal security for export manufacturing companies. At the same time, international trade promotion policies have contributed significantly and positively to the Mexican economy, attracting foreign investment, creating industrial clusters, and jobs.

4.1. IMMEX Program

The IMMEX Decree is a **duty-deferral government program** that provides benefits to authorized companies that engage in the manufacturing or *maquila* operation scheme in Mexico, including import-export. In essence, the IMMEX Program grants administrative facilitation measures and tariff incentives to manufacturers, and foreign-owned companies may also access income tax incentives. The companies must be "residents" in Mexico to access the IMMEX Program by the provisions of the Federal Tax Code and the Income Tax Law.

Notably, IMMEX companies are authorized to introduce goods under the temporary importation customs regime, deferring (avoiding) the payment of import duties or the General Import Tax (known as IGI in Spanish acronym), and where appropriate, antidumping and countervailing duties. The purpose of these benefits is to create an attractive regulatory framework for the export-oriented manufacturing industry; in other words, IMMEX companies can carry out manufacturing activities with temporarily imported goods in a low tax or tariff environment, *but upon the condition that the imported goods are exported after submitted to production or some service.*

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Many foreign investors benefit from the IMMEX Program because it allows, for instance, to manufacture or repair products in Mexico preserving the company’s cash-flow and using excellent and low-cost labor.

The Ministry of Economy and the Ministry of Treasury have joint responsibility for issuing the IMMEX authorization. However, the Ministry of Economy is the authority in charge of issuing the IMMEX authorization or certificate to a company (hereon referred to as “**IMMEX company**”), while the Ministry of Treasury has to approve the company prior said authorization is issued. Besides, an IMMEX company may access extra tax benefits such as the VAT/IEPS Certification issued by the Mexican IRS (known as SAT, in Spanish). For more information on the VAT/IEPS Certification, see [Section 4.2.1](#).

4.1.1 IMMEX Options

Depending on the planned operations or activity, a company may apply for the following five IMMEX options:

IMMEX Industrial	The Industrial IMMEX is <i>the most common type</i> of IMMEX option, and it is granted to a company that uses imported materials and carries out an industrial manufacturing process or transforms goods for export.
IMMEX Holding Company	This modality is like the industrial modality, but it is for an industrial group that carries out the industrial process. The IMMEX program is granted to a certified company, called the “holding company”, and one or more companies that are integrated into the manufacturing operation and controlled by the holding company.
IMMEX Services	This modality is for a company that performs services for the process of producing goods for export or carries out export services.
IMMEX Accommodation (or Shelter)	This modality is for Mexican firms that offer maquila (or tolling) services to foreign companies, while the foreign companies will provide the technology and inputs without operating its own IMMEX company. In other words, the IMMEX Shelter company will import the technology, raw materials, and components supplied by the foreign company and will carry out the industrial activities according to a contract; the finished or semi-processed products are exported to the foreign company.
IMMEX Tertiary	This modality consists of a certified IMMEX company, that due to lack of appropriate infrastructure, carries out a manufacturing process through <i>third parties</i> registered under its IMMEX Program.

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4.1.2 IMMEX Benefits

1. An IMMEX company may perform temporary imports of goods to be used in their manufacturing processes deferring (avoiding) paying import duties, provided that the goods do not exceed their legal stay in Mexico.¹
 - a. 18 months for inputs, parts, components, and packaging;
 - b. 2 years for trailer boxes and containers; and,
 - c. Undefined or throughout the validity of the program for machinery and equipment.
2. IMMEX companies in specific sectors can also obtain a PROSEC program to benefit from preferential import tariffs, according to their manufactured products or export services. For more information, see the ***Chapter 3 - International Trade Policy***.
3. IMMEX companies can transfer temporarily imported goods or the final manufactured products to other IMMEX companies and continue deferring the import duties.
4. IMMEX companies can register a non-IMMEX third party in their IMMEX authorization for sub-manufacturing operations purposes. In such event, the IMMEX company can transfer the temporarily imported inputs to said non-IMMEX third party to perform or even complement (quantity) its production process, while still deferring the import duties. The IMMEX company is responsible for the compliance, including the compliance on behalf of the third-party.
5. When paying import tax², an IMMEX company may choose to apply any of the following applicable rates:
 - i. the General Import and Export Tax Law tariff,
 - ii. that established in the commercial treaties (FTAs) signed by Mexico and,
 - iii. that established in the PROSEC Program provided that the company has the corresponding authorization.
6. An IMMEX Company may also apply for a VAT/IEPS Certification, which is granted by the SAT. The VAT/IEPS Certification allows an IMMEX company to have a "tax credit" equivalent to the applicable VAT and/or IEPS tax as a result of its temporary imports.
7. An IMMEX Company may also apply to be an Authorized Economic Operator to, among other several facilities, extend the term of legal stay of the temporarily imported goods up to 48 months for raw materials, instead of the 18 months indicated in point 1.

¹ If the goods exceed their legal stay, the IMMEX will have to pay the import duties that were deferred (avoided). Otherwise, the company will be subject to fines or even cancellation of the program.

² In the following cases: Regularization of goods, change of customs regime, import of machinery and equipment.

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4.1.3 IMMEX Obligations

1. An IMMEX company has to perform annual export sales that amount at least \$500,000 USD, or their billed exports must represent at least 10% of its total turnover.
2. IMMEX companies can exclusively use the temporary import regime for the goods authorized in its IMMEX Program and use said goods for the authorized purposes.
3. An IMMEX company must export or return the goods temporarily imported within the legal timeframes.
4. An IMMEX company must maintain automated inventory control.
5. An IMMEX company must keep the temporarily imported goods in the registered addresses.
6. An IMMEX company has to permanently inform any change regarding its tax address and the manufacturing facilities to the SAT.
7. An IMMEX company has to submit electronically an annual report no later than the last business day of May to the SAT, to inform its total sales and exports of the previous tax year.
8. An IMMEX company has to submit information to the National Institute of Static and Geography (INEGI, Spanish acronym) for statistical purposes.
9. An IMMEX Company has to permanently comply with its customs and tax obligations.

4.1.4 Grounds for suspension and/or cancellation of the IMMEX Program

The Ministry of Economy may cancel a company's IMMEX authorization when:

- i. the IMMEX company does not fulfill its customs obligations;
- ii. the IMMEX company does not fulfill its tax obligations,
- iii. SAT determines tax liabilities greater than \$400,000 pesos to an IMMEX company due to customs infractions such as not proving the legal stay or legal possession of foreign or imported goods,
- iv. the SAT initiates an administrative enforcement procedure against an IMMEX company to recover a tax liability, which derives from non-compliance of tax or customs obligations; or,
- v. when the SAT determines that information provided by the IMMEX company, such as the name or tax address of his supplier or producer, recipient or buyer abroad, is, for instance, false, non-existent or not verifiable.

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4.1.5 Tax Aspects: Income Tax (ISR) and Value Added Tax (VAT)

a) Manufacturing or Maquila Definition

According to the IMMEX Decree, the "maquila operation" is *"the industrial or service process intended to manufacture, transform or repair foreign goods temporarily imported that are later exported or to provide export services."*

Notwithstanding, the Mexican Income Tax Law provides specific requirements so that foreign-owned IMMEX companies can be considered as a "maquiladora" for tax purposes and benefit from a special tax regime. If said foreign-owned IMMEX company meets the requirements to be considered a "maquiladora", said IMMEX company may determine its tax profit based on the "safe harbor" or Advanced Price Agreements (APA) schemes. For more information about these schemes check out our **Chapter 6 - Taxation** .

Likewise, an individual or company with legal/economic relationships with an IMMEX company will not have a permanent establishment in Mexico, provided that certain conditions are met; for instance, the IMMEX company must use assets owned by the resident abroad or any foreign-related company, that Mexico has a Bilateral Tax Treaty with the country where the foreign individual or company is resident, among other conditions.

b) Antidumping Duties and Countervailing Measures

Antidumping duties or countervailing measures will apply to temporary imports made by an IMMEX company whenever the Final Determination of the investigation expressly establishes so.

c) Non-tariff Regulations and Restrictions

The goods are subject to the non-tariff restriction as long as they are expressly identified in terms of their tariff heading and corresponding nomenclature per the Tariff of the Law of General Import and Export Taxes.

4.1.6 Corporate Matters

Below are the corporate activities and tasks necessary for incorporation and start of the business of a new IMMEX (Maquiladora) company in Mexico:

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a) Incorporation of a new company³

In the **Chapter 5 - Creating a Company in Mexico**, we list and explain different corporate legal structures as well as the steps to incorporate a new company, such as selecting the corporate name, executing the articles of incorporation and bylaws before a notary public, filing a notice before the Ministry of Foreign Affairs, registration in the Local Public Registry of Property and Commerce, and other related tasks.

b) Regulatory Matters

As noted in Chapter Creating a Company in Mexico, a recently incorporated company must register before several authorities, such as:

Registration before the SAT	<p>The registration before SAT consists of filing and obtaining a Federal Taxpayers' Code, also known as the RFC, as well as an <i>e-firma</i> (a digital signature). The RFC is necessary to conclude the incorporation process of a company. Moreover, the RFC is necessary to conduct business operations in Mexico because it allows to issue digital tax invoices.</p> <p>SAT permanently reviews compliance with all tax obligations. In addition to the Taxpayers' Code, a company usually requests a "Positive" opinion on its tax compliance.</p>
Registration before the Mexican Institute of Social Security ("IMSS")	<p>A Mexican company that wishes to act as an employer must comply with the Social Security Law and, thus, register before the IMSS. Given that <i>IMMEX</i> operations are labor intensive, IMSS registration is indispensable.</p>
Registration before the Institute of the National Employee Housing Fund ("INFONAVIT")	<p>When applying for the IMSS registration, INFONAVIT registration is triggered simultaneously.</p> <p>INFONAVIT registration is also a mandatory social security requirement for employers. Per law, Mexican employees that comply with certain requirements are entitled to obtain government subsidized housing loans, whereby the employer also has obligations Chapter 7 - Labor and Migration Environment.</p>

³ An existing company can also request its IMMEX Program.

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4.1.7 International Trade Matters

a) Importers' Registry

As noted in the **Chapter - International Trade Policy**, a company that seeks to import or export must register in the Importers' Registry or Exporters' registry that is managed by SAT's General Customs Administration.

b) Appointment of Broker

As an ancillary process to the Importers' Registry, the IMMEX company must notify SAT of the appointment of at least one customs broker, who shall be in charge of conducting the IMMEX company's international trade operations.

c) Ratification of legal address

Once the Mexican entity has been authorized to operate under an *IMMEX* program, the IMMEX company must again confirm or ratify to SAT its registered tax address as well as any other address where its manufacturing operations are carried out.

4.2 Comprehensive Certification Company Scheme

In Mexico, SAT International Trade Rules establish a "Comprehensive Certification Scheme" for companies that carry out foreign trade operations providing several facilitation measures to make them more competitive.

The Comprehensive Certification Scheme consists of several types of certifications according to the role a company plays in the logistic chain, each certification has different modalities or levels that entail different requirements, obligations, and benefits. In **Appendix 1** of this Chapter, we provide a diagram that includes all types of certifications. Needless to say, the most relevant certifications are the VAT/IEPS Certification and the Authorized Economic Operator, and we will explain key aspects of these certifications below.

4.2.1 VAT/IEPS Certification

As noted in section 3.1.4.2 and 3.1.4.3 of the **International Trade Policy Chapter**, imported goods are normally subject to VAT and IEPS, when applicable, including goods subject to the temporary importation customs regime. However, an IMMEX company, for instance, may apply to obtain a VAT/IEPS certification to avoid paying said taxes when importing goods under the temporary importation customs regime.



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SAT is the authority in charge of authorizing whether an IMMEX company is granted or not the VAT/IEPS Certification. The VAT/IEPS certification is available to any company that imports goods under the following customs regimes:

- Temporary Importation (e.g. IMMEX company);
- Elaboration, Transformation or Repair in an Inbond Facility;
- Strategic Fiscal Precinct; or,
- Tax Warehouse to undergo the vehicle assembly and manufacturing process, to companies in the terminal automotive industry.

In addition to “avoiding” VAT/IEPS upon importation, the VAT/IEPS Certification grants additional benefits, such as the possibility to import “sensitive goods” as raw materials among other benefits dependent upon the industry of the IMMEX company.

How does the VAT/IEPS certification work?

In essence, an IMMEX company with a VAT/IEPS certification has a tax credit equivalent to the payable VAT/IEPS tax resulting from the temporary import of goods. The VAT/IEPS certification, in other words, functions as a tax deferral program, whereby the certified company must export the goods temporarily imported within the legal period to avoid paying the applicable VAT/IEPS (as well as the Import Duty, of course).

Different VAT/IEPS certification?

SAT has established different categories or modalities of the VAT/IEPS certification: A, AA, and AAA. Apart from specific requirements regarding the IMMEX company’s machinery/equipment value and the number of employees, the only difference between modalities is the duration of the certification i.e. one, two, and three years respectively.

4.2.2 General Requirements to Obtain VAT/IEPS Certification

The following table includes the General Requirements to obtain the VAT/IEPS certification.⁴

⁴ Highlighted requirements are specific to VAT/IEPS Certification, while all others apply and should be maintained both for compliance of the IMMEX Program and the VAT/IEPS Certification.

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General Requirements for IMMEX and VAT/IEPS Certification	
Tax	The company must have up to date its tax records and in compliance with its tax obligations, including partners or shareholders.
	The company must request a positive tax compliance opinion from SAT.
	The company must not appear in the list of companies published by the SAT that have used an invoice that simulates a transaction.
	The company must have valid its " tax digital stamps" (CFDI).
	The company must register the establishments where its production processes are carried out before the SAT.
	The company must have updated its online tax mailbox.
	The partners, shareholders or legal representatives have not received a complaint or criminal accusation in the last 3 years.
	The company must maintain its electronic accounting in the SAT's website or portal, and submit its monthly accounts to SAT.
	If the IMMEX company has national suppliers, it must register them in its Program and permanently ensure they have a positive tax compliance opinion from SAT.
	The Company must pay a yearly government fee to obtain the Certification.
Civil	The company must prove the legal possession of the facilities where the production processes will be carried out.
	The legal representative must have the powers or authority to execute ownership acts or deals.

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General Requirements for IMMEX and VAT/IEPS certification	
International Trade	The company must have up to date its customs records and in compliance with its customs obligations.
	The company must not be suspended in the Importer’s Registry or the Importer’s Registry of Specific Sectors or Sectorial Exporters Registry.
	The company must allow, at all times, initial inspection visits from the Customs Audit Authority. ⁵
	The company must have clients and suppliers abroad that are linked, directly or indirectly, to the customs regime for which it is requesting registration.
	The company must maintain electronic inventory control.
	The partners/shareholders or a management individual cannot be related to a company whose VAT/IEPS or OEA certification has been canceled.
Human Resources	The company must have personnel registered before the Mexican Institute of Social Security (“IMSS”, Spanish acronym) or through subcontracting workers.
	The company must comply with the obligation to withhold and pay the income tax of its workers.

As mentioned above, an IMMEX company can obtain VAT/IEPS certification either “A”, “AA” or “AAA” modality or category depending on its operational years, the value of machinery and equipment as well as its number of workers. In the following section, the requirements of each VAT/IEPS certification modality are listed, as well as the benefits of this certification.

4.2.3 VAT/IEPS Certification Benefits and Requirements

In addition to the general requirements listed in the previous section, a company interested to obtain a VAT/IEPS certification must meet a long list of requirements, including the main requirements listed below depending on the modality. If granted, the company would enjoy the listed benefits. The International Trade Rules provide special provisions applicable to “sensitive goods” imports.

⁵ International Trade Audit General Administration, AGACE acronym in Spanish.

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Benefits	Requirements
<p>The company can apply a tax credit equivalent to the VAT/IEPS applicable to its temporary imports.</p>	<p>Modality A:</p> <ul style="list-style-type: none"> • Have at least 10 workers registered before IMSS and / or through outsourcing. • Have the infrastructure to carry out its operation. • Not have suppliers listed by SAT as nonexistent or with nonexistent operations. • Have a maquila, sale, contract, purchase or services order that proves the continuity of the export project. • In the last 12 months, the IMMEX company must have imported inputs under the temporary customs regime and that final or manufactured goods value should represent at least 60% of said inputs' value. Or have returned at least 60% of its total temporary import value.
<p>A company can request authorization for temporary import of "sensitive" raw materials without being subject to a volume limit, or to request renewal every four months as an IMMEX without certification would need to.</p>	<p>Modality AA:</p> <p>In addition to the requirements mentioned above (for Modality A) a company must meet at least one of the following requirements or conditions:</p> <ul style="list-style-type: none"> • Being authorized and having international trade operations during the last 4 years or more.

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	<ul style="list-style-type: none"> • Having over the last 12 months more than 1,000 workers registered in IMSS and/or through outsourcing. • Having machinery and equipment exceeding 50 million pesos. • SAT has not notified a tax or customs liability to the company in the last 12 months. • SAT has not issued a decision denying a VAT refund to the company, whose amount represents more than 20% of the total authorized refunds and/or that the resulting denied amount exceeds 5 million pesos in the last 6 months.
<p>An Industrial IMMEX will automatically have authorized the IMMEX Services Option.</p>	<p>Modality AAA: In addition to the requirements mentioned for Modality A, a company must meet one of the following requirements:</p> <ul style="list-style-type: none"> • Being authorized and having international trade operations during the last 7 years or more. • Having over the last 12 months more than 2,500 workers registered in the IMSS and/ or through outsourcing. • Having machinery and equipment exceeding 100 million pesos.

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	<ul style="list-style-type: none"> • SAT has not notified a tax or customs liability to the company in the last 24 months. • SAT has not issued a decision denying a VAT refund to the company whose amount represents more than 20% of the total authorized refunds and/or that the resulting denied amount exceeds 5 million pesos in the last 6 months.
<p>A <i>special benefit</i> applies for electrical or electronic auto parts and/or aircraft sectors regarding air traffic operations/imports.</p>	
<p>A Services IMMEX can change the customs regime to definitive for goods transferred by auto parts companies that are going to be used by the terminal automotive industry or manufacturing of motor transport vehicles</p>	
<p>Companies in the auto parts industry will be able to register in their inventory control system as returned the goods sold to companies in the terminal automotive industry or manufacturing of motor transport vehicles.</p>	

A company can simultaneously apply for Registration in the Company Certification Scheme under the VAT/IEPS and as an Authorized Economic Operator (OEA) in any of its modalities.

4.2.4 Authorized Economic Operator Certification

Mexico’s Certification as Authorized Economic Operator (AEO) modality is a figure promoted by the World Customs Organization aimed at the various actors who participate directly or indirectly in activities related to foreign trade operations through the implementation of minimum standards in terms of security and which seek to mitigate illicit acts that violate the security of the country.

Also gives companies the opportunity to identify and establish measures to mitigate internal and external risks that affect the security of your supply chain, in addition to obtain diverse administrative facilities applicable to your foreign trade operations.

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4.2.5 Authorized Economic Operator Requirements in Mexico

In addition to the general requirements indicated in [table 4.2.2](#), a company must comply with the following requirements to obtain the AEO certification:

Authorized Economic Operator "AEO" Requirements	
International Trade	The company must have carried out international trade operations during the last two years before to its application. An exception may apply to new companies of a group or resulting from mergers or divisions.
	The company must designate its authorized transport companies for imported goods.
Security	The company must comply with a "Security Profile" consisting of several security standards and processes in each of the facilities where its operations are carried out. The company's Profile requirements will depend on the modality of AEO it is applying i.e.: Importer/Exporter, Controller, Aircraft, Custom Broker, or Carrier, among other modalities. (categories).

4.2.6 Benefits of Authorized Economic Operator

In general terms, a company with AEO certification will benefit from being perceived as a highly reliable and trustworthy company, optimizing its supply chain, enjoying in addition to the VAT/IEPS certification benefits⁶ from the following facilitation measures:

1. Expand the legal stay period regarding inputs imported under a temporary importation customs regime. As noted in section [4.1.2](#), an IMMEX company can have foreign inputs, components and raw materials imported temporarily for 18 months; however, an IMMEX company with AOE may have such goods for 36 months (or up to 48 months on **SECIIT** modality).
2. When importing, the OEA does not have to transmit or provide the "Manifestation of Value" (Customs value worksheet).
3. Using the exclusive "express" lanes for the customs clearance for imported goods.
4. Facilities for the regularization of not declared or leftover goods.

⁶ Except the VAT/IEPS Credit.

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5. The possibility to change all temporary imports into the definitive importation customs regime in a single import notice (*pedimento*).
6. Avoid recording or include serial numbers, part, brand, and model in the import notice or corresponding import documents when carrying out customs clearance.
7. Not requiring authorization to rectify import notices (*pedimentos*) within 3 months of the importation.
8. Right to a preliminary procedure before being suspended from the Register of Importers.
9. Appearing in the SAT's list of reliable companies.

Needless to say, this list is not exhaustive and a company with AEO certification enjoys additional facilitation measures some depending on its modality.

4.3 Sector Promotion Program (PROSEC) and Eight Rule

As we noted in the sections [3.1.3.2.1](#) and [3.1.3.2.2](#) of **Chapter 3 - International Trade Policy**, these are Production Promotion Instruments. IMMEX companies may request the PROSEC authorization to be allowed to import with a preferential ad-valorem tariff (general import tariff) various goods to be used in the elaboration of specific products of certain industries.

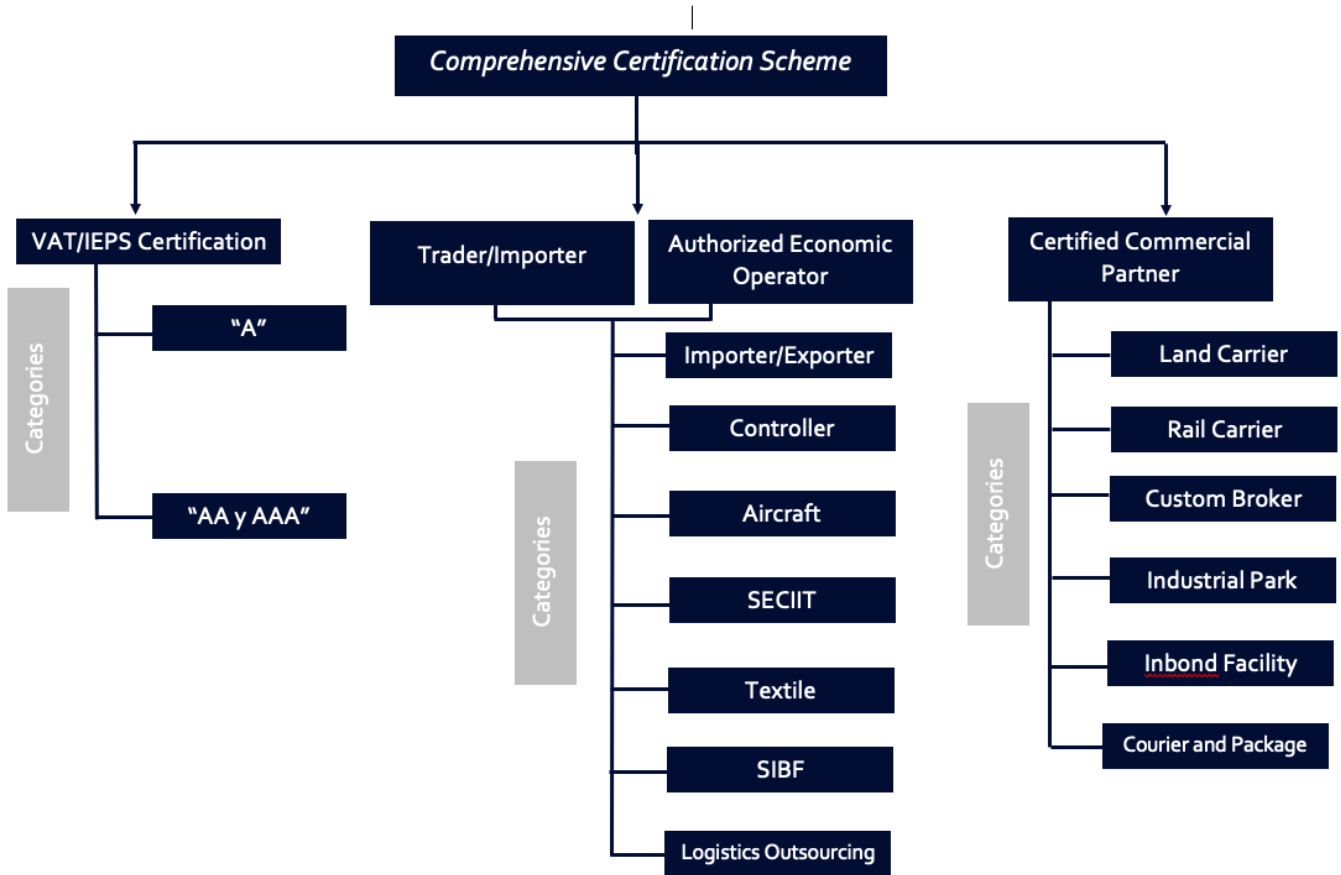
At the same time, authorized PROSEC companies can also benefit from the "Eight Rule", or *Regla Octava* in Spanish. A company would need to apply for an import license granted by the Ministry of Economy to import goods under Mexico's tariff sub-heading 98.02 "special operations". If granted, the company may import supplies, materials, parts, components, machinery, equipment, including packaging material and packaging, and, in general, those for the elaboration of the final products under its PROSEC.

Another benefit included in PROSEC Program is facilitation on non-tariff barriers compliance since some regulations (NOMS) can be avoided during the importation of covered inputs.

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Appendix 1 – Diagram on the Comprehensive Certification Scheme



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2. FOREIGN INVESTMENT.

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