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The New Agrarian Law - Mexico's Way Out.

Adrianna De Aguinaga

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THE NEW AGRARIAN LAW—MEXICO'S WAY OUT

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I.	The Importance of Agriculture in Mexico.....	884
II.	The Evolution of the Ownership of Land in Mexico....	884
	A. Before the Conquest of Mexico	884
	B. During the Spanish Conquest Until the Independence of 1810	885
	C. From the Independence to the Revolution of 1910	886
	D. Distribution of Land in the Beginning of the Twentieth Century	887
	E. The Agrarian Reform	887
	F. The Constitution of 1917	888
III.	The <i>Ejid</i> os	888
IV.	Effects of the Agrarian Reform	889
V.	Deregulation in the Mexican Agricultural Sector	890
VI.	Ownership of Land by Companies	890
	A. Maximum Extension of Land Owned by Companies	891
	B. Stockholders	891
	C. Capital Stock	891
	D. Restrictions on the Holdings of Capital	892
	E. Investment by Foreigners in Landholding Companies	892
	F. Foreign Investment	893
VII.	Regime for the Exploitation of the <i>Ejid</i> os	893
	A. Credit for the <i>Ejid</i> os	894
	B. Transmission of Land in the <i>Ejid</i> o	895
	C. Regime for the Exploitation	896
	D. Rural Companies	896
VIII.	Agricultural Policy Inside Mexico	897

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IX. Agriculture Under the North American Free Trade Agreement	898
X. The Impact of the North American Free Trade Agreement on Mexican Agriculture.....	899
XI. Tax Incentives	900
XII. Conclusions	900

I. THE IMPORTANCE OF AGRICULTURE IN MEXICO

One of the most important sectors in the Mexican economy is the land and cattle sector. It represents 7.8% of the gross domestic product (GDP) of Mexico, and in conjunction with the processed food sector represents 10%. Since 22.8% of Mexico's active population produces these percentages, it is important to increase the productivity of this sector.¹

One of the purposes of this article is to analyze the new legislation in force regarding the agricultural sector, specifically the rules applicable to companies and to the *ejidos*. This article will analyze the ownership of land in Mexico, past and present, and relevant aspects of applicable legislation. It will also analyze the impact of the North American Free Trade Agreement (NAFTA) on Mexican agriculture.

II. THE EVOLUTION OF THE OWNERSHIP OF LAND IN MEXICO

A. *Before the Conquest of Mexico*

When the Spanish conquerors landed in Mexico in 1510, they found different types of land-distribution systems that varied by regional and ethnic groups. Among the Maya group, the common ownership of land prevailed. Among the Aztecs, the land was divided into the properties of the king, noblemen, and warriors; the properties of the common people; and the properties of the army and of God.

The Aztec King, as an absolute monarch, was the owner of all territories conquered by his subjects.² The initial native occupiers of the land were not immediately thrown off the land; they continued occupying it under the conditions imposed by the monarch.

Common people of the Aztec empire owned the land on which

1. Dr. Luis Téllez, *La Nueva Visión del Campo Mexicano*, Speech before Conference in Mexico City on Sept. 30, 1992.

2. The King could transfer the land without limitations to his noblemen, to the members of his family, and to his warriors, as reward for their services and loyalty.

their permanent residence was established. Descendants of a common ancestor formed the *calpullis*,³ which had legal title over the land but granted its use and benefit to the different families of the *calpulli*. In addition to the land of the *calpulli*, there was common land which was worked by the inhabitants. The revenue from this land was used to pay public expenses and tribute. Huge extensions of land were used to maintain the army and to pay the expenses of the religious worship.⁴

The Aztec system of land use and ownership prevailed more or less in all the neighboring states and cities. Even though the land was divided among different groups of people, it was, in fact, owned by very few persons: the king, noblemen, and warriors who owned huge extensions of land transferable only among themselves. As a consequence, there was insufficient common property and the growing population did not have land to work. When the Spanish arrived in America in 1492, newly-discovered and newly-dominated territories were considered to be the private property of the king and queen of Spain.

B. *During the Spanish Conquest Until the Independence of 1810*

The first act of private ownership of land by the Spanish was to distribute landholdings among the conquerors as payment for the services rendered to the crown. Spanish towns were soon established in the territory of "New Spain."⁵

For tax and religious purposes, the distribution of land among the settlers included the assignment of those Indians residing on the land. Some of the Indians continued to possess the land but were required to pay tribute to the particular settler; others became the settler's em-

3. LUCIO MENDIETA Y NÚÑEZ, *EL PROBLEMA AGRARIO DE MÉXICO* 16 (1974) (citing Alonso de Zurita, *Breve y Sumaria Relación*, in *NUEVA COLECCIÓN DE DOCUMENTOS PARA LA HISTORIA DE MÉXICO* 106 (1891)). The *calpulli* can be defined as "neighborhood of known persons or of ancient lineage." *Id.*

4. LUCIO MENDIETA Y NÚÑEZ, *EL PROBLEMA AGRARIO DE MÉXICO* 18 (1974). Such land was owned by the army and the religious hierarchy and was collectively worked by the inhabitants of a certain city or town. *Id.*

5. The Colonization, with the objective of founding a town, was performed by private persons through an agreement between the governor of a new province and the most highly capable person. Afterwards, the land was divided. Some extensions were for agricultural purposes, others were to pay for common expenses, and the rest were divided among the founders of the town. LUCIO MENDIETA Y NÚÑEZ, *EL PROBLEMA AGRARIO DE MÉXICO* 43 (1974).

ployees⁶ and, in general, their properties were not respected. Besides distributing land to the conquerors, Spain also sold land to private persons and the Church.

Laws were subsequently issued to protect the Indians' rights to their lands. Their landholdings were organized in the form of common property, on the same basis as before the Conquest. In the common property, there were four types of ownership of the land. The town area was the extension of land given to a certain group of natives on which they established their homes. The *ejido* was the land common to all the neighbors.⁷ The land already distributed among the families of the group and owned by the *calpulli* was worked by all of its inhabitants to pay certain public expenses.

The Indians did not have any ownership rights to the common properties. The common property was public property granted to the town or group, not a specific person. Private-property distribution in New Spain favored increased Spanish ownership of individual property. Consequently, private-property ownership among Indians decreased. Predictably, constant fighting occurred between the two groups. The Spanish invaded the dominions of the Indians and left them without their possessions and lands. The individual property of the Indians first disappeared, and their common property soon followed.

In the beginning of the nineteenth century, the number of Indians without land was enormous. Since the Indians blamed the Spanish for their misery, their war of independence against the Spanish oppressors was most strongly supported in the agrarian sector. Unfortunately for these indigenous Americans, the Church also favored the decline in Indian ownership, motivated by its own desire for land.

C. *From the Independence to the Revolution of 1910*

After the independence, the problem of unequal land distribution continued. There were both an unequal distribution of land and an

6. This is the origin of the term *encomiendas*. The term was used to describe how a number of indigenous peoples were given to a certain Spanish conqueror or settler, with instructions to teach them religion and good manners. In turn, the Indians worked for and paid tribute to the Spanish.

7. In the New Spain the origin of the *ejido* dates from 1573, with a decree of King Felipe II which later was incorporated into the Summary of Laws of the Indias (*Leyes Indias*). LUCIO MENDIETA Y NÚÑEZ, *EL PROBLEMA AGRARIO DE MÉXICO* 72 (1974) (quoting *ESCRICHE DICTIONARY* (1905)).

unequal distribution of the inhabitants over the territory. Laws for the colonization of the territory were enacted with the objective of distributing unoccupied land throughout the country.

In practice, these colonization rules did not have any effect, and the agrarian problem continued. Indian settlements neither recuperated their land nor solicited others to improve their circumstances. Indian ownership of small plots of private property, the issue spurring the independence movement, continued to decline during the new political disorder.

Also, as the Church accumulated large extensions of land and huge properties, the government stopped receiving land-transfer fees because practically all land was concentrated in the hands of the Church. A law enacted on June 25, 1856, ordered that all urban and agrarian property owned by the Church be transferred to the lessees. Despite the order, most of the land remained in the hands of the Church. However, the small property holdings were transferred to the hands of very few persons and contributed to the creation of huge extensions of land which formed *latifundios*.

D. *Distribution of Land in the Beginning of the Twentieth Century*

A change was needed to depart from the unequal distribution of land among the Spanish owning huge extensions of land, the Indians owning common property, and the Church. Huge *latifundios* were cultivated only in small amounts and with outdated means. This situation forced the Indians and the workers to perform excessive work, creating misery and bad treatment.

These factors led to the armed insurrection aimed at: making restitution of land to its legitimate owners, granting land and water to those without those resources, distributing the *latifundios*, protecting and assisting peasants, and creating mechanisms for agrarian justice that were independent of the judicial power.

E. *The Agrarian Reform*

Faced with these problems, the only solution was to try to redistribute the agrarian lands of Mexico equitably. One premise of this reform was to restore and grant land to those settlements that had lost land by expropriation and distribution.

F. *The Constitution of 1917*

Article 27 of the Mexican Constitution, issued on February 5, 1917, tried to resolve the agrarian problem by fashioning rules to distribute the agrarian lands and to establish a future equilibrium within the agrarian property. It established, as a main point, that the property of land and water existing within the Mexican territory belongs originally to the government and the government has the right to transfer its dominion to private persons in the form of private property.⁸ Article 27 also stated that the government has the right to impose on private property all modalities dictated by public interest and to regulate the use of natural resources equitably to distribute and conserve the public wealth.

Article 27 authorized the necessary measures to distribute land and develop small agricultural property.⁹ Additionally, Article 27 authorized measures designed to create new centers of population, promote agriculture, and avoid the destruction of natural resources. Such measures were dictated to avoid the concentration of property in the hands of a few and to prevent the use of land as an instrument for exploitation.

Article 27 also established that rural communities or towns without land or water, or that have insufficient quantities of either, have the right to receive these resources.¹⁰ Furthermore, the Article demanded respect for individual property. The plan of the agrarian reform contained in Article 27 considered the *ejido*—social property—and private property as the only two forms of property available.¹¹ Therefore, the agrarian economy was to be transformed from huge extensions of land into *ejidos* and small property holdings.

III. THE *EJIDOS*

In addition to the private ownership of land referred to above, Mexico has "social property" which constitutes the *ejidos*. The *ejidos* are formed by a group of Mexican peasants to whom the government

8. Ninety-six percent of rural families did not have land, and one percent of the population controlled ninety-seven percent of the Mexican territory. Furthermore, 834 owners of farms occupied one-half of the land. MARIO RUIZ MASSIEU, *DERECHO AGRARIO REVOLUCIONARIO* 19-20 (1987).

9. MEX. CONST. art. 27 (amended 1983).

10. *Id.*

11. *Id.*

gives land, woods, and water in common ownership. The peasants then work the land and make it produce through their personal efforts and the cooperation of their members.¹² Such property cannot be transferred, prescribed, or subjected to attachment. The government determines its internal administration based on the cooperation and economic democracy of its members.

IV. EFFECTS OF THE AGRARIAN REFORM

Extensive legislation was issued to regulate the agrarian reform which began in 1915. Some of the regulations issued dealt with such issues as: requirements, procedures, distribution of land, quality of the labor work, rights of peasants, maximum extension of land in the *ejidos* and small properties, restitution of land to peasants, granting of land to those who had never received land, agrarian procedure, authorities, and commissions.

After more than seventy years of agrarian reform, we can conclude that:

1. The reforms have not provided all the peasants a parcel to satisfy their needs and those of their families.
2. The reforms have not brought about an efficient organization of the *ejido* from an economic or social viewpoint.
3. The majority of the occupants of the *ejidos* live in a climate of insecurity and injustice.
4. Not enough credit is available.
5. Looking for better opportunities of life, many peasants, without land, work, or property, emigrate to the United States or to the Mexican cities.
6. The agriculture in Mexico is insufficient to cover the needs of a population that increases daily. Therefore, Mexico must import products of first necessity.

The positive effects of the agrarian reform are the following:

1. Large *ejidos* located in areas with good land have independence and prosperity.
2. Ten percent of all the *ejidatarios*—members of the *ejido*—receive credit from the government. This percentage represents an important sector that enjoys relative prosperity.

12. See MARIO RUIZ MASSIEU, DERECHO AGRARIO REVOLUCIONARIO 62-63 (1987) (noting state's role in organizing *ejidos*).

3. A large number of *ejidatarios*, without having the best above-mentioned conditions, own land as a result of private credits for their personal effort. Therefore, they can live in as favorable conditions as independent producers.

4. The *ejidos* are constantly surveyed by the Mexican government, which tries to provide them with food and health services. The *ejido* is a form of organization because it obliges the *ejidatarios* to perform collectively all procedures before the corresponding authorities.

5. The agrarian reform granted to the peasants an economic and political strength that they lacked before the reform. Accordingly, the peasants acquired more importance.¹³

V. DEREGULATION IN THE MEXICAN AGRICULTURAL SECTOR

A review of the legislation in effect prompted the enactment of constitutional amendments and new laws to improve the agricultural production. The review was prompted by the low productivity of the *ejido*, the effects and consequences of agrarian reform, and the difficulties for the *ejidos* to obtain credit.

Amendments to Article 27 of the Mexican Constitution, in effect since January 7, 1992, and the Agrarian Law of February 26, 1992, were based on a consensus of society which demanded a better way of life for millions of farmers. The amendments attempt to modify completely the old system that for decades proved inefficient.

VI. OWNERSHIP OF LAND BY COMPANIES

A foreign company cannot directly own any land in Mexico. Article 27 of the Mexican Constitution states that only Mexican individuals and Mexican companies have the right to acquire land in Mexico. The government can grant this same right to foreign individuals if they agree before the Ministry of Foreign Affairs to be considered as Mexicans with respect to the land acquired.¹⁴ This provision has been in effect since 1917, not only in Mexico but in almost all Latin American countries. It is, however, merely formalistic and of no practical significance.

Foreigners can form part of a Mexican company that has or acquires land within Mexican territory. In this case, the foreigners will

13. LUCIO MENDIETA Y NÚÑEZ, *EL PROBLEMA AGRARIO DE MEXICO* 283 (1974).

14. MEX. CONST. art. 27 (amended 1983).

have to agree to the constitutional conditions stipulated in the prior paragraph.

Before the enactment of the above-mentioned constitutional amendments, stock companies were not allowed to acquire land for agricultural purposes. The New Agrarian Law, enacted on February 26, 1992, and in force the following day, established that stock companies can own agriculture, livestock, or forestry land in extensions not larger than twenty-five times the factor of individual landholdings.¹⁵

A. *Maximum Extension of Land Owned by Companies*

The individual, small landholding is the maximum extension of land that is protected by the Mexican Constitution against expropriation for agrarian purposes. Therefore, the individual, small landholding cannot be subjected to a procedure of division and distribution. The small agricultural property cannot exceed 100 hectares¹⁶ of irrigated land or its equivalent in other types of land.¹⁷ The small livestock-holding cannot exceed the land necessary to raise a maximum of 500 large farm animals or its equivalent in small farm animals. This could be as much as 50,000 hectares.¹⁸ The small forestry property can be any type of forest land, as long as it does not exceed 800 hectares.¹⁹

B. *Stockholders*

The company owning land must have a specific number of individual stockholders in proportion to its total landholdings, divided by the individual landholdings as defined by the Agrarian Law. For example, if the company owns 2500 hectares of irrigated land, and the individual, irrigated landholding is limited in size to 100 hectares, the company must have at least twenty-five individuals as stockholders.

C. *Capital Stock*

The capital stock of the company should have a special series of shares identified with the letter "T." Series "T" shares are equivalent

15. Ley Agraria [New Agrarian Law] art. 126, D.O., Feb. 26, 1992.

16. One hectare equals 2.4 acres.

17. Ley Agraria [New Agrarian Law] art. 117, D.O., Feb. 26, 1992.

18. *Id.* art. 120.

19. *Id.* art. 119.

in value to the capital contributed in agriculture, livestock, or forestry land, or those funds destined for the acquisition of such land, depending on the value of the land at the moment of the contribution or acquisition.²⁰

Series "T" shares represent neither special rights over the land nor different corporate rights from those of other series of shares. At the moment of the company's liquidation, however, the holders of Series "T" shares will have a right to receive land in payment of their contribution to the capital stock.²¹

D. *Restrictions on the Holdings of Capital*

An individual can only own Series "T" shares that are equivalent to the extension of one small, individual landholding. A company can only issue Series "T" shares equivalent to twenty-five times one individual landholding, according to the Agrarian Law classification of the land involved.²²

E. *Investment by Foreigners in Landholding Companies*

Foreigners, either as companies or individuals, can acquire up to 49% of Series "T" shares; the remaining 51% must be held by Mexicans.²³ In our example, however, each foreign company or individual—as well as Mexican company or individual—can own no more than 100 shares each. One-hundred percent of the rest of the capital stock of a company, the Series "B" shares of free subscription, can be held by foreigners. This ownership interest can be used as working capital for items such as machinery and equipment.

In most agricultural operations, the value of the land is less than the value of the rest of the assets and working capital. Therefore, the total held by foreigners in Series "B" shares, plus their direct 49% interest in Series "T" shares, could be a majority of all of the capital of the company. Even though foreign ownership is limited by law to no more than 49% of Series "T" shares, in those companies in which half the value is represented by land and half by working capital, foreigners would own a majority of the capital stock.

20. *Id.* art. 126.

21. Ley Agraria [New Agrarian Law] art. 127, D.O., Feb. 26, 1992.

22. *Id.* art. 129.

23. *Id.* art. 130.

F. *Foreign Investment*

If the majority of the capital stock of a company will be owned by foreigners, authorization is needed from the Foreign Investments Commission (FIC). This authorization is required to incorporate a company with majority-foreign capital stockholdings since agriculture is one of the few areas requiring prior approval of the FIC.²⁴

VII. REGIME FOR THE EXPLOITATION OF THE *EJIDOS*

Since 1917, the Mexican government has distributed land to the peasants—the *ejidatarios*—to comply with the objectives of the agrarian reforms. The reforms dictate that the distribution of land must occur in an equitable manner. The government has been unable to reach this goal, however, primarily because the *ejidatarios* are financially disadvantaged and lack resources and technology.

The old system prohibited the *ejidatarios* from entering into any type of agreement for the sale, transfer, rental, indirect exploitation, or exploitation by third parties, of land they owned.²⁵ The New Agrarian Law now, however, permits the *ejidos* to execute any type of agreement for the association, benefit, or use of the land by third parties for a period not longer than thirty years, although the term may be extended.²⁶

Further, the law provides for the creation of rural associations and mercantile or civil companies to use best the land owned by the *ejido*. The law also allows *ejidatarios* to enter contracts for sale, commercialization, transformation of products, rendering of services, or any purpose required by the *ejidatarios* to perform their activities.²⁷ Most importantly, any *ejidatario* may request title in fee simple to his or her parcel. This change in the law could possibly transform the rural sector of Mexico. It could change inefficient collective farmers into small landowners holding title to land consisting of a minimum of 100 irrigated hectares or 240 rainfall hectares. Such holdings could consti-

24. Article 5 of the Regulations to the Law To Promote Mexican Investment and To Regulate Foreign Investment permits the incorporation of companies with 100% foreign capital-stock, except if they perform the activities classified in a catalogue annexed to the Regulations. In this catalogue, agriculture is an activity which requires prior approval of the FIC to permit more than 49% foreign investment.

25. Ley Federal de la Reforma Agraria [Federal Agrarian Reform Law] art. 55 (1991) (abrogated by New Agrarian Law).

26. *Id.* art. 45.

27. Ley Agraria [New Agrarian law] art. 50., D.O., Feb. 26, 1992.

tute viable economic units. Furthermore, as previously explained, the *ejidatarios* may combine their holdings in any legal form to constitute much larger units. Individual combinations, such as joint ventures, are not limited in size and could mirror corporate-held farms of 2,500 irrigated hectares, which are, indeed, very substantial productive units. The ability to hold title and control the destiny of one's land has been the backbone of highly successful agricultural family units in many countries.

Although the tendency in the industrialized countries may be for the consolidation of farm units and the disappearance of the individual family farm, one of the principal motors of development in the first world was the individual family farm. The New Agrarian Law makes it possible for Mexico to enter the development stage of the private family farm. This stage will develop new attitudes, such as personal ambition, striving, individualism, and, above all, the incentive to improve one's lot and that of one's family. From an economic viewpoint, the very fact that the privately-owned farm can be used as collateral to receive credit ensures a much faster growth than does the *ejido* system.

A. *Credit for the Ejidos*

The Federal Law for the Agrarian Reform, along with the Law for the Rural Credit, is now abrogated. These laws did not contain a detailed credit system that would defend the interests of peasants. Also, because the laws did not contemplate any guarantees for banks that granted credit, it was difficult to obtain affordable financing.

The New Agrarian Law provides that the *ejido*, through a resolution passed at a meeting of its members, and each *ejidatario*, individually, can designate the right to use and enjoy, respectively, the fruits of the common land and the parcels as a guarantee for obtaining credit.²⁸ Such a guarantee would be given to credit institutions or to persons associated or having a commercial relationship with the *ejido* or *ejidatario*. The law provides that if the debtor does not comply with the guaranteed obligations, the creditor, through a resolution of the Agrarian Tribunal, can execute the guaranty on the use of the land for the agreed-upon time period; the use of the land will revert to

28. Ley Agraria [New Agrarian Law] art. 46, D.O., Feb. 26, 1992.

the *ejido* or to the *ejidatario* at the end of the term.²⁹ Furthermore, the law establishes that the *ejido* and the *ejidatarios* can provide guarantee funds to face acquired credit obligations.³⁰

In accordance with the New Agrarian Law, several offices of the Mexican government, such as Fideicomiso Instituído en Relación con la Agricultura (FIRA) which is administered by the Bank of Mexico, are establishing the conditions to (1) channel resources to promote rural investment and financing, (2) create productive units, and (3) encourage the development of productive associations among *ejidatarios* and owners of small properties. FIRA grants financing to commercial banks, which in turn grant financing to the producers. The credits are for agriculture, forestry, fishing production, and the industrialization and commercialization of these products.³¹ There are also special credit programs with Banco Nacional de Comercio Exterior (Bancomext) and other institutions to encourage exportations.³²

B. *Transmission of Land in the Ejido*

Land in the *ejido* is divided into land for the urban area, land for common-use agricultural production, and parcels. The urban area cannot be transferred, prescribed, or attached. Land for common-use agricultural production, in principle, is also nontransferable, cannot be attached, and does not prescribe. However, the *ejido* can transfer the dominion of this land to mercantile or civil companies in which the *ejido* or its members participate if the *ejidatarios* collectively decide that transferring the undivided agricultural land will benefit them. The objective is to increase the production of such land

29. *Id.* art. 46.

30. *Id.* art. 51.

31. The credits can be:

- 1) short-term credits secured by the equipment and on the products (maximum two years);
- 2) medium-and long-term credits for investment in fixed assets (maximum fifteen years); or
- 3) short-term credits with pledge, for the commercialization of products (up to six months).

32. Bancomext is the financial institution of the Mexican Government in charge of channeling credit, guarantees, and promotional services for Mexican exports. The bank directs its services to the public and private sectors to promote the exportation and importation of products, including agricultural products.

The main agricultural products exported in 1991 were vegetables, coffee, fruits, tomatoes, watermelons, and cantaloupes. During 1991, Bancomext granted 1.241 million United States dollars to finance the sales, production, and equipment of the agricultural sector. Such financing was channeled basically through the commercial banks and Fideicomiso Instituido para las Regiones Agrícolas. 1991 BANCOMEXT ANN. REP. 38-39.

through the association in a company. These companies, to which the *ejido* transfers the land, must comply with the dispositions analyzed in Section VI of this article.

Regarding parcels owned by each *ejidatario*, Article 79 provides that the *ejidatario* can use his or her parcel directly, or can grant use, without authorization, to other *ejidatarios*, third parties, or beneficiaries through any type of agreement not prohibited by law. The prior law did not permit such arrangements. Also the law provides that the *ejidatario* can transfer rights for beneficial use to newly-formed mercantile or civil companies.

C. *Regime for the Exploitation*

The abrogated law provided that the *ejidos* had to be exploited collectively unless the *ejidatarios* elected individual exploitation.³³ However, the New Agrarian Law provides that the *ejidatarios* can exploit their parcels collectively or individually, without needing the agreement by the meeting or the authorities of the *ejido*.

D. *Rural Companies*

The New Agrarian Law also provides that the *ejidos* can form cooperatives to coordinate their production and commercialization activities. The agreement to form the cooperative must be approved at a meeting of each one of the *ejidos* participating. The cooperative can (1) establish specialized companies to carry out its objectives, (2) permit optimal access to the productive system, (3) use natural resources, and (4) render services. The cooperative can adopt any type of company approved by law.³⁴

Rural Associations of Collective Interest can also be incorporated by *ejidos*, communities, cooperatives of *ejidos*, rural production companies, or cooperatives of these companies. Rural Associations combine human, natural, technical, and financial resources for the establishment of industries, commercialization systems, and other activities. Finally, producers can also incorporate companies of rural production for the objectives mentioned above.

33. Ley Federal de la Reforma Agraria [Federal Agrarian Reform Law] art. 130 (1991) (abrogated by New Agrarian Law)

34. Ley Agraria [New Agrarian Law] art. 126, D.O., Feb. 26, 1992.

VIII. AGRICULTURAL POLICY INSIDE MEXICO

Dr. Luis Téllez, the Deputy Secretary of Planning for the Agriculture Ministry, has summarized Mexico's agricultural guidelines as consisting of five basic points.³⁵ The first point concerns opening Mexico's economy to international markets by recognizing the price differences and governmental subsidies throughout the world.³⁶ The government will try to diminish such differences with a system of direct payment to requesting producers.³⁷ This system will permit Mexican producers to compete internationally and use the available resources more efficiently.

The second point concerns the need to organize agricultural activity internally. Organization will occur through the establishment of a market structure for the production, commercialization, and distribution of agricultural products.³⁸

The third point of the guidelines includes a definition of rural-ownership rights that will provide producers with certainty of ownership and will enable them to enter into different association agreements.³⁹ This certainty will necessitate a legal system that will protect the producers' rights and will oversee the compliance of such agreements. For this purpose, the Mexican government has begun to grant ownership titles to *ejidos* and communities. The present government firmly believes that private ownership is the solution to the agrarian problem.

As stated by a high government official, it is the intention of this government to stand the *ejido* system on its head and to cause as much *ejido* land as possible to revert to private ownership by encouraging each *ejidatario* to take title to his or her own parcel. Naturally, all such reversions are subject to the limitations of size provided in the New Agrarian Law. Fifty percent of Mexico's cultivated territory is divided into *ejidos* and communities that do not hold title to the property. The Mexican government intends to transfer title to 1/3 of the 50%, at a cost of approximately 300 million dollars.

35. See Amilcar Leis Márquez, *El agro ante la puerta grande del TLC*, EL ECONOMISTA, Sept. 22, 1992, at 33-34 (discussing five central points of agricultural policy).

36. *Id.*

37. *Id.*

38. *Id.*

39. Amilcar Leis Márquez, *El agro ante la puerta grande del TLC*, EL ECONOMISTA, Sept. 22, 1992, at 33-34.

Fourth, Mexico needs to increase its productivity by using new technology and by changing low-productivity cultivation methods to methods with higher value added. Also, Mexico needs to open foreign markets for its products.

The fifth and final point of the guidelines involves determining the dimensions of the Mexican government's role in the process.⁴⁰ This role will include facilitating the transition period, verifying compliance, establishing adequate infrastructure for the operation of a market system, protecting ownership rights of the producers, and instituting a support policy that will enable Mexico to enter the international market.⁴¹

This transition period is very critical and complex because of the serious problems of rural Mexico such as poverty, high death rates, demography, malnutrition, and ecological problems. Also contributing to the problems are external factors, such as a negative agricultural balance, decreasing international prices, disadvantageous interest rates, and distortions and subsidies in international trade.

IX. AGRICULTURE UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

The NAFTA establishes, for Mexico, bilateral commitments between Mexico and Canada, and Mexico and the United States, for the commerce of agricultural products. Mexico and the United States will immediately eliminate all non-tariff barriers by converting them into tariff or tariff-quota systems.⁴²

The tariff-quota system will allow each country to phase out barriers to those products sensitive to import competition.⁴³ Upon implementation of the NAFTA, Mexico and the United States will eliminate tariffs on many agricultural products.⁴⁴

Except for tariffs on those products susceptible to importations, other tariff barriers will be eliminated over a period not to exceed ten years.⁴⁵ Thus, the tariff phase-out period for such products as corn

40. *Id.* at 34.

41. *Id.* at 35. Mexico's countryside is competitive in tropical products, fruits and vegetables, coffee, grains, chilies, products from livestock, and processed fruits and vegetables.

42. North American Free Trade Agreement [NAFTA], Aug. 12, 1992, U.S.-Mex.-Can., pmbl., Agriculture (text revised Sept. 6, 1992).

43. *Id.*

44. *Id.*

45. *Id.*

and beans for Mexico and orange juice and sugar for the United States will continue for an additional five years.⁴⁶

Mexico and Canada will eliminate tariff and non-tariff barriers to their agricultural commerce, except those applicable to dairy products, and products from poultry-raising, egg production, and sugar production.⁴⁷ Also, Mexico and Canada will eliminate immediately, or in a maximum period of five years, the tariffs applicable to fruits and vegetables; and within ten years, tariffs on the rest of the products.⁴⁸ The NAFTA includes a special mechanism to apply safeguards to certain products, and the agreement recognizes the benefit of internal support programs to the agricultural sector and to agricultural trade.⁴⁹

The three party-countries appreciate that the use of subsidies is not appropriate within the free trade zone except when they are necessary to compensate for subsidies granted to imports from non-member countries.⁵⁰ The NAFTA establishes that when Mexico or the United States applies measures to regulate or commercialize a national product, the country applying the measure will grant a no-less-favorable treatment to similar imported products that are destined to be processed.⁵¹ To solve commercial disputes for these products, the three countries will establish a private mechanism.⁵² Also, a trilateral committee will survey the enforcement and practice of these dispositions.⁵³

X. THE IMPACT OF THE NORTH AMERICAN FREE TRADE AGREEMENT ON AGRICULTURE

Studying the reforms in the Mexican field, and the contents of the NAFTA regarding agriculture, shows the importance of analyzing how the NAFTA will affect rural Mexico. The agricultural sector in Mexico, in spite of its enormous difficulties, notorious deficiencies, and different regions and demography, faces an immense market challenge. The results of the negotiation of the NAFTA open new oppor-

46. NAFTA pmb., Agriculture.

47. *Id.*

48. *Id.*

49. *Id.*

50. NAFTA pmb., Agriculture.

51. *Id.*

52. *Id.*

53. *Id.*

tunities for the economic and social development of the rural Mexican countryside. New markets for the exportation of products will be open in the short and medium terms. Also, adequate protection periods will be obtained to adjust the Mexican agricultural economy to international competition.⁵⁴

Therefore, the opening of markets and the reasonable period of time the NAFTA provides Mexico to adjust its products to international competition will give Mexican producers the opportunity to experience the benefits of the NAFTA. Encouraging Mexican agriculture to export products of better quality will also bring higher private investment from national and foreign sources and higher investment from the producers.⁵⁵

XI. TAX INCENTIVES

The income tax law exempts companies from paying tax on income obtained from agriculture, livestock, forestry, or fishing, if the companies do not earn, in one year, the equivalent to twenty times the annual minimum wage for each one of its members.⁵⁶ Income exceeding this amount will be taxed at the rate of 30%.⁵⁷

The tax can be reduced by 50% if the taxpayers' exclusive activity is agriculture, livestock, forestry, or fishing; by 25% if the taxpayers process the products; or by 25% if the taxpayers perform commercial or industrial activities in which they obtain, as a maximum, 50% of their gross income.⁵⁸ *Ejid*os, communities, and their unions, rural associations of collective interest, and other agriculture and livestock groups are exempted from the payment of income tax.

XII. CONCLUSIONS

The modifications to Mexican agrarian legislation caused by the passage of the New Agrarian Law of February 26, 1992, will permit higher productivity in the Mexican agricultural sector and will increase the welfare of peasants. Stock companies will invest in the

54. See Amilcar Leis Márquez, *El agro ante la puerta grande del TLC*, EL ECONOMISTA, Sept. 22, 1992, at 33-34 (interviewing Dr. Luis Téllez discussing effect of the NAFTA on Mexican Agriculture).

55. *Id.*

56. Ley del Impuesto Sobre la Renta [Income Tax Law] art. 10-B, D.O., Dec. 30, 1980.

57. *Id.*

58. *Id.* art. 13.

agrarian sector for the first time. Foreign investment and the associations permitted under the agrarian law will contribute to optimal rural development, mechanization, and the production of quality products. The reforms sought in the production process and in the system of land ownership will permit Mexico to compete in the international markets and to face the NAFTA with the ability to export products of first quality.

The amendments to the law regarding *ejidos* will contribute to the success of agricultural family units. They allow the creation of rural associations and mercantile or civil companies to ensure the best use of the *ejido*-owned land. Paraphrasing Eylene Simpson's classical work, *The Ejido, Mexico's Way Out*,⁵⁹ I predict that the New Agrarian Law is going to result in: the *ejido* out, Mexico's way in.

59. EYLENE N. SIMPSON, *THE EJIDO: MEXICO'S WAY OUT* (1937).