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AN OVERVIEW OF CONSUMER TRANSACTIONS LAW IN MEXICO: SUBSTANTIVE AND PROCEDURAL ASPECTS

JORGE A. VARGAS*

I. INTRODUCTION

The emergence of a body of legal principles created to regulate consumer transactions in Mexico is a relatively new development. This field of law appeared with the enactment of the Federal Consumer Protection Act of 1975¹ (the "FCPA"), promulgated during the administration of President Luis Echeverria.² Mexico's very first legislative pronouncement regulating consumer transactions was inspired by United States statutes in this field, specifically the Consumer Credit Protection Act,³ the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (the "Magnuson-Moss Act"),⁴ the Uniform Consumer Credit Code⁵ and the Federal Trade Commission Act.⁶ Furthermore, the FCPA's major accomplishment—the establishment of the Office of the Federal Attorney General for Consumer Affairs in Mexico—was inspired by a United States bill, S. 4459, which proposed to establish an independent Consumer Protection Agency to protect and serve the interests of consumers (the "Senate Proposal").⁷ Although this bill was never passed

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1. D.O., Dec. 22, 1975 (Mex.) [hereinafter FPCA], *reprinted in* PROTECCION AL CONSUMIDOR (E. Nicolau & E. Aguilar eds. 1989). The text of this act appears in Spanish and includes its most recent amendments. For the English version of this act as originally enacted, see *DOING BUSINESS IN MEXICO* M2-1 app. (B. Carl trans.) (J. Norton ed. 1989).

2. The Echeverria administration (1970-76) was characterized by an impressive production of legislation. In addition to the FPCA, the administration also initiated the Technology Transfer Act, D.O., Dec. 30, 1972 (Mex.), the 1973 Foreign Investment Act, D.O., Mar. 9, 1973 (Mex.), and the 1976 Exclusive Economic Zone Act, D.O., Feb. 13, 1976 (Mex.).

3. 15 U.S.C. § 1601 (1988 & West Supp. 1989).

4. 15 U.S.C. § 2301 (1988 & West Supp. 1989).

5. UNIFORM CONSUMER CREDIT CODE (West Supp. 1969).

6. 15 U.S.C. § 41 (1988 & West Supp. 1989).

7. S. 4459, 91st Cong., 2d Sess. (1970) [hereinafter Senate Proposal]. The purpose of this bill was to establish a Council of Consumer Advisors in the executive office of the president and to establish an independent Consumer Protection Agency in order to protect

by the United States Congress, it is unquestionable that both the functions and the administrative mechanisms of resolving consumer complaints via a consumer protection agency contained therein were reproduced almost verbatim in the text of Mexico's FCPA.⁸ Even the innovative, non-traditional mechanism for solving consumer disputes by administrative mediation and arbitration, the core of the FCPA,⁹ was modelled after United States consumer practice.¹⁰

Section II of this Article addresses the climate leading to the development of consumer transactions law in Mexico. Section III focuses on the enactment of the FCPA in the mid-1970s. Section IV analyzes the substantive aspects of the FCPA, comparing its principles and institutions to similar rules in the United States' legal system. Section V explains the functions and responsibilities of the Office of the Federal Attorney General for Consumer Affairs. Finally, this Article concludes by providing empirical information on how the FCPA is being applied in the border city of Tijuana, Mexico.

II. THE CLIMATE LEADING TO CONSUMER PROTECTION IN MEXICO

A national trend in favor of consumer protection appeared in the United States in the early 1960s, precipitated by President Kennedy's adoption of a "Consumer Bill of Rights."¹¹ This enactment triggered considerable legislative activity initially directed at amending laws already enacted and later at creating statutes designed to give better protection to consumers.¹² Within this latter trend, five bills¹³ were introduced to

and serve the interests of consumers.

8. FCPA, arts. 57-66.

9. FCPA, art. 59, para. VIII.

10. Dispute mediation centers appeared in the United States in 1971 as an alternative mechanism against the legal system's adversarial approach to resolving disputes. See generally, ABA SPECIAL COMM. ON ALTERNATIVE DISPUTE RESOLUTION, *DISPUTE RESOLUTION: EXPLORING THE ALTERNATIVES* (1983).

11. This Consumer Bill of Rights covered issues such as the right to be heard, the right to be informed, the right to be safe, and the right to choose. See *Consumer Protection*, 77 PRAC. L. INST. 17-22 (1972).

12. See, e.g., Consumer Credit Protection Act, 15 U.S.C. § 1601 (1988 & West Supp. 1989); Fair Packaging and Labeling Act, 15 U.S.C. § 1451 (1988 & West Supp. 1989); Federal Hazardous Substances Act, 15 U.S.C. § 1262 (1988 & West Supp. 1989); Flammable Fabrics Act, 15 U.S.C. § 1191 (1988 & West Supp. 1989); National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 (1988 & West Supp. 1989); Radiation Control for Health and Safety Act, 42 U.S.C. § 263b-263n (1988 & West Supp. 1989).

13. The five bills are: (1) S. 4459, 91st Cong., 2d Sess. (1970), see *supra* note 7 and accompanying text; (2) S. 984, 92nd Cong., 1st Sess. (1971), which authorized classes of persons injured by unfair consumer practices unlawful under the Federal Trade Commission Act to seek relief; (3) S. 986, 92nd Cong., 1st Sess. (1971), which provided disclosure standards for written consumer product warranties against defect or malfunction, defined federal content standards for such warranties, and amended the Federal Trade Commission

Congress in the early 1970s which appear to have given rise to the substantive provisions of Mexico's FCPA.

Until the enactment of the FCPA, no form of consumer protection law existed in Mexico. Mexico followed the progress in the United States in this area by introducing consumer protection as part of a political presidential campaign strategy launched by Mexico's official party, the Institutional Revolutionary Party (the "PRI") in 1970.¹⁴ The PRI strategists thought that consumer protection was a new and creative area which could have a profound, positive impact on most Mexicans.¹⁵ When the PRI's presidential candidate, Luis Echeverria Alvarez, was elected, one of his first acts was to introduce consumer protection laws in Mexico.¹⁶ Prior to the enactment of the FCPA, traditional legal avenues offered very little relief to Mexican consumers, especially those with limited education and low economic means — approximately 85% of the Mexican population fell within this consumer category.¹⁷

In the decades following the end of World War II, Mexico became an attractive commercial arena for United States corporations.¹⁸ Mexico, a developing country in need of foreign capital and technologies, sought the necessary means to create jobs for an already large and expanding population.¹⁹ Moreover, it engaged in a political and legal strategy to attract foreign investments and technologies as an indispensable means to promote its efforts toward a more rapid industrialization.²⁰ This induced foreign corporations to establish operations in Mexico, producing *in situ* capital goods and products imported from other countries, principally the United States.²¹

Foreign investment contributed to an acceleration of Mexico's industrialization which, in turn, created jobs for its expanding population.²² This process resulted in an ever-increasing consumer popula-

Act in order to improve its consumer protection activities; (4) S. 1461, 92nd Cong., 1st Sess. (1971), which required the furnishing of documentation of claims concerning safety, performance, efficacy, characteristics, and comparative price of advertised products and services; and (5) H.R. 10835, 92nd Cong., 1st Sess. (1971), *see infra* note 224 and accompanying text.

14. LEY FEDERAL DE PROTECCION AL CONSUMIDOR COMENTADA Y CONCORDADA 27 (D. Kaye 2d ed. 1981) [hereinafter D. Kaye].

15. *Id.* at 26-27.

16. *Id.* at 29.

17. *Id.* at 30.

18. A. HOAGLAND, COMPANY FORMATION IN MEXICO B2-3 (1980).

19. *Id.* at A4-6.

20. According to statistical information provided by the Secretariat of Commerce and Industrial Development, about 7,000 foreign corporations operate in Mexico, including some 1500 assembly plants (*maquiladoras*), principally located along the United States border. *Id.* at A31-32; *see also* GOVERNOR'S OFFICE OF CALIF.-MEXICO AFF., STATE OF CALIF., THE MAQUILADORA INDUSTRY IN MEXICO 9 (1990) [hereinafter THE MAQUILADORA INDUSTRY].

21. THE MAQUILADORA INDUSTRY, *supra* note 20, at 5-6.

22. PRICE WATERHOUSE, DOING BUSINESS IN MEXICO 9 (1984). Foreign investment,

tion.²³ This unprecedented growth in the number of individuals joining the ranks of consumers, however, caught Mexico's legal and judicial systems rather unprepared. Traditional legal remedies provided by the civil and mercantile codes offered limited protection, mainly because they were drafted by legislators in an epoch in which more legal protection was given to merchants and service providers than to consumers.²⁴ Moreover, traditional legal avenues to be exercised through the civil court system were slow, procedurally complicated, and costly.²⁵

Between 1945 and 1975, Mexican courts virtually took no cognizance of cases involving consumer transactions.²⁶ It was not unusual for a Mexican consumer, in those days, to buy an electric domestic appliance, such as a refrigerator, a television set, or a toaster, and get the warranty, as well as the operating instructions, written in a foreign language, usually English. A more serious problem for the Mexican consumer was to determine whether that warranty was enforceable and, if so, what legal remedies were available if the appliance did not work or if it caused some damage or injury to the consumer, his immediate family, or his property. Prior to Mexico's enactment of the FCPA in 1975, the legal and judicial systems were clearly unprepared to cope with the numerous and varied kinds of legal complaints associated with consumer transactions.

Two conclusions were evident in this climate. First, virtually the entire Mexican population was left without effective legal remedies to protect themselves from the arbitrary, abusive, and dishonest practices of some Mexican merchants and service providers.²⁷ Second, in order to handle the increasing number of consumer complaints in an effective and expeditious manner, it was necessary to create a new and practical mechanism to solve those disputes.²⁸ This mechanism demanded a dif-

however, represents only about 5% of the total public and private investment. *Id.*

23. *Id.* The growth of consumer populations, however, has been limited because a large percentage (approximately 36%) of the population is "dependent on agriculture, cattle ranching, and other rural occupations." *Id.*

24. Traditional legal avenues centered on filing suits for breach of a civil or mercantile contract before a civil court. Interview with Lic. Palacios Battani, former Head of the Office of the Federal Attorney General for Consumer Affairs in Tijuana, Mexico (1982-88), in San Diego, Calif. (Feb. 5, 1990) [hereinafter Battani interview]. Proceedings were generally slow and technical and required the costly professional services of a Mexican attorney (*licenciado en derecho*). *Id.* In some cases, attorney's fees were larger than the total amount of the claim. *Id.* Considering the difficulties involved, most Mexicans opted not to sue and were virtually left defenseless. *Id.*

25. *Id.*

26. *Id.*

27. The National Mixed Committee for the Protection of the Salary, a labor organization, advocated the formulation of consumer protection legislation, alleging that "traditionally dishonest commercial practices, unfair disparity between consumers and merchants, and the unavoidable negative impact of persistent publicity on the consumer population propitiated reiterated abuses to the consumer." D. Kaye, *supra* note 14, at 27.

28. Among the problems faced by courts in the early 1970s was a tremendous case

ferent system from the traditional legal means, because Mexico's legal system was generally cumbersome and costly.²⁹ As a result, the FCPA's adjudicatory mechanism to solve consumer disputes, formed by an eclectic procedure combining conciliation and arbitration in a two-tier system, constitutes one of the most innovative approaches to solving disputes in a nontraditional judicial setting.³⁰ This nontraditional mechanism, not coincidentally, was initiated and developed in the United States³¹ prior to the creation of the Office of the Attorney General for Consumer Affairs.³²

From a public interest viewpoint, the success achieved by the implementation and enforcement of this unprecedented type of legislation in Mexico since its adoption over a decade ago may be attributed to the leading role that the federal executive played in this area. The executive's decisive intervention in this new field was based upon the premise that if the existence and implementation of the principles and new institutions of this legal arena were to be effective, one of the very basic obligations of the Mexican Government would be to educate the Mexican population about consumer rights and consumer transactions law.³³ The Mexican Government played a vigorous role in this field, characterized by most Mexican doctrinarians as one of the newest additions to that distinct notion known in Mexico as social law.³⁴

III. THE ENACTMENT OF THE FCPA IN MEXICO

The enactment of consumer transactions law in Mexico was largely the result of a strong initiative advanced by the National Mixed Commission for the Protection of the Salary (the "Salary Commission"). This laborer's organization—politically powerful and closely associated with the Laborer's Confederation of Mexico (the "CTM")³⁵—proposed

overload. Battani interview, *supra* note 24. This was an added deterrent for consumers who sought a traditional legal avenue for their grievances. *Id.*

29. Before deciding to take a case to a traditional court, the Mexican consumer had to consider the following: the costs of attorney's fees; uncompensated salary; fear of the court system and of defendants who could afford better representation; and the uncertainty of the legal outcome. *Id.* These factors often deterred the consumer from taking a grievance through the traditional legal route. *Id.*

30. The FCPA, a beneficial system for settling consumer disputes, has been characterized as "an innovation which revolutionizes our traditional legal system," placing consumer transactions law within the ambit of 'social law.' D. Kaye, *supra* note 14, at 32.

31. *See supra* note 10.

32. *See infra* notes 222-94 and accompanying text.

33. D. Kaye, *supra* note 14, at 35-39.

34. *See infra* notes 42-93 and accompanying text.

35. CTM is the laborer's arm of Mexico's official party, the Institutional Revolutionary Party ("PRI"). This political party is a triad, divided into national confederations representing three large sectors, namely: 1) the laborers, represented by CTM; 2) the

that the Echeverria administration enact "consumer protective legislation . . . as an important avenue towards social justice."³⁶ The Salary Commission's initiative immediately caught the attention of the new administration. President Echeverria's administration created a program to introduce a higher degree of efficiency and technical expertise in Mexico's federal public administration.³⁷ Subsequently, the establishment of the Office of the Federal Attorney General for Consumer Affairs,³⁸ as well as the National Consumer's Institute,³⁹ followed as part of this administrative reform. The Echeverria administration was also known for its clear political orientation in favor of the rights and interests of the Mexican people.⁴⁰ This orientation in favor of the economically underprivileged led to the use of the term "populist" to characterize this regime.⁴¹

A. *The Salary Commission's Proposal*

It is only logical to expect that any legislation created to protect consumers should be formulated and proposed by consumers. Mexico is unique in this regard because the national labor association, whose major purpose is to protect the acquisitive power of the Mexican minimum wage laborers at the lowest economic strata, submitted to the government of Mexico a complete draft of consumer legislation.⁴² In the early 1970s, the unfair and disproportionate relationship between merchants and consumers in Mexico was a recurring theme.⁴³ Labor unions depicted merchants as powerful and dishonest, while the consumers (in reality, laborers working for minimum wages) were described as poor, uneducated, and unprotected legally.⁴⁴ The original setting of the confrontation between these two types of actors was more political than legal, taking place in a philosophical context reminiscent of the confrontation between capitalism and socialism.⁴⁵ Thus, labor unions were vocal in alleging that consumers needed to acquire goods and services, yet they lacked the legal mechanisms necessary to defend themselves, and thus, were forced to

peasants, represented by the National Confederation of Peasant's Organizations ("CROC"); and 3) the bureaucrats, represented by the National Confederation of Popular Organizations ("CNOP"). A. HOAGLAND, *supra* note 18, at A20-22.

36. D. Kaye, *supra* note 14, at 27.

37. *Mexico Faces a Year of Official Austerity*, LATIN AM. NEWSL., Jan. 2, 1976, at 2.

38. FCPA, arts. 57-66; *see infra* notes 228-94 and accompanying text.

39. *Id.* arts. 67-75; *see infra* notes 42-93 and accompanying text.

40. *See* Onis, *Victory Sizeable in Mexican Vote*, N.Y. Times, July 7, 1970, at A16, col. 1.

41. Epstein, *Business-Government Relations in Mexico: The Echeverria Challenge to the Existing Model*, 12 CASE W. RES. J. INT'L L. 525, 525 (1980).

42. D. Kaye, *supra* note 14, at 27.

43. *Id.*

44. *Id.* at 33.

45. *Id.* at 32.

agree to very unfair conditions.⁴⁶ In addition, the Salary Commission argued that the traditional legal system permitted, because of its capitalist orientation which promoted a laissez-faire philosophy, "the renunciation of the few and fragmented norms which, otherwise, would protect the rights and interests of the Mexican consumers."⁴⁷ The Salary Commission made specific reference to a long list of "legal anomalies" which adversely affected the relationship between merchant and consumer, such as "the tactical disparity between the parties in the contractual relationship, the numerous legal lacunae, and the negative influence produced over the consumer population by constant publicity, characteristic of a consumer society."⁴⁸

The Salary Commission formulated a draft Consumer Protection Act based on three fundamental notions: 1) the articulation of a set of eight legal principles designed for the protection of consumers; 2) the establishment of the Office of the Federal Attorney General for Consumer Affairs; and 3) the creation of the National Consumer's Institute.

1. Eight Legal Principles Designed to Protect Consumers

There are eight legal principles which the Salary Commission adopted while drafting the Consumers Protection Act. In general, all of these legal principles were incorporated into the FCPA. The first legal principle is that the consumer protection norms may not be legally renounced.⁴⁹ Thus, any provisions enumerated within the statute are legally binding requirements, thereby enforcing the ultimate goal of the Act, the protection of the consumer. Second, the legal relationship between the merchant and the consumer should be based on the "principle of truthfulness."⁵⁰ Any publicity regarding goods or services should be objective, accurate, and truthful. This terminology is reminiscent of the legal principles set forth in the United States Consumer Credit Protection Act,⁵¹ (also known as the Truth In Lending Act). This principle is expressly articulated in the text of Mexico's FCPA, regarding sales and promotions.⁵²

The third legal principle flows from the principle of truthfulness—contracts should be subject to the "principle of transparency," requiring that contractual arrangements should be drafted in a precise

46. *Id.* at 27.

47. *Id.*

48. *Id.*

49. *Id.* at 28.

50. *Id.*

51. 15 U.S.C. § 1601 (1988 & West Supp. 1989).

52. FCPA, arts. 15-19.

and clear manner.⁵³ This principle allows consumers to be fully aware of their rights.

The fourth legal principle concerns warranties. The underlying principle of the Salary Commission's draft of the Act is that warranties of any goods or services should be legally enforceable.⁵⁴ Until the enactment of the FCPA, warranties in Mexico were unenforceable.⁵⁵ Rather than adopt the detailed provisions on this subject contained in the United States Magnuson-Moss Act,⁵⁶ the Mexican legislature chose the most basic legal premises applicable to the enforcement of warranties in the FCPA.⁵⁷

The theory that public authorities should have the power to establish the maximum interest rates, as well as the total amount of expenses associated with a credit transaction is the fifth legal principle suggested by the Salary Commission.⁵⁸ A maximum interest rate was not incorporated into the Mexican legal system until the enactment of the FCPA.⁵⁹ Prior to that time, many consumers suffered because of the high interest rates, sometimes over 100%, arbitrarily imposed by merchants and service providers.⁶⁰ Pursuant to the FCPA, the Secretariat of Commerce and Industrial Development (the "Secretariat of Commerce") is legally empowered to establish the maximum interest rate in credit transactions, which was fixed at 25%.⁶¹

The sixth legal principle suggested by the Salary Commission and incorporated within the FCPA, is that consumers should have the legal right to modify, through judicial means, unilateral clauses included by merchants and service providers in adhesion contracts.⁶² One of the areas of consumer transactions which was steadily controlled by merchants and service providers was adhesion contracts.⁶³ The lack of regulation and control on the part of Mexican federal authorities, coupled with the disproportionate negotiating capabilities between consumers and merchants, led to very serious and unfair contractual inequalities.⁶⁴ Provisions in the FCPA, for the first time in the legislative history of Mexico, were designed to correct these inequalities.⁶⁵ Eventually, legal

53. D. Kaye, *supra* note 14, at 28, 31-32.

54. *Id.*

55. *Id.*

56. 15 U.S.C. § 2301 (1988 & West Supp. 1989).

57. FCPA, arts. 10-11.

58. D. Kaye, *supra* note 14, at 32, 109; *see also* FCPA, art. 20.

59. FCPA, arts. 22-23; D. Kaye, *supra* note 14, at 113-14.

60. D. Kaye, *supra* note 14, at 113-14.

61. FCPA, arts. 23-26.

62. *Id.* arts. 63-64.

63. D. Kaye, *supra* note 14, at 33; *see also* FCPA, arts. 27, 63.

64. D. Kaye, *supra* note 14, at 27, 31.

65. Articles 63 and 64 of the FCPA were designed to correct these inequalities. FCPA,

protection offered to consumers by the Secretariat of Commerce in this area led to the establishment of a Public Registry of Adhesion Contracts.⁶⁶

The seventh legal principle suggested by the Salary Commission is that consumers should be able to utilize administrative procedures to correct or change misleading practices engaged in by merchants, or any unfair treatment inflicted upon consumers.⁶⁷ This principle is based upon the premise that consumers are not likely to resort to the traditional judicial proceedings—recognized to be technical, slow, and costly—to obtain redress in cases involving consumer claims.⁶⁸ Administrative procedures were included in the FCPA as special, nontraditional adjudicatory mechanisms relying on mediation and arbitration to settle consumer grievances.⁶⁹ Adjudicatory mechanisms were already being utilized in the United States as an alternative method to settle consumer claims.⁷⁰

Finally, the legal principle that competent authorities should regulate the advertising and conduct of sales, as well as special offers, was incorporated into the FCPA.⁷¹ The above eight legal principles which originated within the Salary Commission's draft of the Consumers Protection Act, have shaped and continue to shape Mexican consumer transaction law today.

2. The Establishment of the Office of the Federal Attorney General for Consumer Affairs

The Salary Commission proposed detailed functions for the Office of the Federal Attorney General for Consumer Affairs.⁷² According to the Commission, it should represent all consumers before any authorities or any merchants or service providers; however, in some instances, it may be able to represent consumers on an individual basis.⁷³ The idea of a consumer protection agency clearly stems from Section 201 of the United States' bill, S. 4459.⁷⁴ This bill provided that an "independent agency within the executive branch of the government" is to be established, known as the Consumer Protection Agency.⁷⁵ Furthermore, some of the

arts. 63-64.

66. *Id.*

67. D. Kaye, *supra* note 14, at 28.

68. *Id.* at 28, 134-37.

69. FCPA, art. 59, para. VIII.

70. *Consumer Protection*, *supra* note 11, at 17-22.

71. FCPA, arts. 5-19.

72. D. Kaye, *supra* note 14, at 28-29.

73. *Id.*

74. Senate Proposal, *supra* note 7, § 201(a).

75. *Id.* § 202.

functions to be performed by the Office of the Attorney General for Consumer Affairs were taken from section 202 of the bill.⁷⁶ According to the bill, the Consumer Protection Agency was to:

(1) represent the interests of consumers in proceedings before federal executive agencies and federal courts . . . ; (3) receive and evaluate complaints from consumers and refer complaints to the appropriate federal executive agency and state and local agency . . . ; (6) disseminate information of importance to consumers . . . ; (7) cooperate with an encourage private enterprise in the promotion and protection of consumer interests⁷⁷

3. The National Consumer's Institute

The National Consumer's Institute was proposed by the Salary Commission as an institution devoted to the education of the Mexican population concerning their rights and obligations as consumers.⁷⁸ The Salary Commission argued that because consumer protection was an entirely new field in Mexico, it was necessary to teach the Mexicans about the content and scope of the proposed federal legislation, otherwise its provisions would be rendered completely ineffective.⁷⁹

It is inevitable that along with the new legal measures to be adopted, consumers must be given the necessary orientation, not only to be prepared to demand respect and compliance to their rights, but also to make themselves aware of the important role they as consumers are to play as active subjects in the entire economic process. By learning this, consumers may be able to spend their salary in a rational manner, thus developing a very much needed ability to become wise consumers, capable of buying in the right way and utilizing their income in the best possible manner.⁸⁰

Specifically, the Salary Commission proposed that the Institute perform six functions.⁸¹ First, the Institute should be responsible for compiling, preparing, processing, and disseminating information to assist the consumer in obtaining better knowledge regarding goods and services being offered in the market.⁸² Second, the orientation of industrialists and merchants on the specific needs and interests of the consumer population should be conducted by the Institute.⁸³ Third, the Institute

76. *Id.*

77. *Id.* § 201(a).

78. D. Kaye, *supra* note 14, at 29.

79. *Id.*

80. *Id.*

81. *Id.* at 29.

82. *Id.* at 28-29.

83. *Id.* at 29.

should undertake and support surveys and research on consumer questions.⁸⁴ Fourth, the Institute should promote educational programs at all levels regarding consumer protection, a necessary component to an effective system.⁸⁵ Fifth, the Institute should foster the establishment or, if appropriate, the improvement of a variety of systems and mechanisms to help consumers obtain access to goods and services.⁸⁶ Finally, the Institute should attempt to rationalize the relationship between production and consumption.⁸⁷ Most of the proposals suggested by the Salary Commission to the Echeverria administration were incorporated, not only in the legislative bill introduced by the executive branch of the government to the Mexican Congress, but also in the final text of the FCPA.⁸⁸

In the United States, the Senate proposal specifically emphasized providing information to the consumer.⁸⁹ Section 205 of this bill provided that the director of the Consumer Protection Agency was authorized to "conduct research, investigations, conferences, and economic surveys concerning the needs, interests and problems of consumers, including the execution of federal laws for the protection of consumer interests."⁹⁰ In addition, the director of the agency was authorized to "[a]nalyze and disseminate to the public information obtained or developed under this section."⁹¹ As discussed above, these provisions evidently inspired the creation of the National Consumer's Institute under the FCPA.⁹²

B. The Echeverria Administration's Role in the Development of Consumer Protection

The Echeverria administration was described as a populist regime.⁹³ This characterization suggests the high political priority given to popular concerns, such as education, low-income housing, development of urban infrastructure, good communications within the country, adequate employment, and accessible health, medical services, and medication.⁹⁴ Consumer protection, as a means of protecting the acquisitive economic power of most Mexicans, was certainly included as part of this populist approach.

84. *Id.*

85. *Id.* at 29, 139-42.

86. *Id.*

87. *Id.*

88. FCPA, arts. 67-75.

89. Senate Proposal, *supra* note 7, § 205(a)(2).

90. Senate Proposal, *supra* note 7, § 205(a)(1); *cf.* FPCA, art. 69, paras. III-IV, VI.

91. FPCA, art. 69, paras. I-II, V; *cf.* Senate Proposal, *supra* note 7, § 205(a)(1).

92. FPCA, arts. 67-69.

93. Epstein, *supra* note 41, at 525.

94. *Id.* at 528.

Historically, the Mexico of the early 1970s was a nation marred by a variety of severe problems including inflation, serious unemployment, and a tremendous increase in oil prices.⁹⁵ Other concerns included a growing need to educate the Mexican population to rationalize salary spending and, in particular, the illegal and abusive practices engaged in by most merchants and service providers.⁹⁶ These practices continued because most Mexicans avoided the remedies available to consumers via the traditional legal system which were slow, cumbersome, and quite costly.⁹⁷

Prior to the enactment of the FCPA, the Mexican merchant's philosophy could be stated as follows: "[I]f the domestic appliance the consumer bought at my store did not work, let the consumer sue me."⁹⁸ Needless to say, the consumer was aware that if he sued the merchant, the consumer would have to hire an attorney and proceed through a tortuous legal path full of obstacles and delays, with no guaranteed results in his favor. In addition, most of the Mexican consumer population in the 1970s was not aware of consumer rights, warranties, or consumer protection.⁹⁹ In September 1975, the Echeverria administration introduced to the Mexican Congress,¹⁰⁰ a bill on consumer protection, accompanied by the following statements:

1. Traditional legal remedies were not sufficient to regulate and control the "harmful practices, often times ancient, which produced a clear distortion in consumer habits, injuring the interests of the public at large, the income of families and even the dignity of the citizens."¹⁰¹
2. The FCPA replaces the notion of fault as a cause for non-compliance, and introduces the concept of "objective responsibility."¹⁰²
3. The legal definition of "merchant" is expanded to include "those who *accidentally* conduct acts of commerce."¹⁰³
4. The Office of the Federal Attorney General for Consumer Affairs, as well as the National Consumer's Institute, "are innovations that have revolutionized our traditional legal

95. *Id.* at 526-28.

96. D. Kaye, *supra* note 14, at 31.

97. R. BRAÑES, DERECHO AMBIENTAL MEXICANO 44-51 (1987)

98. Battani interview, *supra* note 24.

99. *Id.*

100. Articles 71 and 72 of the Mexican Constitution provide the process for law formation. MEX CONST. (Editorial Porrúa 88th ed. 1990). In Mexico, close to 90% of legislative bills are initiated by the executive branch of the government.

101. D. Kaye, *supra* note 14, at 31.

102. *Id.*

103. *Id.*

system, placing this new kind of law within the realm of '[s]ocial [l]aw,' thus giving it the recognition of public law; recognition which now applies to an area which traditionally was considered a part of the private sphere."¹⁰⁴

5. Market complexity, increase in income levels, popular demand for better quality products, an exponential growth in information systems, high inflation, and a popular interest in favor of consumer rights,¹⁰⁵ were listed among the factors which contributed to accelerate consumer protection programs in Mexico.¹⁰⁶

The Echeverria administration supported the idea of federal legislation on consumer rights as a means of protecting Mexican consumers, in particular, those at the lowest socio-economic level.¹⁰⁷ At the same time, the Echeverria administration decided to initiate an educational campaign, unprecedented in the history of Mexico, in order to teach the majority of the Mexican population about consumer rights.¹⁰⁸ Thus, legal protections were to be provided by the establishment of the Office of the Federal Attorney General for Consumer Affairs and educational programs, through the services and activities conducted by the National Consumer's Institute, as proposed by the Salary Commission.¹⁰⁹

Because of this concern in favor of protecting the rights of the majority of the Mexican population, as opposed to the legal and economic interests of a limited but powerful group of merchants and service providers, Mexican consumer transactions law is generally characterized as social law.¹¹⁰ This type of law is derived directly from Mexico Constitution of 1917, in particular, Articles 27 and 123.¹¹¹ The first of these precepts establishes a communal property system, known in Mexico as the *Ejido* system, favoring property rights of rural communities instead of individual rights granted to agricultural entrepreneurs.¹¹² Article 123 constitutes a fundamental catalog of labor rights and represents the protective public policy, sometimes labelled as paternalistic, followed in Mexico in relation with labor law questions.¹¹³ Another

104. *Id.* at 32.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 33.

109. *Id.* at 29.

110. *Id.*

111. MEX. CONST. arts. 27, 123.

112. *Id.* art. 27, para. VII.

113. Article 123 of the Mexican Constitution deals with most aspects of labor law, including minimum wages, minor's labor, women's labor, strikes, right to unionize, salary payment, vacations, training programs, and individual and collective labor contracts. *Id.* art.

example of social law in Mexico, in addition to the traditional examples of agrarian law, labor law, and consumer transactions law, is environmental law.¹¹⁴ Social law is identified with that distinct set of legal principles, neither belonging to public law nor to private law, which were derived from the Mexican Constitution, and were created to protect the collective rights of the Mexican population.¹¹⁵ These principles are part of the political philosophy emanating from the 1910 Revolution.¹¹⁶ Mexican authors describe it as a hybrid kind of law where a set of principles of an eclectic nature is formed with elements from both public and private law.¹¹⁷

II. SUBSTANTIVE AND PROCEDURAL ASPECTS OF MEXICO'S FCPA OF 1975

In Mexico, the FCPA is the most popular federal statute, second only to the Mexican Constitution. By and large, most Mexicans consider it "a practical and modern statute" because it regulates and protects consumer transactions taking place on a daily basis.¹¹⁸ The statute provides means for very simple settlement procedures, provided by a federal authority, free of cost,¹¹⁹ thereby dispensing with the need to employ the costly services of an attorney. In addition, Mexico's consumer population is of the opinion that this federal statute has clearly contributed to form a "consumer protection conscience" among Mexicans, fostering a more balanced and equitable relationship between merchants and consumers.¹²⁰

The National Consumer's Institute is, to a large extent, responsible for the relative familiarity most Mexican consumers have with the content and functioning of the FCPA. Since the Institute's inception in early 1976, this federal organ has devoted a substantial part of its functions and programs to teaching Mexicans about the rights and obligations contained in the FCPA, how those rights may be enforced, and how those provisions may effectively protect any individual consumer in Mexico.¹²¹ The Mexican working stratum at the lowest economic level,

123.

114. R. BRAÑES, *supra* note 98, at 40-51.

115. D. Kaye, *supra* note 14, at 32.

116. A. HOAGLAND, *supra* note 18, at A12-13, 16-17.

117. See J. CARPISO, LA CONSTITUCION MEXICANA DE 1917, at 93-105 (1980).

118. Battani interview, *supra* note 24.

119. FCPA, art. 59, para. V.

120. Battani interview, *supra* note 24.

121. The Institute regularly organizes workshops and seminars in workplaces, schools, and community centers to teach Mexicans about the FCPA and consumer protection. In addition, it has printed and distributed millions of copies of the FCPA explaining how individual consumers can take advantage the law. See FCPA, art. 68, paras. (a)-(b), 69, paras. I, IV-V.

those who are minimum wage earners or belong to labor unions or workers' cooperatives, is the group most familiar with the FCPA's provisions.¹²² The FCPA is composed of ninety-eight articles, divided into thirteen chapters.¹²³ Since it entered into force on February 5, 1976, it has been amended twenty-nine times,¹²⁴ most recently in February 1989.¹²⁵

A. *The Jurisdiction of the FCPA*

Any consumer transaction taking place in Mexico by means of a contract entered into between a merchant and a consumer is regulated by the FCPA.¹²⁶ Under Mexican law, provisions of this statute are granted the highest legal rank, second only to constitutional precepts.¹²⁷ The FCPA possesses four distinct legal features. First, its provisions are of a federal nature, with the Mexican Congress empowered to legislate on commerce questions.¹²⁸ Consequently, this statute applies to the entire Republic of Mexico. Second, its provisions concern "[public order] and social interest."¹²⁹ In Mexico, these norms are derived directly from the sovereign powers of the state, as reflected in its Constitution.¹³⁰ These are the public norms upon which law and order are established; they are enforced by the government to protect the interests of the Mexican population and are considered to be an essential component of the state.¹³¹

Third, the FCPA's provisions may not be waived by the agreement of the parties.¹³² Under the traditional norms in the civil and commercial law forming a part of Mexican private law, the parties to an agreement retained an inherent right to waive certain rights in any contractual arrangement.¹³³ This legal option was utilized by merchants in adhesion

122. Battani interview, *supra* note 24.

123. The chapter headings of the FCPA are: 1) Definitions and Jurisdiction; 2) Regarding Advertising and Warranties; 3) Consumer Credit Transactions; 4) Regarding Liabilities for Non-Performance; 5) Services; 6) House to House Sales; 7) General Provisions; 8) Office of the Federal Attorney General for Consumer Affairs; 9) National Consumer's Institute; 10) Legal Status of Personnel; 11) Inspection and Surveillance; 12) Penalties; and, 13) Administrative Appeals.

124. *See supra* note 1.

125. Special decree by the Federal Attorney General of Consumer Affairs delegating powers concerning inspections and penalties, D.O., Feb. 8, 1989. The Spanish text of this decree appears in PROTECCION AL CONSUMIDOR, *supra* note 1.

126. FCPA, art. 2.

127. D. Kaye, *supra* note 14, at 73-79.

128. MEX. CONST. art. 73.

129. FCPA, art. 1.

130. MEX. CONST. arts. 49-50.

131. D. Kaye, *supra* note 14, at 74-78.

132. FCPA, art. 1.

133. D. Kaye, *supra* note 14, at 77-78.

contracts, prior to the enactment of the FCPA, to limit or sometimes eliminate certain legal rights which favor consumers.¹³⁴ Because of this unfair practice, the federal legislature, agreeing with the proposal made by the Salary Commission, stipulated that the FCPA's provisions, and in particular those norms granting specific rights to consumers, were impossible to renounce legally.¹³⁵ Therefore, under Mexican law, any waiving of rights guaranteed in the FCPA is considered void and legally ineffectual.¹³⁶

Fourth, the FCPA regulates and controls any consumer transaction in Mexico, despite "any other stipulations established by other statutes, customs, practices, usages or contractual provisions to the contrary."¹³⁷ This stipulation clearly emphasizes the preeminence of FCPA in the area of consumer transactions *vis-a-vis* any other statutory materials (federal or state) or private contractual arrangements, when such statutes or contracts run contrary to the provisions of the FCPA.

In Mexico, the Federal Congress is solely responsible for any matters affecting commerce.¹³⁸ Until now, this was interpreted as a constitutional impediment on states' powers to legislate on matters concerning consumer transactions.¹³⁹ This interpretation is at variance with the policy adopted in the United States where individual states play a decisive legislative role in regulating consumer transactions in areas already covered by federal legislation.¹⁴⁰ The high degree of centralization which currently prevails in Mexico, together with the effective results produced until now by the application of the FCPA, explains the passivity that states have shown in the area of consumer transactions. With the increased political autonomy gained by Mexican states in recent years, and with the strengthening and diversification of their respective economies, a change in Mexican policy may be seen in the future, bringing it in closer symmetry with United States policy in this area.

The creation of the Office of the Federal Attorney General for Consumer Affairs was a key factor in guaranteeing the rapid success of the FCPA in Mexico. Because this federal statute covers a variety of consumers transactions under Mexican law,¹⁴¹ the FCPA provides that its

134. Battani interview, *supra* note 24.

135. FCPA, art. 1.

136. *Id.* art. 64.

137. *Id.*

138. Article 73 of the Mexican Constitution empowers the Federal Congress with the exclusive attribution "to legislate for the entire Republic on hydrocarbons, mining, film industry, *commerce*, gambling, credit and banking services, electric and nuclear energy" MEX. CONST. art. 73, § 10.

139. Battani interview, *supra* note 24.

140. An example of this is federal and state legislation on used cars. *See generally*, D. PRIDGEN, CONSUMER PROTECTION AND THE LAW §§ 15.1-15.30 (1989).

141. Such as purchase-sale contracts, restaurants, hotels, packaging, labeling, and transportation.

enforcement will be delegated to various corresponding federal departments or agencies, pursuant to the Organic Act of the Federal Public Administration¹⁴² and the Federal Act on Parastatal Entities.¹⁴³ For example, tourism questions are referred to the competence of Secretariat of Tourism; transportation issues are regulated by the Secretariat of Communications and Transportation; and chemical ingredients in food products are regulated by the Secretariat of Health.¹⁴⁴ Transactions which do not clearly fall under the administrative competence of any of these federal departments, however, are placed under the joint jurisdiction of the Secretariat of Commerce and the Office of the Federal Attorney General for Consumer Affairs.¹⁴⁵

The FCPA provides that any federal, state, and municipal authorities are empowered as "auxiliary organs" regarding the statute's application and enforcement aspects. In a rather unusual stipulation, the FCPA further provides that all federal prosecutors in Mexico (*agentes del ministerio publico federal*)¹⁴⁶ are to inform and guide consumers regarding the FCPA's "scope, procedures and competent authorities" empowered to have jurisdiction on consumer grievances.¹⁴⁷ It appears somewhat strange that federal district attorneys, empowered under Mexican law to prosecute federal crimes and who play a decisive role in the combat of drug smuggling, are also charged with this public information responsibility.

The FCPA applies not only to "merchants, industrialists, and persons rendering services,"¹⁴⁸ but also to "decentralized organizations and government agencies . . . where they carry on activities for the production, distribution or marketing of goods or rendering of services to consumers."¹⁴⁹ The rendering of professional and financial services, as well as those stemming from a labor agreement, however, are exempted from the scope of the FCPA.¹⁵⁰

As a consequence of a recent amendment, the FCPA also regulates the leasing of house dwellings in Mexico City.¹⁵¹ Two explanations may

142. D.O., Jan. 1, 1977 (Mex.).

143. D.O., May 14, 1986 (Mex.).

144. Organic Act of the Federal Public Administration, D.O., Jan. 1, 1977 (Mex.).

145. FCPA, art. 1.

146. These prosecutors are the functional equivalent of district attorneys in the United States, participating in cases involving federal crimes, in particular, drug offenses.

147. FCPA, art. 1.

148. *Id.* art. 2.

149. *Id.*

150. *Id.* art. 4. Article 3 also provides for the legal definitions of "consumer," "suppliers," and "merchants." *Id.* art. 3. For purposes of the Act, "consumer shall mean any person who contracts for his personal use to acquire, lease or use goods, or to secure a service." *Id.*

151. *Id.* art. 57.

be offered for this development. First, civil courts were getting overburdened with prolonged litigation on leasing contracts.¹⁵² Second, given the heavy deficit that Mexico City faces on house dwellings, a considerable number of landlords were subjecting the lessees to unfair contractual leasing arrangements.¹⁵³ Therefore, prompted by the social law orientation of the FCPA, the federal executive included this protection for "consumer-lessees" in Mexico City.¹⁵⁴ This type of consumer protection in leasing arrangements was the product of the Mexican legislature's ingenuity in attempting to solve a growing and pressing urban problem in the world's largest city. Due to the fact that the deficit of house dwellings in urban centers constitutes one of the major problems in a number of developing countries, particularly those in Latin America,¹⁵⁵ it is important to determine whether this Mexican model for "consumer-lessee protection" will inspire a similar type of response in other cities plagued by similar urban problems.

B. Substantive Provisions of the FCPA

The FCPA regulates the widest and most varied types of transactions involving consumers. In the United States, these transactions are controlled by several statutes, involving various federal agencies.¹⁵⁶ Therefore, the fact that most consumer transactions are regulated and

152. Battani interview, *supra* note 24.

153. *Id.*

154. In Mexico City, leasing arrangements are regulated by the basic principles of contracts contained in the Civil Code, as well as the provisions of specific legislation. C.C.D.F. arts. 2398-2515. Although the FCPA was formally amended to include under its protection leasing arrangements taking place in Mexico City, no amendments were made to the Civil Code or any other pertinent legislation. It would appear, therefore, that the intervention of the Federal Attorney General for Consumer Affairs on these leasing disputes is based more on principles of fairness and justice, rather than the application of legal provisions *per se*. This appraisal of the role played by the Office of the Federal Attorney General for Consumer Affairs would place this type of settlement closer to notion of "equity" as it is known and practiced in common law countries; a notion which, until now, has not been identified with the legal tradition pertaining to a civil law country such as Mexico. *See generally*, J. MERRYMAN, *THE CIVIL LAW TRADITION*, 48-55 (1985).

155. *See generally* HOUSING NEEDS AND POLICY APPROACHES: TRENDS IN THIRTEEN COUNTRIES (W. van Vliet, E. Huttman & S. Fava eds. 1985).

156. Fair Packaging and Labeling Act, 15 U.S.C. § 1451 (1988 & West Supp. 1989); Federal Hazardous Substance Act, 15 U.S.C. § 1262 (1988 & West Supp. 1989); Flammable Fabrics Act, 15 U.S.C. § 1191 (1988 & West Supp. 1989); Fur Products Labeling Act, 15 U.S.C. §§ 69-69j (1988); Postal Service Mail Fraud Act of 1972, 18 U.S.C. § 1341 (1988 & West Supp. 1989); Radiation Control for Health and Safety Act, 42 U.S.C. § 263 (1988 & West Supp. 1989); Securities Act of 1933, 15 U.S.C. § 77 (1988 & West Supp. 1989); Securities Exchange Act of 1934, 15 U.S.C. § 78 (1988 & West Supp. 1989); Truth in Mileage Act of 1986, 15 U.S.C. § 1901 (1988 & West Supp.); U.C.C. § 2-313 (1989). For a list of some of the statutes which influenced the structure and content of Mexico's FCPA, see *supra* notes 3-6 and accompanying text.

codified in Mexico in a single statute represents a clear advantage for Mexican consumers. A brief overview of the FCPA's salient legal principles enhances the understanding of this modern and innovative area of Mexican law.

1. Advertising and Labeling

Merchants and service providers are under an obligation to provide "truthful and sufficient information" to consumers.¹⁵⁷ Misleading advertising, labeling or marking concerning the origin, components, uses, characteristics and properties of any kind of product or service is prohibited.¹⁵⁸ Prior to the FCPA, Mexico had no regulations regarding advertising or labeling; therefore, this was an area with no legal precedent under the Mexican legal system. Consequently, the provisions on advertising and labeling contained in the FCPA are extremely simplistic. Mexico has not yet developed the marketing and advertising skills associated with commercial activities in the United States, nor is there the necessity to disclose information concerning "the origin, components, uses, characteristics and properties" of any kind of product or service.¹⁵⁹ The fact that the FCPA required merchants and service providers "to give truthful and sufficient information" was considered to be, even in theoretical terms, quite an achievement.

Gradual enforcement of FCPA's provisions in this area produced a dual effect. First, it led to better coordination among the administrative departments with jurisdiction over these cases, recognizing the leading role the Secretariat of Commerce plays in these activities.¹⁶⁰ Second, it induced the administrative agencies involved in this process to enact more detailed regulations.¹⁶¹ These rules apply also to "goods and services from abroad," with the proviso that the parent company and its affiliates, subsidiaries, branches, and agencies "shall be jointly and severally liable."¹⁶²

The FCPA permits merchants and service providers to submit proposed advertisements to the Secretariat of Commerce for advance approval.¹⁶³ The proposed advertising is deemed approved if the responsible federal agency does not render a ruling or decision within forty-five days.¹⁶⁴ This kind of "implicit approval" is a new administrative device the government of Mexico has begun to incorporate in its federal

157. FCPA, art. 5.

158. *Id.*

159. *Id.*

160. Battani interview, *supra* note 24.

161. *Id.*

162. FCPA, art. 5.

163. *Id.*

164. *Id.*

statutes to counteract "red tape" problems associated with its federal bureaucracy.¹⁶⁵ Under the FCPA, the Secretariat of Commerce is given full-range powers on consumer transactions involving labeling requirements, standards and procedures governing warranties, and production costs and prices of consumer goods of "public interest," including those of imported goods.¹⁶⁶ A specific provision stipulates that the data displayed on products, and their labels, bottles, packaging and related advertising "shall be in Spanish and in plain, easy to read language."¹⁶⁷ Inaccuracy in the information or instructions shall give rise to a "cause of action for the damages and losses resulting therefrom."¹⁶⁸

2. Warranties

United States law regarding warranties is detailed and comprehensive. The provisions of the Magnuson-Moss Act,¹⁶⁹ as well as common law decisions¹⁷⁰ in this area, constitute one of the most complete and detailed bodies of legal principles regulating warranties. Therefore, it is not unexpected that the Mexican legislature, accustomed to obtaining legal principles from codified and statutory materials, simplified its task by reviewing the text of various United States bills which preceded the Magnuson-Moss Act.¹⁷¹ The most fundamental provisions of these bills found their way into the text of the FCPA's second chapter, which deals with publicity and warranties.¹⁷²

The terms and conditions of warranties must be clear and concise.¹⁷³ Therefore, the use of the words "guaranteed" or "warranty," or any other similar term, is used only if the precise terms of the warranty are set forth in detail.¹⁷⁴ Again, the Secretariat of Commerce exercises exclusive authority to establish "the minimum standards that the warranties must meet."¹⁷⁵

165. The latest example of the utilization of this type of "implicit approval" appears in the 1989 Regulations on Foreign Investment, D.O., May 16, 1989.

166. FCPA, art. 6.

167. *Id.* art. 7.

168. *Id.* art. 8.

169. 15 U.S.C. § 2301 (1988 & West Supp. 1989).

170. *See, e.g.,* *Hawkins v. Pemberton*, 51 N.Y. 198 (1872) (The plaintiff was not entitled to recover for breach of contract where he represented a product to be blue vitriol when it was not.); *Seixas v. Woods*, 2 Caines 48, 2 Am. Dec. 215 (1804) (plaintiff may not recover in the absence of an express warranty); *Wat Henry Pontiac Co. v. Bradley*, 202 Okla. 82, 210 P. 2d 348 (1949) (An automobile dealer's representation of a car he sells constitutes an express warranty where that merchant is an expert in handling automobiles.).

171. *See, e.g.,* sources cited *supra* note 13.

172. FCPA, arts. 5-19.

173. *Id.* art. 11.

174. *Id.* art. 10.

175. *Id.* art. 11.

3. Dangerous Goods

Under the FCPA, suppliers are obligated to place appropriate warnings and instructions for the use of dangerous products or services.¹⁷⁶ The Secretariat of Commerce and other competent federal agencies are empowered to designate products which are "inherently dangerous."¹⁷⁷ Failure to comply with these provisions results in liability for damages and losses, as well as pertinent sanctions upon the responsible party.¹⁷⁸ Under Mexican law, the Civil Code of the Federal District imposes "objective responsibility" for damages or injuries caused to third parties by the operation of ultra-hazardous objects.¹⁷⁹ No other provision existed prior to the FCPA regarding "dangerous goods."¹⁸⁰ The establishment of this new legal category is due to the influence of United States Senate bill, S. 3419, which proposed that "[a]n Act to protect consumers against unreasonable risk of injury from hazardous products"¹⁸¹

4. Sales and Promotions

The FCPA contains a detailed set of rules governing promotions and sales. Conditions, duration of sale, and volume of merchandise being offered are duly regulated.¹⁸² No sale or promotion may take place without the Secretariat of Commerce's prior authorization.¹⁸³ Consumers have the right to enforce compliance, to accept other equivalent goods and services or to rescind the contract in cases of noncompliance.¹⁸⁴ In appropriate circumstances, consumers are entitled to the payment of damages and losses.¹⁸⁵ Should the consumer or the supplier err during the course of a sale or purchase of an item, either party has the right to exchange the article, or to give the purchaser credit toward the purchase of another article three days after the contract was created.¹⁸⁶

5. Consumer Credit Transactions and Consumer Remedies

In any consumer credit transaction, full disclosure must be made to the consumer under the FCPA.¹⁸⁷ The Secretariat of Commerce has the

176. *Id.* art. 13.

177. *Id.*

178. *Id.*

179. C.C.D.F. art. 1910.

180. *Consumer Protection*, *supra* note 11, at 109-89.

181. 92nd Cong., 2d Sess. (1972).

182. FCPA, arts. 15-18.

183. *Id.* art. 17.

184. *Id.* art. 18.

185. *Id.*

186. *Id.* art. 19.

187. *Id.* art. 20.

power to establish maximum rates of interest and additional charges imposed on the consumer, as well as the authority to ensure that additional charges and interest are not incorporated into the price of the goods and services.¹⁸⁸ If no agreement exists regarding maximum interest rates, deferred interest charges cannot exceed 25% of the ordinary interest.¹⁸⁹ Accrued unpaid interest cannot be collected, nor can interest be capitalized.¹⁹⁰ Violation of these provisions is considered usurious profit for the purposes of other applicable laws.¹⁹¹

Moreover, consumers have the right to be reimbursed for payments made in excess of the legally authorized price, plus the accrued interest.¹⁹² Action for recovery must be brought within one year from the date payment was made.¹⁹³ When the net content of a product is below what it should be (less than indicated in the container or package), or when the supplier used any measuring device to defraud the consumer, the consumer is entitled to replacement of the product, a bonification (allowance), or a refund.¹⁹⁴ Additionally, when an article has a "latent defect," the consumer may elect to rescind the contract or to obtain a reduction in its price, including the right to seek compensation for losses and damages suffered.¹⁹⁵ Consumers are further entitled to indemnification for goods which do not conform with quality standards, with representations or warranties, or with their intended purposes because of defects in manufacture, production, structure, quality, or sanitary conditions.¹⁹⁶ Merchants and service providers incur civil and administrative liability for their own acts, as well as for those of their employees, agents, or independent contractors.¹⁹⁷ This liability is separate from, and in addition to, any personal liability.¹⁹⁸

6. Services & Door-to-Door Sales

Under the FCPA, repair services must be guaranteed for thirty days, or for a longer period of time if based upon a warranty.¹⁹⁹ Consumers have the right to be indemnified for loss or damages caused by service providers to articles left with them to be repaired and may be entitled to

188. *Id.* art. 22.

189. *Id.* art. 23.

190. *Id.*

191. *Id.* art. 26.

192. *Id.* art. 28.

193. *Id.* art. 30.

194. *Id.* art. 32, para. I.

195. *Id.* art. 31.

196. *Id.* art. 33.

197. *Id.* art. 55.

198. *Id.*

199. *Id.* art. 40.

rental fees to replace articles returned for service.²⁰⁰ Charges for services must be publicly displayed with clearly legible characters.²⁰¹ Two different prices may not be charged for the same service.²⁰² No discriminatory practices regarding the selection of clientele and retaining the right of entry are allowed, save in cases fully justified which affect the safety or the normal conduct of business in a given establishment, or are based on explicit provisions of other statutes.²⁰³ Service providers must issue invoices or vouchers for their work.²⁰⁴

Door-to-door sales transactions are similarly regulated in the FCPA. Door-to-door sales are transactions which take place at the consumer's home or place of business. To be valid, these transactions must be "formalized by a written contract" which is binding five working days after it was signed.²⁰⁵ Within that time period, the consumer may rescind the contract without any liability provided the rescission is in compliance with the FCPA (e.g., by personally delivering notice to the salesperson, or sending such notice by certified mail, or some other proper means).²⁰⁶

7. Other Provisions

Due to Mexico's level of socioeconomic development, its culture and traditions, the FCPA includes provisions designed to curb or eliminate practices engaged in by merchants and service providers which are insensitive, offensive, or even degrading to consumers.²⁰⁷ Thus, the Secretariat of Commerce is empowered to punish, at the request of interested parties, "those who consistently name one or more customers in an announcement in the press or in other mass media in an attempt to collect a bill or secure performance of a contract."²⁰⁸ Moreover, the practice of delivering credit vouchers, tokens, or merchandise to consumers in lieu of the Mexican legal currency, is equally prohibited.²⁰⁹ It was a common practice among merchants in Mexico to use chewing gum, candy bars or a similar type of merchandise as a means of paying the change due in a transaction. Not surprisingly, this practice was deliberately used by merchants with children. It was also common for merchants, especially at large stores in shopping centers to privately detain, frisk, and even incarcerate, for a short period of time, individual

200. *Id.* art. 41.

201. *Id.* art. 42.

202. *Id.* art. 43.

203. *Id.* art. 44.

204. *Id.* art. 45.

205. *Id.* art. 48.

206. *Id.*

207. *Id.* art. 54.

208. *Id.* art. 50.

209. *Id.* art. 51.

consumers charged with a criminal offense, such as shoplifting, before reporting the case to the police.²¹⁰ As a result, the FCPA provides that "[i]t is strictly prohibited for any business or service establishment to take any direct action against the public which threatens its freedom, safety and personal integrity, or undertake any kind of personal investigations or inspections, or, in general, do any acts that offend the dignity and honour [of the consumer.]"²¹¹ Violation of this provision may lead to temporary or permanent closures and, in cases involving repeated violators, cancellation of federal permits or authorizations in certain fields such as tourism, transportation, travel, hotels, or restaurants.²¹² Such penalties are separate from "any civil recovery by the accused for 'moral damages' [for injury to his reputation or feelings] and for losses or injury suffered where he is not proved guilty of the crime."²¹³

Since the FCPA's inception, consumers are now entitled to recover the full amount paid as deposit for a package or bottle, when returning the same.²¹⁴ The FCPA also remedied the merchants' control over food staples.²¹⁵ Frequently, shortages of certain food staples such as milk, sugar, meat, and tomatoes occur. Before the FCPA took effect, merchants conditioned the sale of the needed food staples upon the purchase of other products or goods.²¹⁶ The FCPA expressly prohibits this practice.²¹⁷

V. THE OFFICE OF THE FEDERAL ATTORNEY GENERAL FOR CONSUMER AFFAIRS

The FCPA is recognized in legal and administrative circles in Mexico because of two very distinct features. First, it constitutes Mexico's *corpus juris* in consumer protection law.²¹⁸ Second, it creates a federal entity empowered not only to monitor and enforce the application of the Act, sanctioning its violations, but also capable of settling consumer disputes by means of alternative dispute resolution mechanisms.²¹⁹

President Echeverria's bill summarized the functions to be performed by the new Attorney General as follows:

210. See D. Kaye, *supra* note 14, at 133.

211. FCPA, art. 54.

212. *Id.* art. 53.

213. *Id.* art. 54.

214. *Id.* art. 56.

215. *Id.* art. 14.

216. Battani interview, *supra* note 24.

217. FCPA, art. 14.

218. This federal statute established the legal framework currently applied throughout Mexico on consumer transaction matters.

219. FCPA, arts. 57-66.

[T]he establishment of the Office of the Federal Attorney General for Consumer Affairs, as an autonomous entity, is hereby proposed. Its major functions will be to represent the society's interests, as a population of consumers; to represent the collective interests of consumers before any kind of merchants or service providers; to act as conciliator and arbiter in disputes between consumers and merchants; and, in general, to preserve for the effective application of those norms which protect consumers.²²⁰

When the bill was debated in the Mexican Congress, numerous groups of merchants and private entrepreneurs vigorously opposed it.²²¹ In retrospect, the Echeverria administration realized that to succeed in its objective to create a comprehensive legal framework for consumer protection, it was imperative to not only establish a new federal agency in charge of these matters, but also to place the agency close to the President's office, from a political viewpoint. Therefore, pursuant to the FCPA, the individual who commands the federal agency is appointed directly by the President of the Republic.²²² The Office of the Federal Attorney General for Consumer Affairs (the "Consumer Affairs Office")²²³ is the counterpart, in the administrative area of consumer protection, to the Office of the Attorney General (*Procuraduria General de la Republica*) which controls federal criminal jurisdiction in Mexico. Therefore, the Consumer Affairs Office is not only politically close to the President of Mexico, but it is also empowered to control some aspects of the Mexican economy.

The Consumer Affairs Office has been traditionally portrayed as a Mexican institution. This notion, however, requires some clarification. The conceptualization of this office was influenced by the United States and then adapted to suit Mexico's social and economic realities. A simple reading of the United States bill, H.R. 10835, which was never passed, demonstrates the validity of this assertion.²²⁴ The authority and powers of the Consumer Affairs Office under the FCPA were greatly influenced by the this bill.

220. D. Kaye, *supra* note 14, at 35.

221. *Id.*

222. FCPA, art. 61. The Federal Attorney General for Consumer Affairs should be a Mexican citizen by birth and must possess a law degree. *Id.* Unlike other presidential appointees, the appointment of this federal official does not require Senate approval. Informally, this places the Federal Attorney General for Consumer Affairs as a member of the presidential cabinet, a kind of minister without portfolio.

223. In Spanish, the official title is *Procuraduria Federal del Consumidor*. This may also be translated as "Federal Procurator for Consumer Protection," "Federal Attorney General for the Protection of Consumers," or "Consumers' Ombudsman."

224. H.R. 10835, 92nd Cong., 1st Sess. (1971) [hereinafter House Proposal]. This bill was passed by the House of Representatives on October 14, 1971 and transmitted to the United States Senate the following day; the bill died in the Senate.

A. Authority and Powers of the Consumer Affairs Office

Pursuant to the FCPA, the powers granted to the Consumer Affairs Office may be classified into the following categories: representation powers, supervisory functions, and conciliation and arbitration powers.

1. Representation Powers

The Consumer Affairs Office was created mainly to protect the Mexican consumer, both from an individual and a collective perspective. Consequently, this office was given the broadest powers to represent consumers in Mexico before any administrative agencies,²²⁵ private entities and organizations, including suppliers of goods and services,²²⁶ and before jurisdictional authorities in cases which may affect the larger interest of consumers in general.²²⁷ This type of legal representation appears to be rather similar to the submission of *amicus curiae* briefs in cases pending in the United States.

The United States bill proposed a consumer protection agency, "an independent agency within the executive branch of the Government."²²⁸ This agency was to be headed by an "administrator" appointed by the President, with the advice and consent of the Senate.²²⁹ The functions of this agency were to include the representation of, *inter alia*, "the interests of consumers . . . before federal executive agencies and federal courts in accordance with section 203 of this Act."²³⁰ Among the reasons considered by the United States Congress for enacting the bill was the perception that "vigorous representation and protection of the interests of consumers" was an essential component "to the fair and efficient functioning of a free market society."²³¹

In Mexico, the representation powers of the Consumer Affairs Office as reflected in the FCPA were modeled after section 204 of the United States bill. The Mexican legislature played a role, albeit limited, in

225. FCPA, art. 59, para. I.

226. *Id.* art. 59, para. II.

227. *Id.* art. 59, para. III.

228. House Proposal, *supra* note 224, § 201(a).

229. *Id.* Except for the approval by the United States Senate and the requirement of a law degree, this provision is clearly reflected in Article 61 of the FCPA. FCPA, art. 61.

230. House Proposal, *supra* note 227, § 203(1). Section 203 details the agency's power to represent consumers whenever the agency finds that: (1) the result of a pending federal agency proceeding may substantially affect the interests of consumers; and (2) such interests may not be adequately protected unless the agency participates or intervenes in the agency proceeding. *Id.* The agency may intervene in any federal agency proceeding under the provisions of chapter 5 of title 5 of the United States Code relating to administrative procedure or as a party in a proceeding of a United States court involving the review of federal agency action in a rulemaking proceeding. *Id.*

231. *Id.* § 2 (statement of findings).

adapting the provisions of the United States bill to Mexican societal conditions. Apart from that, the Mexican legislature's contribution to the creation of representation powers for the Consumer Affairs Office was virtually nil.

In accordance with its representation powers, the Consumer Affairs Office may provide advice to consumers, free of charge.²³² In addition, under the FCPA's recent amendment creating a Registry of Adhesion Contracts,²³³ the Consumer Affairs Office plays a decisive role in studying, reviewing, and authorizing adhesion contracts to ensure that they "do not contain clauses imposing disproportionate charges or inequitable obligations on consumers."²³⁴ Only those adhesion contracts which are expressly authorized or approved by the Consumer Affairs Office, or by any other competent federal authority, are inscribed in the registry.²³⁵ The FCPA recognizes that the Consumer Affairs Office, acting as "the representative of the collective interest of consumers," is the competent authority empowered to approve any adhesion contracts when no other federal agency is legally authorized to approve such contracts.²³⁶

2. Supervisory Functions

The FCPA imposes "[t]he responsibility for inspection and surveillance by the appropriate agencies" within the scope of the Consumer Affairs Office.²³⁷ In order to comply with this responsibility, all appropriate federal agencies are empowered to prepare reports, collect data, and conduct inspection visits.²³⁸ The manner in which these visits ought to be conducted is set forth in the FCPA.²³⁹ These supervisory functions were also inspired by H.R. 10835 in the United States. This bill proposed that upon the request of the administrator, each federal agency would be authorized and directed to furnish the proposed consumer protection agency with information, data, estimates, and statistics, and to allow access to all information in the agency's possession which the administrator may determine to be necessary for the performance of the functions of the consumer protection agency.²⁴⁰

232. FCPA, art. 59, para V.

233. *Id.* art. 63.

234. *Id.* This article defines adhesion contracts as those whose clauses have been approved or drafted unilaterally by the supplier without the other party having been able to bargain their content before accepting them. *Id.*

235. *Id.*

236. *Id.*

237. *Id.* art. 78.

238. *Id.* art. 78, paras. I-II.

239. *Id.* arts. 79-85.

240. House Proposal, *supra* note 224, § 206.

Mexican federal agencies are also obligated to advise the Consumer Affairs Office "of known facts which may constitute a crime,"²⁴¹ or, more generally, to disclose to any other appropriate authorities the commission of certain acts which may constitute "an official crime, fault, negligence or omission."²⁴² Finally, as part of these functions, federal agencies must encourage the responsible authorities "to adopt adequate measures to attack, stop, modify or avoid all kinds of practices detrimental to the interests of consumers or of the public economy."²⁴³

The Consumer Affairs Office is also empowered to conduct studies and propose measures with the purpose of protecting consumers²⁴⁴ and to advise the National Consumer's Institute, where deemed appropriate, of the recommendations made to other authorities under the FCPA.²⁴⁵ Again, these provisions of the FCPA were inspired by United States H.R. 10835. Section 203 of the bill provides that the agency should "encourage and support research, studies, and testing leading to a better understanding of consumer products and improved products, services, and consumer information . . .,"²⁴⁶ submit recommendations to improve the operation of the federal government "in the protection and promotion of the interests of consumers,"²⁴⁷ and "conduct conferences, surveys and investigations . . . concerning the needs, interests and problems of consumers."²⁴⁸

As part of its supervisory function, the Consumer Affairs Office is empowered to denounce violations of regulations as to prices, quality standards, weight, measures, and other standards for products and services when such violations are brought to its attention.²⁴⁹ In addition, the Consumer Affairs Office may denounce the existence of monopolistic practices, or attempts to create monopolies, or any other violation of article 28 of the Mexican Constitution.²⁵⁰ These functions appear to bear a close resemblance to the legal entity of the ombudsman as it exists in certain Scandinavian countries.²⁵¹

The FCPA empowers the Consumer Affairs Office to use two "measures of compulsion" in discharging its supervisory duties: a) the power to impose fines; and b) the "assistance of the public force."²⁵²

241. FCPA, art. 59, para. IX.

242. *Id.* art. 59, para. XI.

243. *Id.* art. 59, para. X.

244. *Id.* art. 59, para. IV.

245. *Id.* art. 59, para. XII.

246. House Proposal, *supra* note 224, § 203(b)(2).

247. *Id.*

248. *Id.* § 203(b)(5).

249. FCPA, art. 59, para. VI.

250. *Id.* art. 59, para. VII.

251. D. Kaye, *supra* note 14, at 37.

252. FCPA, art. 66, paras. I-II. Fines may be imposed up to a maximum of one hundred

Should these measures prove to be insufficient, however, the violator shall be prosecuted for criminal offenses against the authority.²⁵³ In order to perform its supervisory functions more effectively, the FCPA authorizes the Consumer Affairs Office to establish offices in each of the thirty-one states in the Republic of Mexico, as well as other places where necessary.²⁵⁴

Mexican federal courts have jurisdiction to resolve disputes to which the Consumer Affairs Office is a party. In these cases, the FCPA mandates that federal, state, and municipal authorities, as well as consumer organizations, shall assist the Consumer Affairs Office in accordance with the applicable regulations.²⁵⁵ This process provides an expedient and efficient means to supervise and mediate the relationship between merchants and consumers.

3. Conciliation and Arbitration Powers

The Consumer Affairs Office is empowered to settle disputes between suppliers and consumers, acting as a *compositeur amiable*.²⁵⁶ The FCPA establishes an alternative, nontraditional adjudicatory system designed to settle consumer disputes, consisting of an administrative procedure which utilizes conciliation and arbitration to achieve its final objective.²⁵⁷ This new adjudicatory system, unprecedented in the Mexican legal tradition, constitutes an entirely separate procedure from the traditional judicial avenues in civil and commercial law areas, which remain open to the contending parties.

The alternative dispute settlement mechanism applies to any consumer grievances against merchants, industrial companies, service companies, state-owned companies, independent agencies, and other governmental departments.²⁵⁸ Since it was introduced in 1975, this new administrative system has successfully protected consumers.²⁵⁹ The system

times the amount of the prevailing minimum wages in the federal district (Mexico City), *id.*, which are the highest in the country. Currently, the minimum daily wages in Mexico City are less than four dollars for a day's work. Perry, *Pope Focuses Attention on Mexico's 'Ring of Misery'*, Reuters, May 8, 1990.

253. FCPA, art. 66.

254. *Id.* art. 58. Currently, the Office for of the Federal Attorney General for Consumer Affairs has 54 offices throughout Mexico, including its major cities such as Acapulco, Cancun, Ciudad Victoria, Cuernavaca, Chihuahua, Guadalajara, Juarez, La Paz, Mazatlan, Mexicali, Merida, Mexico City, Monterrey, Oaxaca, Puebla, Queretaro, Reynosa, Tampico, Tijuana, and Veracruz. LEY FEDERAL DE PROTECCION AL CONSUMIDOR, PROCURADURIA FEDERAL DEL CONSUMIDOR 167 (1989).

255. FCPA, art. 58.

256. *Id.* art. 59, para. VIII.

257. *Id.*

258. *Id.*

259. Battani interview, *supra*, note 24.

is relatively simple, expeditious, and of an insignificant or no cost to those individual consumers who choose to submit to it.²⁶⁰

The dispute resolution powers are unprecedented in Mexican history. The powers of the new Consumer Affairs Office cut across departmental jurisdictions at the highest governmental level, empowering it to act virtually in any area under federal jurisdiction.²⁶¹ Moreover, the process of dispute resolution marks the first adjudicatory arena created by the executive power, which is different and separate from the traditional judicial system.²⁶² Finally, the new consumer adjudicatory mechanism is perceived as a consumer-oriented administrative structure favoring the consumer, rather than an impartial administrative forum for resolution of consumer disputes.²⁶³

C. *The New Alternative Dispute Resolution Mechanism*

Article 59, paragraph VIII of the FCPA sets forth in detail the new method to settle consumer disagreements.²⁶⁴ Since it was introduced to Mexico in early 1976, this new method has only suffered minor adjustments. A brief discussion of the dispute resolution process is necessary to convey its effectiveness.

When the Consumer Affairs Office receives a consumer complaint, it requires the merchant or service provider to render a factual written report within five working days.²⁶⁵ If, from the report, it may be reasonably deduced that the merchant is willing to favorably consider the complaint, the case will be closed upon the Consumer Affairs Office's determination that the consumer is satisfied.²⁶⁶

If the consumer is not satisfied, the Consumer Affairs Office will summon both parties to appear at a conciliation meeting.²⁶⁷ If both agree to conciliate their interests, the agreement will be reflected in written minutes of the meeting, which are legally binding on the parties.²⁶⁸ If the consumer does not appear at the conciliation meeting, the Consumer Affairs Office will assume the consumer abandoned his rights, and the consumer will not be able to submit another complaint based upon the same facts and against the same merchant, unless special circumstances for the nonappearance are proven.²⁶⁹ If both parties

260. *Id.* art. 59, para. V.

261. *Id.* art. 59, paras. I-XII.

262. Battani interview, *supra* note 24.

263. *Id.*

264. FCPA, art. 59, para. VIII.

265. *Id.*

266. *Id.* art. 59, para. VIII(a).

267. *Id.* art. 59, para. VIII(b).

268. *Id.*

269. *Id.*

appear but no conciliation is reached, the Consumer Affairs Office will ask to be designated as arbiter, either in the posture of *amiable compositeur*,²⁷⁰ or in arbitration proceedings *strictu sensu*, as decided upon by the parties.²⁷¹

Pursuant to the FCPA, if a dispute is resolved by way of an *amiable compositeur*, all questions in dispute must be explicitly articulated.²⁷² The Consumer Affairs Office will resolve the case "in conscience and good faith, without being subject to legal rules, but observing the formalities of due process."²⁷³ There appears to be very little doubt that from the perspective of the common law, this type of dispute resolution incorporates fundamental principles of equity.²⁷⁴ It is remarkable to find the presence of common law principles in a country, such as Mexico traditionally rooted in civil law principles. The explanation is very simple, however, because the essentials of the FCPA were extracted from the United States Uniform Consumer Credit Code, newly published when Mexico adopted its consumer legislation.²⁷⁵ When acting as *amiable compositeur*, the Consumer Affairs Office is empowered to receive any evidence which it deems appropriate in the case.²⁷⁶ The final award, known in Mexico as a resolution, is not subject to appeal and may only be clarified.²⁷⁷

In the arbitration proceedings, *strictu sensu*, the parties are in charge of formulating the *compromis*, in which they will establish their agreed upon rules of procedure.²⁷⁸ The rules of the Code of Commerce and the local Code of Civil Procedure, however, apply as supplementary rules.²⁷⁹ Any decisions using these rules are usually subject to appeal. In contrast, arbitral awards are not appealable, unless the parties so agree in the *compromis*.²⁸⁰

If neither conciliation, nor an arbitral *compromis* were agreed upon by the parties, and the merchant did not appear at the conciliation meeting but the consumer did, the Consumer Affairs Office must study the facts to determine whether a violation of the FCPA has occurred.²⁸¹ If there is no reason to believe that a violation was committed, a

270. *Id.* art. 59, para. VIII(d).

271. *Id.* art. 59, para. VIII(c).

272. *Id.* art. 59, para. VIII(d).

273. *Id.* art. 59, para. VIII(c).

274. D. Kaye, *supra* note 14, at 29.

275. See CONSUMER PROTECTION: A SYMPOSIUM (L. Levy ed. 1972).

276. FCPA, art. 59, para VIII(c).

277. *Id.* art. 59, para. VIII(d).

278. *Id.* art. 59, para. VIII(c).

279. *Id.*

280. *Id.*

281. *Id.* art. 59, para. VIII(d).

decision to that effect shall be rendered,²⁸² leaving intact the possible rights of the consumer to proceed via the ordinary judicial avenues. Conversely, if a violation was committed, both the consumer and merchant are given ten days to offer evidence and make supporting allegations.²⁸³ After no more than fifteen days, the Consumer Affairs Office determines whether a violation exists, and renders the pertinent administrative resolution, leaving aside the possible rights of both consumer and merchant to be exercised before an ordinary judicial court.²⁸⁴

The alternative dispute resolution mechanism for the consumer is unique. Any legal obligations agreed upon by consumers and merchants or service providers which are reflected in the written minutes produced by the Consumer Affairs Office are legally binding and enforceable under Mexican law.²⁸⁵ For this legal enforceability to take effect, however, it is necessary for the winning party to bring the Consumer Affairs Office's final resolution before a judicial court for enforcement.²⁸⁶ Pursuant to the FCPA, this may be done via an immediate enforcement procedure before a competent court or by means of an executive suit, at the election of the interested party.²⁸⁷

The FCPA stipulates that consumers have a specified period of time to file a complaint with the Consumer Affairs Office; however, in cases when the FCPA does not establish such a period, consumers are granted a maximum of six months to file their complaints.²⁸⁸ Moreover, when a consumer institutes proceedings with the Consumer Affairs Office, no other judicial avenue may be taken by the contending parties.²⁸⁹ The Consumer Affairs Office may utilize the services of expert witnesses (*peritos*) in resolving consumer disputes.²⁹⁰ If there is no agreement between the parties regarding the appointment of an expert witness, however, the Consumer Affairs Office will appoint an expert.²⁹¹

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.* art. 59, para. VIII(e).

286. *Id.*

287. *Id.* Procedurally speaking, this specific provision constitutes the legal basis which provides arbitral awards and administrative resolutions or decisions rendered by the Consumer Affairs Office with the legal power of enforceability, when exercised via the ordinary judicial court system. Without this legal recognition and the corresponding validating action by the ordinary civil or commercial courts in Mexico, any administrative decisions, resolutions or awards produced by the Consumer Affairs Office will be inoperative and unenforceable.

288. *Id.* art. 59, para. VIII(f).

289. *Id.* art. 59, para. VIII(h).

290. *Id.* art. 59, para. VIII(i).

291. *Id.*

VI. THE SUCCESS OF THE FCPA IN TIJUANA

The impact that the FCPA has had on consumer transactions in Mexico is evident from the statistical data compiled by the Consumer Affairs Office's delegation in Tijuana since the FCPA entered into force in 1976. The data and its impact will be discussed, in turn, below.

TABLE I²⁹²

Major Activities Between 1976-82 and 1983-88

	Total	Annual Average
Cases		
1976-82	55,065	7,866
1983-88	37,595	6,265
1976-88	92,660	7,127
Complaints		
1976-82	28,080	4,011
1983-88	15,012	2,502
1976-88	43,092	3,314
Legal Advice		
1976-82	13,661	1,951
1983-88	19,257	3,209
1976-88	32,918	2,532
Conciliation Hearings		
1976-82	26,305	3,757
1983-88	37,170	6,195
1976-88	63,475	4,882
Inspections		
1976-82	11,704	1,672
1983-88	2,276	379
1976-88	13,980	1,075

The data is divided into two periods: the 1976-82 period corresponds to the initial years of implementation of the FCPA, toward the end of the Echeverria administration and the entire six-year presidential term of Jose Lopez Portillo;²⁹³ the 1983-88 period coincides with the term of President Miguel de la Madrid.²⁹⁴ During the initial years of implementation of the FCPA, the number of cases handled by the Consumer Affairs Office's delegation in Tijuana was very high. A similar phenomenon occurred in other urban centers, particularly in Mexico City. Out of the total 55,065 cases, many of them did not involve any administrative action on the part of the Consumer Affairs Office's arm in Tijuana, as is

292. The statistical data in this table was provided by the Consumer Affairs Office in Tijuana (on file at the office of the N.Y.L. SCH. J. INT'L & COMP. L.).

293. Battani interview, *supra* note 24.

294. *Id.*

suggested by the number of complaints, 28,080, formally presented during the same period. Most of these complaints (26,305 or roughly 97%) were discussed and resolved in conciliation hearings.

During the initial years of application of the FCPA, the official emphasis was placed on conciliation and education rather than arbitration.²⁹⁵ Two reasons contributed to this trend. First, there was an open reluctance on the part of merchants and service providers to subject themselves to the arbitration procedure.²⁹⁶ This reluctance stemmed from their impression that the Consumer Affairs Office, in general, was a federal agency created to protect consumers and therefore inadequate to serve as an impartial arbiter.²⁹⁷ Second, in addition to the novelty of the procedure, the Consumer Affairs Office in those early days faced the legal problem of how to enforce its own arbitral awards. Currently, the FCPA, as amended,²⁹⁸ provides that the Consumer Affairs Office's arbitral awards are "legally enforceable" (*traen aparejada ejecucion*) through the competent judicial courts.²⁹⁹ This provision was lacking in the original text of the FCPA.³⁰⁰ The prior mechanism for solving consumer disputes in the original FCPA was based upon a system of voluntary compliance by the interested parties. Legally, those awards were not judgments *per se* but mere voluntary agreements, *inter partes*, with no enforceability. Thus, in order to enforce those agreements, it was necessary to institute proceedings in an ordinary judicial court to that effect. In Mexico, these proceedings were quite long, procedurally complicated and costly, requiring the professional services of an attorney. Only an insignificant number of consumers could afford to rely on this judicial avenue for seeking redress.

The amended and present system focuses upon arbitration. Pursuant to the FCPA, as amended, the Consumer Affairs Office's resolutions and awards are legally enforceable.³⁰¹ The interested party brings the award to a competent judicial court to simply enforce it. These judicial proceedings are relatively short and simple, although the legal services of a private practitioner continue to be necessary. Judges have become more familiar with these proceedings and they conduct them in a most expeditious way, enforcing the Consumer Affairs Office's awards as a matter of course. Finally, the data indicates that the Consumer Affairs Office's Tijuana delegation's role in providing free legal advice to

295. *Id.*

296. *Id.*

297. *Id.*

298. FCPA, art. 59, para. VIII(e).

299. *Id.*

300. "Where a conciliation agreement or arbitral award is not voluntarily complied with, the interested party may institute proceedings in the ordinary courts for the enforcement of either instrument." *DOING BUSINESS IN MEXICO*, *supra* note 1, at M2-18 app.

301. FCPA, art. 59, para. VIII(e).

consumers, since its inception and until now, continues to be one of its major functions. In part, the high frequency of this service may be due to the presence of an educational component when legal advice is provided, in conjunction with a steady growth in Tijuana's population, Mexico's largest and most prosperous border city.³⁰²

TABLE II³⁰³

Major Activities Between 1983 and 1988

	1983	1984	1985	1986	1987	1988	Total	Annual Average
Cases	6,318	7,425	5,074	6,857	6,046	5,875	35,595	6,265
Cases Closed	2,941	2,154	2,355	2,351	2,524	2,204	14,529	2,421
Cases Ended by Agreement Between Parties	1,235	1,657	1,810	1,726	2,021	1,641	10,090	1,681
Conciliation Hearings	6,895	6,485	6,272	5,195	6,125	6,198	37,170	6,195
Complaints	2,889	2,319	2,390	2,568	2,503	2,343	15,012	2,502
Legal Advice	2,132	4,448	2,272	3,592	3,166	3,647	19,257	3,209
Inspections	420	368	248	515	298	427	2,276	379
Fines	801	943	1,060	1,201	1,199	1,391	6,595	1,099
Amount of Fines (in multiples of \$100)	36	51	114	240	378	1,007	1,897	316
Amount Claimed (in multiples of \$100)	340	306	465	547	838	1,806	4,306	717.6
Amount Recovered (in multiples of \$100)	268	241	354	544	798	1,703	3,912	652

302. Battani interview, *supra* note 24.

303. The statistical data in this table was provided by the Consumer Affairs Office in Tijuana (on file at the office of the N.Y.L. SCH. J. INT'L & COMP. L.).

The data compiled over the last six years reflects more accurately the day-to-day functions that the Consumer Affairs Office's delegation in Tijuana performs on a regular basis. The activities of this office are stable, not only in the city of Tijuana, but also throughout the country. An analysis of the data indicates a considerable reduction in the number of cases handled by the Consumer Affairs Office's delegation in Tijuana, from 55,065 cases in the initial years, down to 37,595 over the last six years, a 68% reduction. Correspondingly, the annual average came down from 7,866 to 6,265. During the thirteen year-period covered, a total of 92,660 cases were handled, an average of 7,127 per year. Almost a 50% reduction of complaints, from 28,080 to 15,012, occurred, with a recent annual average of 2,502. Contrary to other trends, the cases of legal advice increased significantly, from a total of 13,661 to almost 20,000, for a recent annual average of 3,209, as compared to 1,951 during the initial years. This average suggests that Mexican consumers are becoming more comfortable seeking free legal advice from the Consumer Affairs Office. Possibly, this increase in the number of free consultations for legal advice suggests an increase on educational awareness by Mexican consumers, particularly those in urban centers.

From the statistical viewpoint, the settlement of consumer complaints by means of a conciliation hearing appears to be becoming more effective, as evidenced by the increase from a total of 26,305 between 1976 and 1982 to 37,170 between 1983 and 1988, a 32% increase. The annual average of the initial years, calculated at 3,747, increased by almost 40% to a considerable 6,195. Generally, the data indicates that only about 50% of the cases handled by the Tijuana office of the Consumer Affairs Office come to a final conclusion: 14,529 out of a total of 37,595. Of the total of closed cases, a large portion of them: 10,090 (equivalent to 69%) were solved by agreement between the parties. It is important to note that, due to the existence of the Consumer Affairs Office, approximately 25% of the total number of cases are being resolved by means of an administrative settlement, rather than through traditional judicial means. Moreover, the amount of money claimed increased: from \$340,000 in 1983 to \$1.8 million dollars in 1988,³⁰⁴ for an annual average of \$717,000. This represents a 1500% increase in a six-year period. The Tijuana delegation of the Consumer Affairs Office recovered \$3.9 million of the total amount claimed, approximately 95%. The amount recovered increased, annually from a relatively modest \$268,000 in 1983 to \$1 million in 1988, a 300% increase!

The number of inspections has decreased dramatically from a total of 11,704 between 1976 and 1982 to 2,276 between 1983 and 1988, a

304. These figures are given for reference purposes. The amount in pesos was converted into United States dollars without considering Mexican inflation during this period or any other economic factors. The 1989 exchange rate of 2,500 pesos per one United States dollar was used to make the conversion.

500% reduction. Merchants and service providers are complying in good faith and on a voluntary basis with the provisions of the FCPA, thus limiting the number of inspections to serious violations or to cases where there has been a specific consumer complaint. Conversely, the application of fines—which are the consequence of such inspections—have increased from 801 fines imposed in 1983, for a total amount of \$51,000, to 1,391 fines in 1988 for a total amount of over \$1 million. The data indicates that a total of 6,595 fines were imposed in the period from 1983 to 1988, amounting to \$1.8 million dollars. A drastic change occurred between 1987 and 1988, when the amount of fines grew from \$378,000 to over \$1 million, a 73% increase, with a mere 18% increase in the total number of fines. A relationship between the severe financial crisis that the government of Mexico has endured since 1982, on the one hand, and the increase in the collection of fines on the part of the Tijuana delegation of the Consumer Affairs Office, and similar offices in other parts of Mexico, on the other hand may exist. Because the collection of these fines constitutes a federal act pursuant to the FCPA, these funds are sent to the Secretariat of the Treasury and Public Credit.³⁰⁵ Therefore, the imposition and collection of funds resulting from this type of sanctions constitutes an additional source of income for the Mexican Government, this might also explain the current trend of imposing stiffer fines.

VII. CONCLUSION

In the mid-1970s, social and economic conditions were ripe in Mexico for the introduction of consumer protection practices designed to protect consumers at large in their legal relations with merchants and service providers. The concept of a legal regime protecting consumers became part of the political agenda of Mexico's official party, the Institutional Revolutionary Party. Thus, the labor branch of the PRI, took a keen interest in formulating a most detailed legal regime controlling consumer transactions in Mexico. When the PRI took office, the emergence of consumer transactions law in Mexico, as reflected in the FCPA of 1975, constituted one of the most effective pieces of legislation providing legal protection to the most vulnerable social classes in Mexican society. Moreover, the FCPA has served to educate Mexican consumers as to their rights and obligations under consumer transactions law and to teach them to spend their salaries wisely. Most of the basic principles of the FCPA, including the establishment of the Office of the Federal Attorney

305. Fines imposed by the Consumer Affairs Office may be as high as 500 times the minimum wages in the Federal District (Mexico City), which are the highest in Mexico. In addition to the imposition of fines, the Office is empowered to sanction any FCPA violation by temporary closure of up to 60 days, "administrative arrest" for 36 hours, and, in certain cases, cancelling or revoking a federal license or permit to operate a commercial establishment, or the definite closure of same establishment. FCPA, art. 86, paras. I-IV.

General for Consumer Affairs, were influenced by unenacted United States bills, especially H.R. 10835, a profound source of inspiration for the Mexican legislature. The utilization in Mexico of alternative dispute resolution mechanisms, including conciliation and arbitration, was inspired by the administrative practice initiated in the United States in the early 1970s.

Although originally modeled after United States legislation, in recent years, Mexico's legal developments in the area of consumer transactions law have proceeded on an original and effective path entirely suited to the Mexican legal and economic realities. As the Mexican economy gradually recovers financially, and as it strengthens and diversifies, consumer transactions law will be upgraded and expanded. When that occurs, United States consumer law and institutions will provide Mexico with a useful and familiar frame of reference both for the enactment of more detailed and technical regulations in areas already covered by the Mexican legislature and the federal government, and for the enlargement of the scope of application of consumer protection laws into areas not previously regulated. Areas in which more detailed and technical regulations will be required in Mexico include food products, electric domestic appliances, cosmetics and perfumes, pharmaceutical products, housing construction standards and, in particular, any activity relating to the handling and disposal of industrial wastes and hazardous materials, including radioactive materials. Among the new areas into which consumer protection in Mexico is likely to move in the near future are credit cards, professional services, mass-media advertisements, and used cars.