

Harmonizing Trade Laws and Commercial Documents

The NAFTA is regarded by many observers as a monumental accomplishment, opening North America to new opportunities for market access and cross-border investment. However, important issues are still to be resolved, including the standardization of trade and investment documents and the harmonization of trade and investment laws among the three countries.⁸

The U.S. and Canadian legal systems are based on common law, which relies on judicial precedents, while Mexico's system is based on civil law, which focuses on written, constitutional codes and statutory provisions. Thus in some areas there are no parallel legal concepts, and new difficulties are introduced when legal vocabularies must be translated from one language to another. Litigation is also carried out differently in the two systems; what may be a civil case in one system may have criminal implications in another. Such a minor detail as assigning liability for merchandise damaged in transit—easily resolved when it occurs within one country—may not have resolution when merchandise moves from one country to another.

Ordinary business practices also vary significantly between the three countries. For example, in the United States and Canada, inventories and accounts receivable normally serve as collateral for bank loans to firms. In Mexico, loan collateral has traditionally been land. This difference is linked to the manner in which bankruptcy proceedings are conducted in the two legal systems.

Legal documents, including warehouse receipts and bills of lading, vary also, resulting in lost time and added transaction costs. The absence of uniform accounting standards is an area where differences are especially problematic: investors have difficulty comparing statements of earnings and profits between, say, U.S. and Mexican corporations.

Most of the differences between legal structures and business practices hold the potential to affect businesses on a practical, day-to-day basis. The differences in powers of

⁸ While there are many institutions involved in this task, one serves as the hub of such efforts: the National Law Center for Inter-American Free Trade, located at the University of Arizona in Tucson. The Center works with counterpart organizations in Canada and Mexico. This section draws heavily on materials obtained from the Center.