

# **The new globalized Mexican Port System**

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## Colonet and beyond

Business opportunities and  
public procurement considerations

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# The new globalized Mexican Port System Colonet and beyond

Business opportunities and public procurement considerations



The most important infrastructure project of the current Mexican Federal Administration is the port of Punta Colonet, which is expected to handle *6 million TEUs* and will imply a total investment of approximately *5 billion dollars*.

Punta Colonet will leverage the inability of the West Coast ports of the United States to deal with the growing traffic between Asia and the United States.

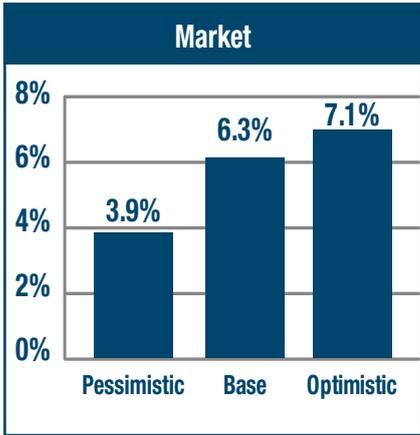
The 2007-2012 National Infrastructure Program establishes the objectives, goals and actions that the federal government will promote to increase the coverage, quality and competitiveness in the Communications and Transportation Sector (SCT for its acronym in Spanish) for national development. It aims to transform Mexico into one of the most important logistic platforms in the world, taking advantage of its strategic geographical position and a network of trade agreements. This will afford Mexico direct access not only to the world's largest market but to different regions and more than one billion consumers throughout several continents.

Punta Colonet, a multimodal project located in Ensenada, Baja California, constitutes a great opportunity for Mexico because of the increasing commercial traffic registered between Asia and the United States through the Pacific Ocean, which in turn is the most direct route between both continents, even more direct than the Panama Channel or the Suez Channel.

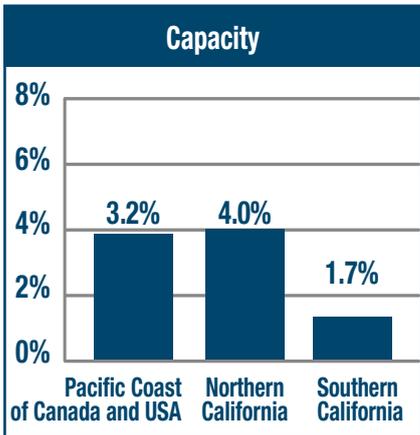
Punta Colonet is expected to be among the 50 largest ports worldwide, serving both Mexico and the US. It involves a comprehensive strategy aimed at increasing Mexico's competitiveness and includes significant infrastructure development and transportation logistics meeting the highest quality requirements. The project contemplates the construction of both port and railroad infrastructure to move containers efficiently from East Asia to North America. Ten berthing positions will be built in a first stage followed by ten more during the second one. The port will be 18 meters deep in order to be able to receive Post-Panama vessels. Four cranes will be installed in each of the berthing positions. It is expected that 5 million containers will be moved each year. New industrial parks, commercial developments, residential areas and hotels are also conceived for this area located 150 kilometers south of the city of Ensenada and 160 kilometers south of San Isidro, California. It is estimated that approximately two hundred thousand people are expected to live in this new area.

The public bidding process has already begun and is currently in its first stage. The winner will be awarded a 45 year concession. The project will be completely funded by the private sector. The construction projects are expected to begin in 2009 and be concluded in 2012.

**Forecast of Asia - West Coast trade vs. Projection of container handling capacity in West Coast ports, 2006-2010. Growth scenarios:**



Source: Punta Colonet Multi Modal Project. SCT



## Ports Comparison

Punta Colonet will be the largest port in Mexico with an extension of 3,000 hectares. This is a much greater surface area than the ones of the main ports of Mexico and USA.

*Maritime-Terrestrial Surface of Port Enclosures:  
(In hectares)*

Punta Colonet	
Allocated Zones	Area
Land	83.2
Water	2286.6
<b>Total</b>	<b>2769.7</b>

### US Ports

Los Angeles Port	
Terminal	Area
Pier 100	30.3
Pier 121-131	75.2
Pier 135-139	69.9
Pier 206-209	34.8
Pier 212-225	74.8
Pier 226-236	82.9
Pier 302-305	118.1
Pier 401-406	195.7
<b>Total</b>	<b>681.6</b>

Long Beach Port	
Terminal	Area
Pier C	28.3
Pier A	68.8
Pier J	103.6
Pier F	41.3
Pier G	99.6
Pier T	155.8
Pier E	38.4
<b>Total</b>	<b>535.8</b>

### Mexican Ports

Manzanillo Port		
Zones	Allocated Zones	Developed Areas
Land	234	117.8
Water	203.4	148.3
<b>Total</b>	<b>437.4</b>	<b>266.1</b>

Veracruz Port		
Zones	Allocated Zones	Developed Areas
Land	367.8	367.8
Water	201.7	201.5
<b>Total</b>	<b>569.5</b>	<b>569.3</b>

## TENDER OVERVIEW

The project will grant concessions for a *Port Manager (API for its acronym in Spanish)*, a *Container Terminal*, a *Railway* and a *Radio-Electric Frequency Band*.

<b>Bidders</b>	Companies: Worldwide port and railway operators that submit a bid for the concessions. The companies may also include other investors, both national and foreign.
<b>Port and Terminal</b>	The Tender includes two concessions, one for a Port Manager and another for a Container Terminal. Bidders will be allowed to determine the business model, the investment needs for each concession, the prices, tariffs and port services required. They can opt to renounce the adjudication of the Port Manager Concession.
	The Terminal has no foreign investment restriction. However, the Port Manager does have a restriction limiting foreign to 49%.
	There will be a period of exclusivity to operate the Container Terminal to allow recovery of the investment. The Port Manager is required to conduct a private bidding process for the construction and operation by third parties of other port terminals.
	The goal of the Port Manager is for concession-holders to develop the port for the benefit of the project and the economy of the region.
<b>Railway</b>	The government established the option to build the Bahía Colonet – Santa Teresa route, in addition to building another route to the border. Border crossings will be negotiated by Mexican and USA authorities along with the winning bidder.
	Foreign investment in the railway is limited to 49%. However there is an option to increase said participation upon approval by the Foreign Investment Commission.
	The Tender includes the concession of a Radio-Electric Frequency Band for the railway operation.
<b>Terms of Concessions</b>	Term of 45 years for the Port Manager, Container Terminal and Railroad and 20 years for the Radio concession, with the possibility of their respective extension, according to the applicable laws.
<b>Bidding Conditions</b>	The Request for Proposals and related documents establish the general criteria, requirements and technical specifications which the concession-holder must meet for the development of the project. Decisions regarding the business model, technical design of the Port Authority, terminal and railroad layout will be up to the bidders’ ability, knowledge and experience.

<b>Rate Regulation</b>	The rates will not be subject to regulation so that concession-holders have flexibility to develop their business model, react to market changes and ensure the project's international competitiveness.
<b>Social Witness</b>	The Social Witness, assigned by the Ministry of Public Administration, will participate in the entire process until a final decision is rendered.
<b>Obligations of Concession-holders</b>	Build the Container Terminal and undertake the infrastructure works for the port and railroad, in accordance with their Proposal.
	Build the port infrastructure works in accordance with their Proposal.
	Comply with an initial minimum capacity for the port and railroad infrastructure.
<b>Federal Government Commitments</b>	Negotiate with the US government the required Presidential Permit for Border Crossings, as well as those pertaining customs inspection.
	Take the necessary steps to obtain the release of right of way for the railway, according to the route proposed by the concession-holder. The concession-holder will cover all the costs of release of right of way, in accordance with the Regulatory Law of the Railroad Service.
<b>Assessment Process</b>	Qualification of the consortia that will be allowed to participate will be based on: experience, technical ability, financial resources, and presentation of guarantees.
	Proposals will be subjects to a detailed technical and economic assessment to determine their viability and coherence.
	Proposals that pass the technical and economic assessment will then be subject to an analysis based on "adjudication variables".
	The adjudication variables will serve to identify the proposal that ensures the largest container volume in the shortest time.
<b>Consideration</b>	The fixed fee per TEU that the concession-holder will have to pay will allow competitive rates vis a vis other international ports.
	The total fee that the concession-holder will pay the Government will be based on the highest of the real operating volume and the volume committed in their Proposal.

## STAGES OF THE BIDDING PROCEDURE AND PARTICIPATION MODALITIES

The bidding process provides for three mandatory stages, neither of which can be skipped. In order to participate directly on the first stage, a potential bidder will have to acquire the status as an Interested Party, since the very beginning of the tender process. Subsequently, Interested Parties will have to become Participants and Bidders in the second and third stages respectively. Nevertheless, other companies may participate in the bidding process if they form a consortium with at least one Bidder. Additionally, the tender offers an ample scope for sub-contractable works and services. In this context, not only major players, but also second and third tier companies have the possibility to participate. This might include port operators, engineering specialists, infrastructure contractors, multimodal carriers and logistic agencies, cargo handling and stevedore corporations, escort and towage companies, as well as all other service providers.

	Interested Party	Participant	Contestant
Standing Position	Any individual or company who obtains the record of the SCT granting credit as investor, railroad operator or port operator, in the terms pointed out by the form for records as an interested party.	The Interested Party to whom the SCT sends the corresponding notification, once it puts up the Participation Bond required by the Request for Proposals.	The group to which the SCT sends the corresponding notification, once it puts up the Contestant's Bidder Bond required by the Request for Proposals, which in turn, will have to be replaced by the Seriousness Bond when submitting its proposal.
Rights	Explanatory meetings, formal visits to site.	Explanatory meeting, formal visits to site and subsequent packages of Bidding Documents.	Explanatory meetings, formal visit to the site, subsequent and definitive packages of Bidding Documents and submit proposal.
Documents & Witnesses	Registration as Interested Party.	SCT approval of Consortium Agreement.	Witness of Bidder.
Guarantees	Of participation by 25 million pesos.		Of Bidder by 200 million pesos.

*Note: Although the tender calendar has been defined, it is subject to change. For further information please contact GRA.*

# BEYOND COLONET – OTHER RELEVANT PORTS

Investment in Mexican port infrastructure has increased drastically in the last decade regarding all types of terminals, including LNG and container major facilities. With container traffic between Asia and North America expecting to double in the following 10 years, Mexico has laid forth its commitment in becoming a world-class logistics platform. The Calderon administration has made the development of port infrastructure one of its highest priorities. Several Mexican ports such as Lazaro Cardenas and Manzanillo, have already positioned themselves as a clear alternative to saturated US ports such as Long Beach and Los Angeles. Currently, 287 million tons of cargo and 2.6 million TEUs of container cargo are handled by Mexican ports. The country's current port infrastructure includes 198 kilometers of berths and 5.6 million square meters of storage areas. The National Infrastructure Program (NIP) plans to achieve the construction of 5 new ports, expand or modernize 22 existing ones, build 13 new cruise ship terminals and increase Mexico's current container handling rates and capacity.

## ***Pacific Ports***

Among the 5 new ports expected to be built, two of them are located on Mexico's pacific coast: Punta Colonet, Baja California and Manzanillo II (Cuyutlán), Colima. Aside from this, the expansion of the ports of Lazaro Cardenas and Manzanillo are of utmost importance for the program. In respect to Lazaro Cardenas, the improvement of its container handling capacity is sought by building a second container terminal with an expected investment of MXN 3 billion. The Manzanillo expansion will address the issues of power generation and tourist activities located in that area. It is also contemplated to construct highways and railroads to enhance the connectivity of both ports with the rest of the country.

Other ports to be expanded are Ensenada, Baja California; Guaymas, Sonora; Topolobampo, Sinaloa; Mazatlan, Sinaloa; Salina Cruz, Oaxaca; Puerto Madero, Chiapas; Zihuatanejo, Guerrero; Puerto Vallarta, Jalisco; Pichilingue, Bajo California Sur; Cabo San Lucas, Bajo California Sur; Puerto Cortés Baja California Sur; Loreto, Baja California Sur.

The Mexican government is projecting to build cruise ships terminals in: Guaymas, Sonora; Loreto, Baja California Sur; Puerto Cortés Baja California Sur; Cabo San Lucas, Baja California Sur; Mazatlan, Sinaloa (2); Puerto Vallarta, Jalisco (2); Manzanillo, Colima; and Zihuatanejo, Guerrero.

## ***Gulf Ports***

Gulf ports play a very important role in the commercial traffic existent between Mexico and its commercial partners. In 2007, 65% of the country's commercial cargo was moved through the Gulf of Mexico. More than half of ship traffic took place here. In that same year, forty percent of vehicle commercial traffic took place in the port of Veracruz. The aforementioned highlights the significance these ports have for NIP.

NIP plans to build new ports in Veracruz II, Veracruz; Puerto Morelos, Quintana Roo; and Seybaplaya, Campeche. In addition, the ports of Veracruz, Tuxpan and Altamira will be expanded too. These ports provide the country with a gateway to the Pacific Ocean commercial routes. The works in Veracruz require MXN 3.7 billion and are expected to be performed from 2010 to 2012. The expansion in Tuxpan includes the construction of a MXN 4.5 billion private industrial terminal to be finished in 2012 in addition to a MXN 2 billion investment to increase the infrastructure of the port for the transportation and storage of oil and gas.

New cruise ship terminals are expected to be built in Playa del Carmen, Quintana Roo; Cozumel, Quintana Roo; and Punta Brava, Quintana Roo. Simply last year, more than 3 million passengers arrived or departed from these first two ports.



**REGULATORY FRAMEWORK**

**MINISTRY OF COMMUNICATIONS AND TRANSPORTATION (SCT)**



**CONCESSIONS**

Required to act as a Port Manager for the construction, operation and exploitation of terminals, marinas and port facilities.

Concessions to act as a Port Manager are granted when the planning, programming, development and other activities related to the property and services in a port are entrusted as a whole company. The equity in such a company will initially be underwritten by the government and thereafter sold to third parties following an international public bidding procedure.

**RIGHTS OF CONCESSION HOLDERS**

Right to create liens and encumbrances over the rights conferred under a concession and property related thereto, including buildings thereon and appurtenant facilities; yet the foreclosure of those liens and encumbrances are of the exclusive jurisdiction of Mexican courts.

The SCT may grant authorizations for the assignment in full of the obligations and rights resulting from the concessions, provided the concession has been in effect for at least 5 years, the assignor has complied with all of its obligations and the assignee meets the same requirements existing at the same time the concession was granted.

**PERMITS**

Required for the rendering of port services and for the building of piers, wharves, launching docks and other similar facilities on waterways outside ports, terminals and marinas.

**PUBLIC PROPERTY**

Buildings and port facilities built on public property by concession or permit holders are deemed as owned by the latter during the effective term of the concession. Upon the termination of the concession or permit, or of any extension thereof, only those works and facilities permanently affixed to the land within the concession or permit will become property of the Mexican State-

**COSTS**

The process will occur at no cost and ownership over the property will be reverted to the government free and clear of any encumbrance or lien.



**LAW OF PORTS**

**FOREIGN INVESTMENT**

49 % FI permitted in the equity of a company with a concession to act as an integrated port administration or in a company with a permit to engage in pilotage services. The limitation may be overcome by the authorization of the Foreign Investment Commission.

49% FI in companies providing port services such as a towage, launching, and line handling. The limitation may be overcome by the authorization of the Foreign Investment Commission.

With 75 years of solid experience and permanent innovation, our firm is duly prepared to assist port operators, engineering specialists, infrastructure contractors, multimodal carriers and logistic agencies, cargo handling and stevedore corporations, escort and towage companies, as well as all other service providers in successfully achieving their business objectives in the new era of the globalized Mexican Port System.

*Goodrich, Riquelme y Asociados is one of the most prestigious, widely respected and innovative law firms in Mexico City. The majority of its clients are medium and large companies, many of which are in the “Fortune 500” category. As creative problems solvers, we help our clients address their changing needs so they can prosper in the Mexican business environment, which itself is continually changing.*

*Aside from providing our corporate clients with complete legal services, we also help them achieve their business objectives in today’s growing globalized business world and within the parameters of the various new multilateral and bilateral trade and investment agreements such as NAFTA, WTO, MEUFTA, MERCOSUR and others. Today the firm has a professional and administrative staff of over 200.*

Please note that this newsletter has been produced for informational purposes only. It may not be relied upon as legal advice. For further information about the issues discussed in this newsletter, please contact:

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