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REVIEW OF CURRENT ISSUES AFFECTING ECONOMIC DEVELOPMENT IN MEXICO

MIGUEL JÁUREGUI ROJAS*

The United States-Mexico Law Institute serves as a forum to discuss trends affecting economic development, infrastructure, and free trade in Mexico. The following article reviews the major issues of the past year and identifies the impact of these issues on the Mexican economy.

BORDERS ISSUES BETWEEN THE U.S. AND MEXICO

If Mexico would like to continue exporting goods to the United States in an agile manner, one of the topics the U.S.-Mexico Law Institute must address is how to achieve safe borders between Mexico and the United States. One area of major concern is bioterrorism legislation. Businesses that export fresh produce and meat are all concerned with bioterrorism issues. Mexico must study bioterrorism carefully to avoid losing business to other countries. In addition, because of the events of September 11, 2001 and the need for security along the borders, Mexico must consider the repercussions of the Patriot Act.¹

The Mexican private sector has actively attempted to adhere to the principles of both bioterrorism legislation and the Patriot Act. It created the Business Anti-smuggling Coalition,² which in turn gave birth to the Customs-Trade Partnership Against Terrorism.³ The Business Anti-Smuggling Coalition (BASC) is a business-

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1. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act), Pub. L. No. 107-56, 115 Stat. 272 (2001).

2. For more information on the Business Anti-Smuggling Coalition visit the U.S. Embassy website at <http://usembassy.or.cr/basc.html> (last visited April 19, 2005).

3. U.S. CUSTOMS AND BORDER PROTECTION, C-TPAT FACT SHEET AND FREQUENTLY ASKED QUESTIONS, at <http://www.customs.gov> (last visited April 19, 2005).

led alliance, supported by the U.S. Customs Service, created to combat narcotics smuggling via commercial trade. The BASC is a voluntary program where corporate participants set self-imposed business standards to eliminate the use of legitimate business shipments by narcotics traffickers to smuggle illicit drugs. The Customs-Trade Partnership Against Terrorism (C-TPAT) is a joint government-business initiative to build cooperative relationships that strengthen the overall supply chain and border security. These two groups attempt to understand crime patterns and search out corruption and contraband in trade between the United States and Mexico. Mexico has drafted a law that makes contraband an organized-crime offense. If this law is adopted, Mexico must be careful to avoid having what would normally be considered an innocent administrative omission result in criminal charges.

THE DEVELOPMENT OF INFRASTRUCTURE IN MEXICO

U.S. President George W. Bush and Mexican President Vicente Fox instituted the Partnership for Prosperity following their election into office. The Partnership for Prosperity is a private-public alliance that uses the power of the private sector to foster an environment in which no Mexican feels compelled to leave his home because of lack of jobs or opportunities.⁴ To date, Partnership for Prosperity has had two meetings, one in San Francisco, California and one in Guadalajara, Jalisco. The meetings focused on the development of infrastructure through the North American Development Bank (NAD Bank). In order for this development to occur, a decision must be made whether to simply expand the NAD Bank's role or create special funding for the development of infrastructure

In determining which zones to develop, the Bank must target areas that have large numbers of individuals immigrating to the United States. Areas in Mexico with the highest rates of immigration are targeted for development. Unfortunately, some of these areas cannot be easily developed because of problems such as poverty. Therefore, before implementing the Partnership for Prosperity within Mexico, a determination must be made regarding which areas can actually be developed.

MEXICAN NATIONALS RESIDING IN THE UNITED STATES

“Money-sending” is the practice of sending money earned while working in the U.S. to family and friends who remain in Mexico. This system has become very important to Mexico's economic growth because it generates large sums of foreign exchange. This year Mexico is expecting over U.S. \$15 billion because of the money-sending system.

Money-sending has positive and negative effects. On the one hand, it illustrates that Mexican immigrants living in the United States are working hard enough to be able to sustain their families in Mexico. The money they send helps family members to survive and provides them with the ability to buy at least some durable consumer goods. In addition, some of this money is being used to invest in

4. Press Release, U.S. Department of State, U.S.—Mexico Partnership for Prosperity, *available at* <http://www.state.gov> (last visited April 19, 2005).

productive activities within the immigrants' hometowns. On the other hand, Mexico is sending its best and brightest citizens to the United States instead of taking advantage of their talents to aid in the growth of Mexico. The U.S. receives all the benefits these individuals have to offer. However, this is not the problem. The problem is that these benefits are not adequately recognized. As such, Mexico should be careful that Mexican nationals who have immigrated to the U.S. are not exploited, as exploitation eventually results in the destruction of Mexico's own economic growth and strength.

The development of international communities and the mixing of cultures between the United States and Mexico is an important phenomenon that accelerated following the implementation of the North American Free Trade Agreement (NAFTA).⁵ A perfect example of this is illustrated in areas surrounding the U.S.-Mexico border. The cultures have become so intertwined in these border towns that even the idea of a "pure" Mexican no longer exists. In essence, the cultures of Mexico and the United States are "melting" together. This "melting pot" is something both countries will be forced to deal with in the future. As such, the United States and Mexico must begin developing public policies that will recognize the validity and worth of this "melting pot."

FREE TRADE AGREEMENTS

NAFTA is lagging behind the point where it should be today. NAFTA has worked so well that many have forgotten the benefits it provides not only to the United States and Mexico, but to Canada as well. Unless Mexico focuses on improving trade, investment and competition will begin to dwindle. In addition, NAFTA should be developed into a larger, more understandable agreement than it is today. As such, future U.S.-Mexico Law Institute conferences should focus not only on how we can make NAFTA more competitive, but how we can make it more understandable.

Mexico has a free trade agreement with Europe.⁶ Unfortunately, Mexico has not fully recognized this agreement in the past. However, problems in the U.S. economy over the past few years have forced Mexico to establish links with European countries. As a result, Mexico now does significantly more trade with the United Kingdom and France than it did a few years ago. There has also been an increase in European investment in Mexico. As the European Union continues to grow, the newly admitted countries may be more inclined to buy Mexican products than other European countries.

Mexico also has free-trade agreements with Chile⁷ and other countries in South America.⁸ Mexico has similar trade agreements with Central America.⁹ These

5. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605.

6. For more information on the Mexico-European Union Free Trade Agreement (MEFTA) see the *Secretaria de Economía* (Secretary of the Economy) website available at <http://www.economia-snci.gob.mx> (last visited April 19, 2005).

7. For more information on the Mexico-Chile Free Trade Agreement see the *Secretaria de Economía* (Secretary of the Economy) website available at <http://www.economia-snci.gob.mx> (last visited April 19, 2005).

8. See, e.g., Treaty on Free Trade between the Republic of Colombia, the Republic of Venezuela and the United Mexican States, available at <http://www.economia-snci.gob.mx> (last visited April 19, 2005).

9. For more information on the trade agreements Mexico has entered into with Central American nations

agreements could pose difficulties because Mexico and South America are not well acquainted. Although Mexico is a part of Latin America, in areas of trade, investment, culture and economics, Mexico has always tended to look north when developing its trade agreements. Nonetheless, free-trade agreements with South America are just as important.

Mexico has established a free trade agreement with Japan.¹⁰ The final agreement with Japan was extremely hard to obtain. Japan was a very difficult country to negotiate with, particularly with respect to meat and other agricultural products. One of the biggest obstacles in the negotiations of this agreement was the exportation of pork to Japan. It was so difficult that at one point during President Vicente Fox's visit to Japan, he was forced to postpone the negotiations. Fortunately, Mexico and Japan are now in the stages of *limpieza del tratado* (cleaning up the treaty).

The *Comisión Estatal de Ecología* (the State Commission of Ecology) (hereafter COESE) and the Mexican private sector will more than likely sign off on the trade agreement with Japan in the near future. Once this trade agreement is approved by COESE and the private sector, the Senate will hopefully ratify it. This agreement will help develop trade and investment between Japan and Mexico, aid the growth of manufacturing facilities in Mexico, and increase the exportation of food products from Mexico to Japan.

THE LAW IN MEXICO AND ITS EFFECTS ON DEVELOPMENT

One element that has decreased competition in Mexico is the lack of, or at least a perception of the lack of, the rule of law within the country. This is best illustrated by the sustainability of strategic final decrees. When a final decree is issued from the Federal District Courts there is no recourse, or appeals process. There has been a law proposed that would allow a case to be re-opened if it is discovered that the case was somehow corrupt, unethical, or a mistake was made during the legal proceedings. If this proposal becomes law the decisions in many cases will not be considered a final decree.

The current Supreme Court of Mexico adheres to the principles of law and the Mexican Constitution. It has accepted cases that would have never been taken on by any previous Supreme Court. It is currently deciding a substantial number of constitutional disputes.¹¹ Unfortunately, the court is also going through very difficult times in attempting to deal with populism and negligent politics.

Mexico has received bad press because of its failure to enforce the terms of arbitration awards in landmark cases.¹² However, this bad press is unwarranted. The courts are enforcing awards. Those awards that are not enforced are a result of

see the *Secretaría de Economía* (Secretary of the Economy) website available at <http://www.economia-snci.gob.mx> (last visited April 19, 2005).

10. More information on the Agreement for the Strengthening of Economic Partnership between Japan and the Mexican United States is available at <http://www.economia-snci.gob.mx> (last visited April 19, 2005).

11. For more information see the website of the National Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) at <http://www.scjn.gob.mx> (last visited April 19, 2005).

12. See, e.g., *Sosa v. Alvarez-Machain*, 124 S.Ct. 2739 (2004) (U.S. Supreme Court opinion regarding enforcement of Mexican arbitral awards) and *F. Hoffman La-Roche Ltd., et al., v. Empagran S.A. et al.*, 124 S.Ct. 2359 (2004) (same).

technical deficiencies and do not represent a general unwillingness to enforce these decisions. Without the rule of law and legal security, Mexico will not progress. The Mexican Supreme Court is Mexico's only current hope of sustaining growth and the rule of law in order to make Mexico more attractive in terms of competitiveness, investment and security.

LIMITATIONS TO GROWTH AND DEVELOPMENT IN MEXICO

There are other important bars to growth and development in Mexico. First is the legislative stalemate that has been extremely prejudicial. Legislative stalemate is fostered and promoted by the unions in Mexico. Although unions may be good for their own constituencies, once they become part of the political system they become invasive. They become strongholds of power and economic strength, creating a sort of "coercion" over the state. For example, the practices of the *Compañía de Luz y Fuerza Del Centro* (Central Light and Power Company) allow it to have a stranglehold over an entire utilities market in Central Mexico. The company's union not only protests privatization, but also wants to quash any discussion of electricity generation issues. Unions such as *Compañía de Luz y Fuerza Del Centro* limit competition in Mexico, thereby barring future growth and development throughout the country.

The energy stalemate has also limited growth and development in Mexico. This stalemate is a consequence of two factors: confusion over what Mexican energy policy should be and a significant wasting of resources. There is a constant debate between the Mexican private and public sectors regarding prices of natural resources. Mexico is currently paying U.S. \$6 per million BTU's for natural gas, an extremely high price. This is because Mexico ties its natural gas prices to gas produced in the Houston channel, which is the most expensive in North America. A more reasonable price would be in the range of U.S. \$2-2.50 per million BTU's.

The lack of road and port infrastructure in Mexico also bars growth and development. A perfect example is the case of Manzanillo. Manzanillo involved a strike on the West Coast of the United States. Unfortunately, Mexico could accept only one percent of the load that would have gone to the ports on the West Coast. Therefore, Manzanillo was unable to provide containers to the factories in the United States on time. If Mexico had more roads, this economic opportunity might not have been lost.

Lack of credit lending is another factor barring growth and development in Mexico. Banks are not lending enough, if they do so at all. In fact, banks have not been making loans for a number of years. Companies are forced to expand using their own resources. Those businesses without the needed resources are unable to expand, which further hampers growth and development in Mexico.

Taxation is another problem that has caused legislative stalemate in Mexico. There is no consensus on tax reform in the legislature. Specifically, there is no agreement on what should be done to increase tax revenue in Mexico, or on what the tax structure should be. Hopefully, Mexico will see some progress in the coming year. Even if this progress is minor, it will still be meaningful.

The Mexican Government does not provide incentives to encourage individuals to establish private businesses. Individuals are forced to go to banks to obtain the money they need to start and develop companies. Forcing these individuals to go

to private banks can cause problems. Many banks have ceased making loans for a number of years. Individuals are either forced to expand using their own resources, or they must negotiate with banks to borrow money at high interest rates with burdensome loan requirements. For example, the Foreign Trade Development Bank is more expensive than other banks. It is also more burdensome when entrepreneurs are attempting to guarantee a loan. The National Development Bank of Mexico (*Nacional Financiera*)¹³ has similar problems. It is more expensive and difficult to access and deal with overall. Without incentives for development, small- and medium-size businesses will never survive. In fact, with the exception of large companies that can survive off their own treasuries, management, and placement of securities, there is little economic growth in Mexico.

President Fox is attempting to copy Great Britain's model. Britain has a combination of public-private initiatives that are called *Programas de Promoción de Servicios* (Service Promotion Programs or P.P.S.). Under P.P.S., the private sector renders services that would ordinarily be provided solely by the public sector. The P.P.S. process is currently being implemented at universities and hospitals in Mexico. P.P.S. has helped to reduce the amount of public money normally used to build and administer universities by combining money from the private sector with money from the public sector. The private sector builds, administers, cleans and maintains the buildings. The public sector in turn provides teachers, other employees, programs and unions within the university. Similarly, money from the private sector has been used to build and equip hospitals. One business builds the hospital, another provides the equipment, and yet another provides the management. The public sector then provides doctors, transfers clients from public institutions to these new "private" hospitals, and pays for the services rendered by the private sector.

Pemex¹⁴ multiple service contracts will allow Mexico to begin exploiting its natural gas resources.¹⁵ Under this concept, Pemex will award a long-term, multi-billion dollar contract to private companies, who will render services to Pemex. The private companies will not actually own the gas. They simply will continue to provide the same services they always have, only now they will receive payment. The companies must invest in rendering the service. However, once they recover their investment, they can pull out. Pemex then will keep whatever money is left over. The number of years a company is required to stay will depend on the bidding process. This new idea is good for both Pemex and the taxpayers because neither has had to spend money on the development and exploitation of natural gas release contracts. These contracts are also attractive to multinational, integrated energy companies. These companies now only have to invest U.S. \$3 million as opposed to the normal investments which can range between U.S. \$15 and \$35 billion.

13. For more information on the National Development Bank of Mexico see the *Nacional Financiera* website at <http://www.nafin.com> (last visited April 19, 2005).

14. Pemex, or *Petróleos Mexicanos* (Mexican Petroleum), is the nationalized Mexican oil production company. More information is available at <http://www.pemex.com> (last visited April 19, 2005).

15. Commission on Constitutional Points, Senate of the Republic, Information on Pemex Multiple Service Contracts, Press Bulletin No. 2002/015 (Jan. 31, 2002), available at <http://www.senado.gob.mx/> (last visited April 19, 2005) (*Comisión de Puntos Constitucionales, Senado de la Republica, Informacion de Contratos de Servicios Multiples de PEMEX, Boletín de Prensa No. 2002/015*).

THE POLITICAL SCENARIO

President Vicente Fox is interested in Mexicans living in the United States. Some members of the *Partido Revolucionario Institucional* (Institutional Revolutionary Party or PRI)¹⁶ believe that it is foolish to send ballots to Mexicans living in the United States. They argue that Mexicans living in the United States will never vote, and they will not know the issues. Even if they did know the issues, according to the PRI they would have no interest in casting their vote, and would never come forward given their illegal status. The truth is that the PRI does not want them to vote. Many of these people were disgruntled with the policies in Mexico that forced them to leave. Thus, it is highly unlikely that they would ever vote for the PRI. In contrast, President Fox wants to give these people the right to vote, and provide them with access to democracy.

Group presidential succession in Mexico is a nightmare. It is very hard to ascertain who will fill what position. Lic. Roberto Madrazo Pintado is the leader of the PRI. However, if Madrazo does not find a way to get rid of Andrés Manuel López Obrador¹⁷ he will lose the election. López Obrador has created ill will in Mexico as a result of his efforts to polarize the people based on class, and his severe mismanagement of Mexico City's treasury. Further, when López Obrador was an oil well burner during the administration of President Miguel de la Madrid Hurtado,¹⁸ he threatened to burn the President's oil wells if the President failed to cooperate with the Pemex Union. A person such as López Obrador without a clean and honest track record, who has continuously failed to live up to the role of statesman, is not worthy of a vote in Mexico's current democracy.

Cuauhtémoc Cárdenas¹⁹ is López Obrador's enemy. Cárdenas is preparing to run for President. If he becomes a candidate, López Obrador is finished. There is also a political fight between Manuel Espino Barrientos and Felipe Calderón Hinojosa.²⁰ They are fighting for the nomination of the *Partido Acción Nacional* (National Action Party or PAN). Finally, the unknown factor is Jorge Castañeda.²¹ If Mr. Castañeda runs as an independent candidate and manages to attract a following he will detract votes from everyone else. Mr. Castañeda is very bright. He has some wonderful ideas. However, like many of the other candidates, his track record may not be satisfactory.

16. The Institutional Revolutionary Party, or PRI, was Mexico's ruling party for approximately seventy-one years. More information about the PRI is available at <http://www.pri.org.mx>. (last visited April 6, 2005).

17. Andrés Manuel López Obrador is the current mayor of Mexico City. More information is available at <http://www.citymayors.com>. (last visited April 19, 2005).

18. Miguel de la Madrid Hurtado was president of Mexico from 1982-1988. More information is available at <http://www.britannica.com> (last visited on April 6, 2005).

19. Cuauhtémoc Cárdenas was the first elected Mayor of Mexico City in 1997. More information is available at www.pbs.org/newshour/bb/latin_america/jan-june99/mexico (last visited April 19, 2005).

20. Manuel Espino Barrientos was the former Secretary General of PAN and Felipe Calderón Hinojosa was the Secretary of Energy in Mexico, until he resigned on June 1, 2004. More information on their candidacy is available at www.pan.org.mx (last visited April 19, 2005).

21. Jorge Castañeda was the Secretary of Foreign Relations under President Fox's Administration. More information is available at <http://envivo.presidencia.gob.mx/?Art=3970&Orden=Leer> (last visited April 19, 2005).

THE ECONOMY IN MEXICO

The rate of inflation in Mexico has stabilized over the past few years. This may be because the Gross Domestic Product has not grown as much as in previous years. Additionally, there has been an increase in direct foreign investment, particularly in 2001. Foreign investment in Mexico is estimated to be U.S. \$20 billion per year. Mexico has been unable to attract a greater sum because the sectors of the economy that attract foreign investment remain closed. If Mexico were to allow foreign investment in these sectors, it would easily be attracting U.S. \$25 billion per year.

In addition, higher oil prices have been very good for Mexico. Although the oil market was very bad in 1998 and 1999 and was not very good in 2001, it has begun to improve. Now we are experiencing a bonanza to some degree. However, this could pose a danger because Mexico must manage its oil reserves well.

Although the economic situation has gotten better, there are still some problems. In the communications field there is still a problem with Telmex holding a private monopoly.²² Employment in the fields of professional and personal services has decreased, including the legal profession. Mexico has not grown enough to do a good job of addressing unemployment. Although growth is steady, it is not sufficient. Unfortunately, President Fox has not been able to create the million-plus jobs that are necessary.

22. See Aileen A. Pisciotto, *Telecommunications in Mexico: A Market in Transition*, MEX. LAW & BUS. REPORT, Oct. 31, 1997 (discussing the Telmex monopoly in Mexico).