A Free Trade Agreement between the United States and Mexico: The Right Choice

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INTRODUCTION

The purpose of this Article is to demonstrate that the intended Free Trade Agreement (FTA) between the United States and Mexico is a natural and necessary step in the two countries' economic relations. The past seventy years of economic policies between Mexico and the United States have not anticipated such an alliance; yet, due to worldwide and internal changes in both countries, the move to align through the FTA seems both logical and compelled. Therefore, by both natural force and more recently by design, the steps needed for the pact are almost complete. Although it will have permanent consequences and potential obstacles, the agreement must be implemented now, and with some degree of haste. This Article will trace the steps which have led to the FTA and will analyze the evolution and progression of Mexican economic, legal, and political policies which have now reached a point which permits and necessitates a trade pact.

To examine the issues, steps, and problems inherent in a United

States/Mexico trade alliance, this Article must discuss broadly related concepts. Part I generally analyzes the formation of the FTA as well as the reasons for it. Part II briefly presents Mexico's history, which is essential to understand the concerns and obstacles to such an agreement. A review of Mexico's history is necessary to understand how much of an aversion the FTA is to certain sectors in Mexico. A historic perspective also helps to bring into focus the dramatic change which Mexico has recently made to allow greater foreign presence. Recently, much of the basic framework of the Mexican Constitution has unwittingly evolved to tolerate more and more foreign presence. Part III presents the recent programs Mexico has implemented to attract foreign investment and to make it more receptive to the FTA. Part IV discusses more specifically the steps that Mexico has taken to create confidence in both its economy and its political structure. These steps have been designed to convince foreign investors that their money will be safe. Part V analyzes both the need for an FTA, and the benefits it should generate. Part VI addresses how other nations, specifically Japan, are responding to the recent economic changes in Mexico. Part VII briefly discusses the scope and application of the FTA. And, finally, Part VIII analyzes the potential obstacles to the FTA.

I. THE FREE TRADE AGREEMENT

Is there a tangible benefit for America in sharing the economic fate of a diverse country such as Mexico? How can the FTA help Mexico's economy? What are the reasons for the agreement? How does an FTA make the nations involved become more prosperous? This section analyzes these basic queries.

A. *What is a Free Trade Agreement?*

Pursuant to the theories of comparative costs (or advantages) of Ricardo and Mill, whereby countries benefit more by producing the types of commodities that are intrinsically (considering population, geography, climates, etc.) more efficient to produce, international trade has increased.[1] The corresponding principles of free trade associated with these theories have been sustained by the democratic countries, especially after World War II.[2] A free trade agreement is

1. P. SAMUELSON, ECONOMICS 626-36 (1980).
2. This point is demonstrated principally by the emergence of GATT, General Agreement on Tariffs and Trade, 55 U.N.T.S. 194 (1947). For an overview of the

based upon the unrestricted international exchange of goods, with tariffs used only as a source of revenue, not as an instrument to influence the quantity, direction, or price of goods.[3] Thus, an FTA imposes no artificial control over the import or export of goods to manipulate the market; it lets the theory of comparative costs operate freely.

A free trade pact between the United States and Mexico, like the agreement reached by the United States and Canada,[4] should be viewed not only as a classic example of free trade, but also as a defensive reaction to the creation of other trade blocks in other parts of the world.[5] Further, the pact is a natural step in the progression of western hemisphere economics.[6]

This progression is manifested in the intended integration of the American, Mexican, and Canadian markets. On February 5, 1991, President Bush announced the intent to create a tri-lateral trade agreement among the United States, Mexico, and Canada.[7] This intention was also announced by President Salinas of Mexico and Prime Minister Mulroney of Canada.[8] The integration of the three North American economies would create the most powerful economic zone in the world.[9]

A tri-lateral approach to North American trade should not materially affect trade between the United States and Mexico specifically. The time schedule of the agreement should not be altered because of

GATT, *see generally* O. LONG, LAW AND ITS LIMITATIONS IN THE GATT MULTILATERAL TRADE SYSTEM (1985).

3. WEBSTER'S NEW INTERNATIONAL DICTIONARY 907 (3d ed. 1981); *see also* PARR & GRANT, ENCYCLOPEDIA DICTIONARY OF INTERNATIONAL LAW 137 (1st ed. 1986); HANDBOOK OF INTERNATIONAL BUSINESS, at 8, 9 (J. Walter/Murray 2d ed. 1988).

4. United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449, 102 Stat. 1851 (codified as amended at 19 U.S.C. § 2112 (1988). *See also generally* H. CROOKELL, CANADIAN-AMERICAN TRADE AND INVESTMENT UNDER THE FREE TRADE AGREEMENT (1990).

5. *Poll Shows U.S. Support for Extension of U.S.-Canada Trade Pact to Include Mexico*, 7 Int'l Trade Rep. (BNA) 848 (June 13, 1990). *See also* Longworth, *World Trade System Won't be the Same after Failure of GATT Talks*, San Diego Union, Dec. 9, 1990, at A2. Principal examples of these blocks would include the European Economic Community (EEC), ASEAN (among Singapore, Malaysia, Indonesia, Philippines, Korea, Thailand, and Taiwan), Latin American Free Trade Associations (LAFTA), and various smaller trade alliances in the Caribbean and Africa.

6. *Free Trade Agreement Endorsed*, 7 Int'l. Trade Rep. (BNA) 1002 (July 4, 1990).

7. Truell, *U.S., Canada, and Mexico to Negotiate a North American Free-Trade Pact*, Wall St. J., Feb. 6, 1991, at A7, col. 1.

8. *Id.*

9. *See* Halverson, *Global Changes Forge New Economic Ties*, Christian Science Monitor, Apr. 30, 1990, at 9; Kaslow, *Salinas Wants Labor Mobility*, Christian Science Monitor, June 15, 1990, at 9, col. 1; *North American Free Trade Zone Would Top EC in Population, Output, Mexican Official Says*, 8 Int'l. Trade Rep. (BNA) 51 (Jan. 9, 1991).

Canada's participation.[10] The prior free trade agreement between the United States and Canada will most likely be used as a starting point for the United States/Mexico/Canada negotiations; it is believed that a greater liberalization can be achieved through creating a North American Trade Area than could be achieved in a bi-lateral negotiation.[11] The resulting tri-lateral agreement would be the first step towards integrating all nations of the western hemisphere into a single common market,[12] consistent with President Bush's announcement.[13] Canada will obviously play a vital and indispensable role in the negotiation of the tri-lateral free trade agreement. However, this article will only focus on the relationship between the United States and Mexico in regard to the FTA.

B. Impetus for the Free Trade Agreement

The reasons for the United States-Mexico Free Trade Agreement are numerous and complex. From an objective point of view it is apparent that certain global economic phenomena have affected almost every nation on earth. Advancing communication and transportation technologies have helped to open borders and stimulate international exchange. The resulting increase of foreign contact within most nations has steadily affected social and political traditions in many regions and has led to some compromise in the concept of sovereignty as foreign cultures and ideas begin to permeate daily life.[14]

Modern technological advances have also reduced the value that many individuals give to the concepts of nationalism and patriotism, especially when economic prosperity is at stake. Consequently, the world has invented complicated economic entities such as trans-na-

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10. Remarks by D. Abelson, Office of the United States Trade Representative, at a public meeting on the U.S.-Mexico Free Trade negotiations, sponsored by the Institute for Regional Studies of the Californias (San Diego State University) and the Department of Transborder Affairs, County of San Diego (Feb. 7, 1991); *see also*, *Hills Sees No Delay if Canada Included*, 7 Int'l. Trade Rep. (BNA) 1468 (Sept. 26, 1990); *Trilateral Negotiations Are Feasible*, 7 Int'l. Trade Rep. (BNA) 1923 (Dec. 19, 1990).

11. *Id.*

12. S. Jenner, *A Different Perspective on the Free Trade Agreement*, Special Report: Maquiladoras, Nov. 26, 1990, at 17 (reporting on a presentation by Don Abelson of the Office of the U.S. Trade Representative). *See also* Truell, *supra* note 7.

13. *See* Truell, *supra* note 7. On February 5, 1991, President Bush announced his desire to see an expanding western hemisphere free market, stating that the tri-lateral agreement with Mexico and Canada would be a "dramatic first step to the realization of a hemispheric free trade zone stretching from Point Barrow in Alaska to the Straits of Magellan." *Id.*

14. *See generally Nation-State: An Idea Under Siege*, Wash. Post, Nov. 11, 1990, at A1, col. 4.

tional corporations to seize available opportunities around the globe. Thus, loyalties are increasingly being pledged to economic goals rather than to traditions or sovereigns.[15]

Recently, nations have demonstrated their increasing interdependence by forming trade blocks[16] to take advantage of these global trends. Through a trade block, a nation can exploit its strength, whether it be technology, capital, or labor, etc., and align with a neighbor who has a complimentary strength. The result is a more complex economic structure and a greater level of competition in the world market.[17]

Obviously, the United States and Mexico are not immune to the effects of this global movement and the resulting heightened competition. The recent trade alliances create serious implications and ramifications both in the United States and in Mexico and forces both countries to reevaluate their ability to compete. As a result of these reevaluations, the United States and Mexico must realize the depth of their trade and economic interdependence[18] and see that they can compliment each other and together offer a greater ability for each to compete globally.[19] Thus, to a great degree, an FTA would serve as a defensive reaction to these natural economic movements and as a mechanism to hedge against increasing world competitiveness created by the formation of other trade blocks.[20]

Because Mexico is also required to compete in the global arena, it has reasons for wanting the FTA that go beyond a defensive reaction. Mexico seeks the FTA because it has a compelling need for investment capital and economic growth.[21] As a rather young coun-

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15. *See generally*, M. SILVA & B. SJOGREN, EUROPE 1992 AND THE NEW WORLD POWER GAME 3-32 (1990).

16. *See supra* note 5 and accompanying text.

17. *"Win-Win" Situation*, 7 Int'l. Trade Rep. (BNA) 1651 (Oct. 31, 1990); *Facing Increased International Competition*, 8 Int'l Trade Rep. (BNA) 122 (Jan. 23, 1991).

18. OFFICE OF TRADE AND INVESTMENT ANALYSIS, U.S. DEP'T. OF COM., U.S. FOREIGN TRADE HIGHLIGHTS 1989 46, 48 (1990). The Commerce Department's data states that Mexico is the third highest purchaser of United State's products, with American exports increasing from approximately $9 billion in 1983 to almost $25 billion in 1989. Also, Mexico is the third highest supplier of American imports and the United State's third highest total trade partner with combined trade of $52 billion in 1989. On the Mexican side, the United States is Mexico's number one purchaser of exports and supplier of imports. *See* MEXICO CITY NATIONAL CHAMBER OF COMMERCE (CAMARA NACIONAL DE COMERCIO DE LA CIUDAD DE MEXICO), MEXICO 1990: COMPENDIUM OF DATA AND STATISTICS OF MEXICO (COMPENDIO DE DATOS Y ESTADISTICAS DE MEXICO), 126 (1990).

19. *See North American Free Trade Zone Would Top EC in Population, Output*, *supra* note 9, at 51.

20. *See Facing Increased International Competition*, *supra* note 17; Miller, *Salinas is Eager to Nail Down a Pact*, L.A. Times, June 9, 1990, at A3, col. 4.

21. Mexico's labor force is one of the fastest growing of any major country, demanding the creation of one-million jobs a year. C. Salinas de Gortari, Address by the President of Mexico, to a Joint House/Senate Meeting, 101st Cong. 1st Sess., 135 Cong. Rec. H 6562, 6564 (Oct. 4, 1989) (Speech also published and reproduced by the Office

try, Mexico has reached a position where its demographic growth is competing against its economic development.[22] Without the ability to create economic growth and provide jobs. Mexico will be unable to meet the needs of its expanding population because of a capital shortage.[23]

Prior to Mexico's economic crisis of 1982[24] which was generated mainly by the fall of oil prices,[25] Mexico was able to balance economic growth with population growth. This balance was reached by receiving large amounts of financing from foreign sources.[26] In the years prior to 1982, Mexico had staked the majority of its economic development on the oil industry,[27] and thus, with the collapse of oil prices in 1982,[28] Mexico had no mechanism to maintain its growth rate.[29] Additionally, the indebtedness that was used to finance the oil industry has recently become mature and payable and any capital that could have been used to stimulate and modernize the economy, is necessarily being used to service the immense debt.[30] Consequently, due to its exhausted ability to generate credit, Mexico must seek growth through a new type of catalyst: foreign capital. In the

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of the Press Secretary to the President of Mexico) [hereinafter Salinas Address]. Such a high rate of growth demands that jobs be created. Capital is needed to provide these jobs. In the past, Mexico depended largely on borrowed funds to promote growth; now, however, that option is no longer viable, *see infra* notes and accompanying text. A Mexican economic official confessed that Mexico had borrowed too much in the past and now must seek a source of foreign capital to grow. *See* Rohatyn & Altman, *Confront the Mexico Problem*, Wall St. J., Nov. 26, 1986, at A20, col 3; Green, *Mexicans Divided on Benefits of U.S. Trade Deal*, J. Com. & Commercial, Nov. 15, 1989, at 5A, col. 1. The new investment liberalizations recently enacted in Mexico, *see infra*, demonstrate that Mexican economic policy is to pursue foreign capital and investments. *See Financial Services May Open Later*, 6 Int'l. Trade Rep. (BNA) 707, 708 (May 31, 1989); Moffett, *Japanese Investors Tread Warily in Mexico*, Wall St. J., Nov. 1, 1989, at A8, col. 1.

22. This proposition is especially evident in regard to agricultural output. *See* R. Salinas de Gortari, *Mexican Agriculture in regard to the Challenge of Modernization (El Campo Mexicano ante el reto de la Modernizacion)*, 40 Foreign Commerce (Commercio Exterior) 827 (Sept. 1990).

23. *See supra* note 21.

24. A. RIDING, DISTANT NEIGHBORS 63-65 (1989).

25. *Id.* at 64. For an analysis of the crisis and its origins, *see* MEXICO 2000, *infra* note 44, at 33-41.

26. L. Meyer, *Oil Booms and the Mexican Historical Experience: Past Problems-Future Prospects*, in MEXICO-U.S. RELATIONS: CONFLICT AND CONVERGENCE 177, 181 (C. Vasquez & M. Griego eds. 1983).

27. *See* A. RIDING, *supra* note 24, at 165.

28. *Id.* at 64.

29. *See generally* L. Meyer, *supra* note 26.

30. *See generally* WEINTRAUB, A MARRIAGE OF CONVENIENCE: RELATIONS BETWEEN MEXICO AND THE UNITED STATES 12, 13, 132-33 (1990); Castañeda, *The Choices Facing Mexico*, in MEXICO IN TRANSITION 18, 19 (1988).

current scenario without borrowing, this capital will have to come from increased trade and international investment.[31]

Furthermore, in addition to creating domestic problems in Mexico, the shortage of capital and inability to create jobs directly affects the United States and, consequently, the United States has a legitimate interest in Mexico's ability to provide employment.[32] In a declining Mexican economy, wages would fall, illegal immigration to the United States would rise, and the size of Mexico's market for American products would diminish.[33] To combat these undesirable effects, a logical solution for both the United States and Mexico would be to align economically by opening the door of free trade, allowing an influx of capital into Mexico, thereby fostering growth and curbing illegal immigration. Moreover, an alignment through free trade should have additional benefits to both the United States and Mexico beyond creating jobs and curbing illegal immigration. These benefits will be discussed at a later point.[34]

However, from the Mexican perspective, an alliance with the United States may not be the only available alternative to win foreign capital. Prior to discussing the FTA with the United States, Mexico attempted to attract other types of foreign investment capital. Initially, efforts were made by Mexico's administration to attract foreign investment indiscriminately from many sources as sights were not solely fixed on the United States and American capital.[35] Indeed, Mexico's administration specifically sought to attract capital from Japan and Europe rather than from the United States. This is demonstrated by trips taken by Mexico's President Salinas to Japan and Europe in the spring of 1989 to find investors.[36] Immediately following his trips to Japan and Europe, President Salinas decided to follow-up on the United State's ongoing proposals[37] to enter into a free trade type of alliance. The less than successful trips to Japan and Europe, in conjunction with the present global situation of developing trade blocks, made the FTA seem more plausible. Only then, after six weeks of rumor and innuendo that an FTA was being negotiated,[38] did President Salinas fully commit to the possibility of a

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31. *Mexico: The New Model Debtor*, ECONOMIST, Oct. 6, 1990, at 86.
32. *See infra* notes 231-33 and accompanying text.
33. R. Dunn, *Low-Paid Workers Would Lose Even More in Free-Trade Pact With Mexico*, Wash. Post, Aug. 1, 1990, at F3, col. 1.
34. *See infra* text accompanying notes 222-37.
35. Brisson, *U.S.-Mexico Trade Continues to Expand and Improve*, BUS. AM., Dec. 4, 1989, at 7, 8.
36. *See* Kaslow, *supra* note 9.
37. A. RIDING, *supra* note 24, at 335; A. PASTOR & J. CASTAÑEDA, LIMITS TO FRIENDSHIP, 239 (1988); *House Agriculture Committee's De la Garza Presses Mexico to Study Broad Trade Accord*, 6 Int'l. Trade Rep. (BNA) 239 (Feb. 22, 1989).
38. *U.S. Seen Giving "Warm Reception" to Mexican Request for Talks on FTA*, 7 Int'l. Trade Rep. (BNA) 736 (May 23, 1990).

free trade pact with the United States.[39] Subsequently, experts in Mexican-American economic relations began to voice divergent opinions on the issue.[40] However, as the realities of heightened competition and need for economic growth peaked, the possibility of a North American trade agreement began to materialize.[41]

II. HISTORICAL MEXICAN ATTITUDES TOWARDS FOREIGN INVESTMENT

Although the FTA may help to solve Mexico's economic problems, many factions oppose it. Emerging political parties in Mexico oppose opening Mexico's economy to foreign investment.[42] This reaction may be reasonable in light of unfortunate passages of Mexican history. Prior colonizations, interventions, and economic exploitations in Mexico by foreigners are not easily forgotten by the Mexican people. Therefore, because of Mexico's historic distrust of its northern neighbor, many questions and problems will arise if Mexico commits to such a permanent relationship. To realize the source and extent of this distrust from a nationalistic Mexican perspective it is necessary to understand the historical events which have produced hostility towards foreign presence.

A. Pre-Constitution (before 1917)

Throughout its modern history, Mexico has often been subjected to foreign intervention. Intervention began when the Spaniard, Hernan Cortez, first arrived at Mexico's shores in 1519. Violent clashes between the Spaniards and native Mexicans set the tempo for what much of Mexican life would be for the next few hundred years.[43]

Mexico was formed as a self-governing country by native indians

39. *Bush and Mexican President Salinas Agree to Move Toward Free Trade Agreement*, 7 Int'l. Trade Rep. (BNA) 834 (June 13, 1990).

40. *Compare FTA Between Mexico and United States Will Boost Export Opportunities, Study Finds*, 8 Int'l. Trade Rep. (BNA) 357 (Mar. 6, 1991) and *Key Legislators Urge Bush Not to Limit Agenda in FTA Negotiations with Mexico*, 8 Int'l. Trade Rep. (BNA) 19 (Jan. 2, 1991). The reports by independent officials support many divergent opinions regarding the benefits that an FTA would bestow.

41. SPECIAL FORM NO. 1 (INFORME ESPECIAL), BANCOMEXT, Aug. 1990, at 1.

42. *See* R. Rubio, *Mexico in Perspective: An Essay on Mexico's Economic Reform and the Political Consequences*, 12 HOUS. J. INT'L. L. 239 (1990); Davison, *Salinas gets silent treatment*, San Diego Union, Nov. 2, 1989, at A1, col. 2; Silver, *Mexico has its own Reform Movement-Salinastroika*, San Diego Union, Oct. 21, 1990, at C5, col. 1. *See also infra* p. 82-92.

43. *See generally*, A. RIDING, *supra* note 24, at 29-34.

and Christian subjects of the king of Spain. The majority of these people shared a heritage of both indian and Spanish blood and were called mestizos. The mestizos did not share the values of the Spanish. Instead, as a result of domination by Spanish landowners and employers, the mestizos grew to distrust the Spanish, and identified them with exploitation and unfairness.[44]

As a result of this exploitation and resentment, Mexico rebelled against three hundred years of Spanish domination on September 15, 1810, with Father Miguel Hidalgo's cry for revolution against Spain. This was the first of Mexico's many attempts to shed the yoke of foreign manipulation and subjugation.[45]

Later, after Mexico had won its independence from Spain, France invaded Mexico, and in 1864 Napoleon III placed a stranger, Maximilian, on the Mexican throne. This French intervention pushed Mexico into another civil war where Mexicans fought to rid themselves of French dominion and a non-Mexican ruler.[46]

However, in the minds of many Mexicans, the most acrid and vehement violations of sovereignty came at the hands of the United States. Many Mexicans have always feared that threats from the colossus to the north would be imminent.[47] The threats and actions of the United States have taken Mexican land, terminated Mexican lives, dominated Mexican politics and culture, and guarded Mexican autonomy. These violations have subsequently become ingrained in the Mexican mind as an integral part of their history.

In 1836, fifteen years after Mexico's independence from Spain, American settlers in the Texas territory rebelled against Mexican authority.[48] After battles such as the Alamo and Goliad,[49] Texans declared their independence from Mexico.[50] Within ten years after this declaration, the United States annexed Texas as a state, and declared war in response to Mexican challenge (Mexico was still claiming Texas as a territory).[51]

During the war, American forces captured Mexico City in December 1847. Mexico was compelled to surrender and to drop any claims to Texas.[52] Further, the United States demanded Mexico's northern territories. These additional demands, as expressed in the Treaty of

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44. J. WANNISKI, MEXICO 2000 at 17-20 (1990).
45. *Id.*
46. Peck, *Mexico and the U.S.: A History of Suspicion and Friendship*, SCHOLASTIC UPDATE, Nov. 18, 1988 at 16.
47. *See generally*, A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 39-77.
48. *Id.*
49. J. CROW, THE EPIC OF LATIN AMERICA, at 653-55 (1980).
50. *See* Peck & Eskin, *Remember Which Alamo?*, SCHOLASTIC UPDATE, Nov. 18, 1988, at 18.
51. *Id. See also* J. CROW, *supra* note 49, at 655-57; A. RIDING, *supra* note 24, at 36.
52. J. CROW, *supra* note 49, at 657-59.

Guadalupe in 1848,[53] required Mexico to sell off close to one-half of its total land mass, including what is now California, Arizona, Nevada, New Mexico, and Utah, for the paltry sum of 15 million dollars.[54]

As a result of this American invasion, Mexicans have passed stories on to subsequent generations to demonstrate the great anti-American emotions that Mexico felt. One of these accounts is of "Los Ninos Heroes" (Heroic Children), where several young men, to avoid the ravages of an American incursion into Mexico City led by General Winfield Scott, wrapped themselves in the Mexican flag and threw themselves down from a lofty fortress.[55] This act is today commemorated by a large monument in Mexico City and the story is taught to elementary students as an important part of Mexican history demonstrating how one should feel for Mexico.

The 1847 invasion of Mexico City was not an isolated incident. The United States invaded Mexico during the period of the Mexican Revolution from 1911 to 1917. During this period, United States President Woodrow Wilson sent troops to Mexico to prevent a certain "undesirable" anti-American general from taking control of the country. During this invasion, American Marines occupied the Ports of Tampico and Veracruz in an effort to halt ammunition deliveries to the wrong Mexican revolutionaries.[56]

Angered by President Wilson's interference, Pancho Villa, an infamous rebel leader, crossed into the United States and killed eighteen Americans. In response to Villa's actions, General John J. Pershing was sent into Mexico by President Wilson. In 1916 General Pershing led 10,000 troops on a retaliatory expedition deep into Mexico to capture Villa.[57]

Moreover, further hostility towards Americans resulted from the association of Americans with favors given by Mexico's most despised dictator, Porfirio Diaz. Through thirty-four years of oppression (1884-1910) Porfirio Diaz alienated both himself and foreigners from the Mexican people. He granted favors to foreigners by selling them prime business opportunities, while he strangled his own people with oppression and injustices. This oppression linked the hate and

53. Treaty of Guadalupe-Hidalgo, Feb. 2, 1848, United States-Mexico, 9 Stat. 922 at art. V; *see also* A. RIDING, *supra* note 24, at 36.

54. A. RIDING, *supra* note 24, at 36. *See also*, Peck, *supra* note 46, at 16.

55. J. CROW, *supra* note 49, at 657-58.

56. *See generally* Peck, *supra* note 46, at 17, and J. CROW, *supra* note 49, at 690-91.

57. *See* Peck, *supra* note 46, at 17.

inequities of the dictatorship to the Americans, since Americans profited from the special treatment.[58] During the tenure of Porfirio Diaz, Mexico was known as the "mother of foreigners and the stepmother of her own children".[59]

Additionally, Mexico has been subjected to determinism and economic manipulation by America.[60] Hard nosed dollar diplomacy was used to exploit Mexico's economy.[61] American businessmen with large interests in Mexican land, oil, and agriculture effectively precluded bright points of the Mexican economy from being enjoyed by Mexicans.[62]

To an extremely patriotic nation these invasions over the years have made Mexicans wary of Yankee exploitation.[63] Mexico perceives its foreign relations with the U.S. as a permanent relationship of interference.[64] This perception helped lay the foundation for Mexico's strong anti-foreigner Constitution drafted in 1917.[65] Much of the popular acceptance of this supreme document resulted from the portion of its text which controls and eliminates rights and opportunities for foreigners.[66] This anti-foreigner position was likely caused by the United States' earlier interference with the ideals and leadership of the Mexican Revolution. Many of the leaders who were affected by the United State's interference were later instrumental in drafting Mexico's Constitution. Moreover, these anti-foreign attitudes were not only adopted by the very nationalistic and influential people, but were also demanded by the Mexican populace which had suffered in one way or another under the influence of foreigners. These strict constitutional measures to regulate foreigners were deemed necessary and aimed to remedy the threat of future breaches of economic and territorial sovereignty. Many of these attitudes still persist today, and have been the basis of Mexican politics over the past seventy or more years.

B. The Mexican Constitution

The Mexican Constitution, written in 1917, became a pioneer in the world of social proclamations because it was the child of dramatic social and economic conditions of the past. Through historical

58. *See generally* J. CROW, *supra* note 49, at 669-74.
59. *See* Peck *supra* note 46, at 17.
60. A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 55-77.
61. Peck, *supra* note 46, at 16.
62. *See id.*, at 17.
63. *See* Work & Bussey, *Bievenidos To A Fire Sale*, U.S. NEWS AND WORLD REPORT, Oct. 16, 1989, 96, 100.
64. *See generally*, A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 55-77.
65. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS DE MEXICO (CONSTITUTION OF THE UNITED STATES OF MEXICO) (MEXICO) [hereinafter CONST.]
66. *See infra* notes 67-83 and accompanying text.

introspection it is evident that the social and economic problems in Mexico, especially during the Mexican Revolution, greatly influenced this fundamental charter. Along with provisions relating to the State's structure and functions, chapters were specifically included in the Constitution to resolve the problems of inequality and exploitation by the church and the threat of all types of invasions by foreigners.

The most important examples of these provisions are found in Articles 27[67] and 123[68] of the Constitution. These Articles were designed to exert control over the most troubled aspects of the country's economy: land and labor. Article 27 declares that "ownership of the lands and waters . . . is vested in the nation" and gives the nation the right to regulate the use of national resources in order to preserve and ensure a more equitable distribution of public wealth.[69] Section I of the same Article further provides that "only Mexicans . . . have the right to acquire ownership of lands, waters and their appurtenances."[70] The State may grant the same ownership right to foreigners only if they consider themselves as nationals in respect to such property and promise not to invoke the protection of their governments at penalty of forfeiting the property.[71]

Moreover, Article 27 bans foreign ownership within a zone of one hundred kilometers along the borders and of fifty kilometers along the shores.[72] It also restricts ownership of lands by religious institutions and even confiscated such lands in their possession at that time. Further, all corporations with any foreign capital were impeded from acquiring agricultural properties. As a vindication of prior dominions, Mexico, at the time of the Constitution, seized ownership of all

67. CONST., at ch. I, art. 27.

68. *Id.* at tit. VI, art. 123.

69. "The nation shall at all times have . . . the right to regulate the utilization of national resources . . . in order to preserve them and ensure that there is a more equitable distribution of public wealth." *Id.* at ch. I, art. 27.

70. *Id.* at ch. I, art. 27, § I.

71.

> The state may grant the same right to foreigners [to acquire ownership of lands, waters, and their appurtenances], provided they agree . . . to consider themselves as nationals in respect to such property, and bind themselves not to invoke the protection of their governments in matters relating these to, under penalty, in case of noncompliance with this agreement, of forfeiture of the acquired property to the nation.

Id.

72. "Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers along the frontiers and of fifty kilometers along the shores of the country." *Id.*

subterranean land for itself, including all subsoils, waters, gases, minerals, and hydrocarbons.[73]

In the area of labor, Article 123 set limits on the rampant traditional exploitation of human resources; and, in that context, established minimum legal safeguards to protect every Mexican worker.[74] This elaborate article sets guidelines on maximum working hours, minimum age and wages, working conditions, and employers responsibilities. It gives workers the right to participate in profit sharing, and to form unions and associations to organize strikes and lockouts. Finally, as a blanket protection, Article 123 generally prohibits waiver of these constitutional rights.[75]

Additionally, Articles were established to protect Mexico from foreigners in general.[76] Only citizens of Mexico have the right to assemble, associate, or take part in the political affairs of the country.[77] These limitations are so important that they are reiterated twice in the Constitution by two separate articles.[78] Moreover, Mexican citizens have "priority over foreigners under equality of circumstances for all classes of concessions and for all employment, positions, or commissions of the government."[79]

The Constitution also bans the use of nobility titles that were widely used earlier by the Spanish to discriminate and exert dominion over those without titles, and the rendering of official services or aid to foreign governments and individuals.[80] Any breach of these bans would result in revocation of Mexican citizenship.[81] Even the use or acceptance of foreign decorations without permission by the Congress is included in this restriction.[82] Furthermore, to be president of Mexico, a candidate must be a "Mexican citizen by birth [not naturalization] . . . and the child of Mexican parents by

73. "In the case of petroleum, and solid, liquid, or gaseous hydrocarbons or radioactive minerals, no concessions or contracts shall be granted nor may those that have been granted continue, and the nation shall carry out the exploitation of these products." *Id.* at ch. I, art. 27.

74. *E.g.*, The maximum duration of work for one day is limited to eight hours, the maximum duration for night work is limited to seven hours, and for every six continuous days of work, a worker must have at least one day of rest. *Id.* at tit. VI, art. 123.

75. *E.g.*, "[s]tipulations implying the waiving of any right designed to favor the worker in the laws of protection and assistance for workers" are considered null and void even if expressed in a contract. *Id.*

76. *See generally id.* at ch. I, art. 9, ch. III, art. 33.

77. *Id.*

78. *Id.*

79. *Id.* at ch. III, art. 33. *See also id.* ch. I, arts. 5, 9, 12, ch. IV, art. 37, tit. VII, art. 130 for similar applications.

80. "In the United States of Mexico nobility titles shall not be granted." *Id.* at ch. I, art. 12.

81. *Id.* at ch. IV, art. 37, § B.

82. "Mexican nationality is forfeited . . . [b]y accepting or using foreign decorations without permission of the Federal Congress or of its Permanent Committee." *Id.* at Fraction I.

birth."[83]

In many ways, the specific provisions limiting foreign involvement in Mexico were more solidly drafted into the Constitution than the provisions designed to establish the powers of the government branches.[84] Anti-foreign articles laid the ground for the nationalization of foreign owned businesses. This was later exemplified in 1938 by the nationalization of United States and British oil companies for their non-adherence to the Mexican Supreme Court's decision regarding the enforcement of Constitutional labor laws.[85]

Thus, through its Constitution, Mexico attempted to thwart future foreign injustices and interventions. However, notwithstanding the guarantees and safeguards found in the Constitution, Mexico's prior experience of injustice and intervention has not been forgotten, and today it still affects the hearts of Mexicans almost as much as it affected Mexico's constitution. To present day Mexicans, articles such as 27 and 123 have become symbols of legitimate self-governing victories over foreign intrusion, and are currently being honored daily in every town and city. Most every Mexican community has schools, auditoriums, hospitals, public squares, clubs, or streets that are named after one of these articles. For example, a main street in central Mexico City is named "Article 123," reminding Mexicans of the importance of the Constitutional labor safeguards.

C. *Protectionism after the Constitution*

Following the enactment of the Constitution, Mexico continued to take steps to protect its economy from foreign influences. One of these steps was to protect its domestic industrial and agricultural base. Import substitutions were the most important protective measure. These were first applied to goods for consumption and later to intermediate and capital goods. Mexico implemented both tariff and non-tariff barriers, such as import licenses, quotas, subsidies, tax breaks, and credits for ailing industries.[86] On the domestic side, tax policies and public finance measures patriotically protected and promoted local manufacturing. There was no intent or incentive by the government to increase exports or to buy imports. As a result of such

83. *Id.* at tit. III, ch. II, art 82.
84. *See generally* text of CONST.; Gomez-Palacio, *The New Regulation on Foreign Investment in Mexico: A Difficult Task*, 12 HOUS. J. INT'L. LAW 255-56 (1990).
85. CONST. at tit. VI, art. 123. *See also* A. RIDING, *supra* note 24, at 54, 160-61.
86. A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 231.

domestic subsidies, Mexico's industries became inefficient. Such inefficiency led to expensive distribution and commercial channels which, for many years, due to protectionism and trade restrictions, did not have to deal with external competition.[87]

Consistently, as Mexico protected its domestic industrial base, it also limited foreign investment.[88] The first foreign investment protectionism measures resulted from the Constitution, especially the enforcement of the articles on land and labor. Later, however, even more restrictive rules were added to Article 27 of the Constitution. For example, regulations to fraction I of Article 27, enacted in 1925, limited foreign equity ownership to a maximum of fifty percent.[89] This enactment limited foreign equity in Mexican businesses, and consequently made majority ownership by any foreigner illegal. Generally, the idea was to limit foreign ownership by making the controls more and more detailed and restrictive.[90] Thus, Mexico began to use regulations to its Constitution as a tool for implementing further control over foreign involvement.

This seemingly ad hoc and complicated set of rules emanating from the Constitution focused mainly on limiting and preventing foreign ownership in restricted zones and activities. This policy was strictly enforced until 1937, when Mexico's President Cardenas issued an Executive Order authorizing the limited use of trusts to allow foreigners to use and receive benefit from real estate located close to Mexico's borders and shores.[91]

The 1937 executive order, combined with another in 1941,[92] produced the final Executive Order by President Echeverria in 1971 which authorized the Ministry of Foreign Relations to issue permits for Mexican banks to act as trustees for foreigners in the ownership of real estate in the restricted zones.[93] Through these trusts, a Mexi-

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87. D. RONFELT & C. SERESERES, THE MANAGEMENT OF U.S.-MEXICO INTERDEPENDENCE: DRIFT TOWARD FAILURE?, in MEXICAN-U.S. RELATIONS: CONFLICT AND CONVERGENCE 43, 52 (C. Vasquez and M. Griego eds. 1983).

88. *See* S. WEINTRAUB, FREE TRADE BETWEEN MEXICO AND THE UNITED STATES? (1984).

89. Organic Law of Fraction I of Article 27 of the General Constitution, OFFICIAL GAZETTE (DIARIO OFICIAL), Jan. 21, 1926 [hereinafter D.O.].

90. For a list of these controls, see Regulations to the Organic Law of ch. I, art. 23, § 1 of the Mexican Const., D.O., Aug. 29, 1926. The term "Organic" is not precise in this situation. The law would generally be entitled a regulatory law, not organic law, since organic laws in Mexico have historically only been enacted to create regulatory bodies. In this instance, no actual body was created, rather only a set of guidelines.

91. D.O., Nov. 22, 1937.

92. D.O., Aug. 6, 1941.

93. *Presidential Accord that Authorizes the Ministry of Foreign Relations to Grant National Credit Institutions the Permits to Acquire as Trustees the Dominion of Real Estate Destined to Industrial and Tourism Activities in Borders and Coasts*, D.O., Apr. 30, 1971 [hereinafter *Fideicomiso*]. The legal term for this type of trust is "Fideicomiso." The 1971 order was later elevated to the status of law. *See infra* notes 101-02, 108-09 and accompanying text. The "Fideicomiso" system was further modified by the

can seller (trustor or settlor) conveys title to the bank, giving instructions that the foreign buyer (beneficiary) acquires all interests and rights in the land, except for the title, for a maximum term of thirty years. The main considerations for limiting complete foreign owner were the attitudes of the original Constitutional Congress to defend the country's sovereignty, and the federal government's unavoidable duty to preserve the integrity of the nation's territory.[94]

In 1981, Mexico's gross national product grew 8.8 percent as a result of oil reserve exports.[95] Though impressive, this growth was achieved by an abuse of domestic reserves, by relying too heavily upon foreign credit, and by fixing loans to mature in the short term. Notwithstanding this growth, in many regards Mexico retained its protectionistic and isolationist position. Through the 1970s and early 1980s, Mexico kept a paternal attitude towards industry. During this period, fearing a loss of control over its oil resources, Mexico rejected a proposal to form a North American common market.[96] The same reaction, under the pressure of Mexican entrepreneurs and unions, resurfaced in 1981 when Mexico decided not to join the General Agreement on Tariffs and Trade (GATT) because of the "risk" of exposing its own protected industries to foreign competition.[97]

D. *Changes Opening Mexico to Foreign Investment*

Though the Mexican government generally maintained its protectionist attitude through 1988, some steps had been taken to allow limited foreign investment. From 1938, when Mexico's President Cardenas was in office, until December 1, 1988, when Carlos Salinas de Gortari became President, government foreign investment policies had, for the most part, not changed ostensibly. However, several pos-

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Foreign Investment Regulations of May 16, 1989 which provided for an additional 30 year renewal of foreign ownership interest. *Infra* notes 139-42 and accompanying text. For a discussion of the current "Fideicomiso" system *see infra* note 161 and accompanying text. As a review, the restricted zones under this trust system are all lands located within one-hundred kilometers of Mexico's borders and fifty kilometers of the shores. *See supra* note 72.

94. *Fideicomiso*, D.O., Apr. 30, 1971, at preamble.

95. Mexico City National Chamber of Commerce, (CAMARA NACIONAL DE COMERCIO DE LA CIUDAD DE MEXICO), MEXICO 1990: COMPENDIUM OF DATA AND STATISTICS OF MEXICO (COMPENDIO DE DATOS Y ESTADISTICAS DE MEXICO), 54 (1990).

96. A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 239. C. RICO, THE FUTURE OF MEXICAN-U.S. RELATIONS AND THE LIMITS OF THE RHETORIC OF "INTERDEPENDENCE", in MEXICAN-U.S. RELATIONS: CONFLICT AND CONVERGENCE 1127, 1129-40 (C. Vasquez and M. Griego eds. 1983); S. WEINTRAUB, *supra* note 88, at 2.

97. A. RIDING, *supra* note 24, at 333. *See generally* S. WEINTRAUB, *supra* note 88, at 84-91.

itive steps were taken in this period. Mexico first, in a very isolated manner, tenuously relaxed its anti-foreign position in 1959 by allowing the temporary importation of materials to be assembled in Mexico and then reexported.[98] This step in 1959 was the seed of the Maquiladora concept which was further liberalized in 1966.[99] The Maquiladora program was the first mechanism since 1926, when foreign ownership was restricted to fifty percent, to allow 100 percent foreign ownership of a Mexican company.[100]

Mexico also relaxed its anti-foreign position through the enactment of a foreign investment law in 1973.[101] This law did not substantively change the ability of foreigners to invest in Mexico, but it did demonstrate the Mexican government's renewed interest in foreign investment.

When the 1973 foreign investment law was enacted, the underlying policy of controlling foreign investment was expressed in its title, "Law to Promote Mexican Investment and to Regulate Foreign Investment."[102] This law established as a blanket rule, a forty-nine percent equity limit on foreign participation in a Mexican industry.[103] The main feature of the law was the creation of the National Commission on Foreign Investment, which was given power to determine the percentage of foreign equity participation allowed on a case by case basis.[104] The law established the criteria and requirements of applications for ownership (based on legal provisions and regulations) and the breakdown of criteria required to accept such investments in Mexico.[105] Interestingly, the law was written with the purpose to "foster Latin American regional and subregional integration," not to seek investment, and required that any foreign investor respect the country's social and cultural values.[106] The National Foreign Investment Registry was created to ensure these ideologies.[107]

98. *System of Temporary Imports and Exports*, D.O., Oct. 3, 1958, at 1.

99. *See Ministerial Letter 4132, from the Ministry of Industry and Commerce, to the Ministry of Finance*, D.O., June 20, 1966 [hereinafter *Ministry Letter*]. Issued reciprocally by the Ministries of Finance and Industry and Commerce. For a discussion of the Maquiladora program *see infra* notes 114-35 and accompanying text. However, the Maquiladora law was not officially enacted until 1983. *See Decree for the Development and Operation of the Maquila Industry for Exportation*, D.O., Aug. 15, 1983 [hereinafter *Maquila Decree*].

100. CONST., *supra* note 65, at ch. I, art. 27, fraction I. Article 27, fraction I limited foreign ownership to 50%. *See supra* text accompanying note 89.

101. *Law to Promote Mexican Investment and to Regulate Foreign Investment*, D.O., Mar. 9, 1973, at art. 3 [hereinafter *Foreign Investment Law*].

102. *Id.*, ch. I, art. 1.

103. *Id.*, ch. I. art. 5.

104. *Id.*, ch. III, arts. 11, 12.

105. *Id.*, art. 13.

106. *Id.*, art. 13 at XVI, XVII.

107. *Id.*, ch. V, at. 23.

Subsequently, in 1975, the National Commission on Foreign Investment began to issue administrative decisions which soon evolved into general resolutions and legal precedents. Through this evolution, the Commission began to legislate, and thus mold the limits on foreign investment. This legislation may have made the 1973 law's application and understanding somewhat confusing to potential investors, but it did provide greater flexibility. Further, through the foreign investment law, previous executive orders, specifically the 1971 Order[108] which granted Mexican banks the right to be trustees for foreign ownership of restricted land, were finally elevated to the category of law.[109]

These small number of changes in over fifty years were attempts to develop Mexico's economy; however, at the time of President Salinas' inauguration in 1988, the Maquiladoras and the other minor foreign investment changes were not bringing enough real capital into the country.[110] Consequently, President Salinas decided that Mexico required a major economic reform.[111]

The first reform enacted by President Salinas was to attract capital through the new Foreign Investment Regulations of May 16, 1989 (Regulations).[112] These Regulations have subsequently been liberalized[113] and have even been credited for opening the doors to greater economic change in Mexico.

III. MAJOR STEPS TO ATTRACT FOREIGN INVESTMENT

By looking at the volatile relationship between the United States and Mexico, one sees that the FTA cannot be completely enacted in

108. *Fideicomiso*, D.O., Apr. 30, 1971 at 1. This Executive Order authorized the Ministry of Foreign Affairs to grant Mexican credit institutions permits to acquire the ownership of real estate for foreigners as trustees for land destined to carry out activities in industry or tourism in the border or shore areas (restricted zones). However, this was only an Executive Order and not actually given status of law until the 1973 law was enacted. *See infra* note 109.

109. *Foreign Investment Law*, D.O., Mar. 9, 1973, at ch. 4, arts. 18-21, p. 7.

110. The main purpose of the Maquiladora program was not created to bring capital into Mexico; rather, the program was established to provide jobs for Mexican workers. *Maquila Decree*, D.O., Aug. 15, 1983. See discussion of this program and its function *infra* notes 114-35 and accompanying text. *See also generally* R. DAVIS, INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSION 12-23 (1985).

111. *See generally*, Salinas Address, *supra* note 21.

112. *Regulations to the Foreign Investment law*, D.O., May 16, 1989 [hereinafter *Regulations*]. For a discussion of the May 16, 1989 regulations *see infra* notes 139-44 and accompanying text.

113. For examples of subsequent liberalizations, see *infra* notes 136, 164, 204 and accompanying text.

one massive leap. Such an agreement will have grave impact on the cultures and economies of both countries. This especially applies to Mexico in that an FTA is completely opposed to many of Mexico's historic economic policies. A slow and steady process of liberalizing Mexico's anti-foreign restrictions was needed to position Mexico so that the many factions in Mexico could accept the notion of free trade with the United States. Over the past twenty-five years, this process did occur. While effectively maintaining many protectionist attitudes, Mexico, perhaps unwittingly, enacted various steps which, when taken together, created the opportunity and foundation for an FTA. These steps are analyzed below.

A. The Maquiladora Industry

The Maquiladora program, conceptualized in 1966,[114] was developed fundamentally to generate employment,[115] and has become Mexico's foreign exchange flagship.[116] Maquiladora (or a plant which does industrial production known as a Maquila) is a legal structure for a manufacturing program which allows foreigners to import equipment, machinery, components, and materials duty free, to produce, within certain limitations, goods in Mexico, provided that a substantial percentage of such goods will be exported from Mexico.[117] A Maquila can be completely owned by a Mexican national, foreigner, or by any corporation proved to be duly incorporated under Mexican law.[118] Most Maquiladoras are run as twin-plants. Under a twin-plant framework, a company will establish two entities, one on each side of the border.[119] Generally, the Mexican based entity is a production plant used for the labor intensive parts of production, while the United States based plant could be used for other aspects of production, marketing, or distribution. Hence, a production sharing concept is derived.[120]

Originally, the 1983 law governing Maquiladoras required that companies export eighty percent of all production.[121] However, as of December 22, 1989, new directives were outlined to allow up to fifty

114. *See supra* note 99.

115. *Ministry Letter*, D.O., June 20, 1966. The Maquiladora program was established to compensate for agricultural jobs lost when the Bracero program was terminated in 1965. The Bracero program allowed Mexicans to enter the U.S. and work in the agricultural sector to fill a void made by the lack of available U.S. labor. *See* R. DAVIS, *supra* note 110, at 21-22.

116. *See infra* notes 130-32 and accompanying text.

117. *Maquila Decree*, D.O., Aug. 15, 1983, at ch. II, arts. 3, 7, 12.

118. *Id.* at art. 3.

119. A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 225.

120. Teske, *U.S. Trade with Mexico in Perspective*, BUS. AM., June 18, 1990, at 20-21.

121. *Maquila Decree*, D.O., Aug. 15, 1983, at ch. II, art. 12. However, less than eighty percent may be exported in exceptional circumstances. *See generally id.*

percent of the Maquiladora's production to be sold domestically under certain circumstances.[122]

Production through the Maquiladora system is advantageous to both Mexico and the United States. For American companies, the lower cost of Mexican labor can significantly reduce production costs in the manufacturing of labor intensive products. Wages in Mexico range from ten to twenty percent of what comparable employees would be paid in the United States.[123] Further, under the Maquiladora system, foreign owners are permitted to send their managerial and supervisory staff into Mexico with almost no limitations.[124] This virtually unrestricted entrance differs from the restrictions placed upon persons who are trying to obtain working visas outside of the Maquiladora program.[125]

American companies also obtain the benefit of favorable tariff schedules because exported items follow special United States Tariff Schedules which only place duty on the value added by the Mexican components (including labor).[126] Additionally, under the Generalized System of Preferences (GSP) of the United States Trade Act of 1974,[127] certain articles produced in developing countries, which would otherwise be dutiable under other United States tariff schedules, may enter the United States free of duty.[128] Since Mexico is listed as a developing country, this benefit is available to Mexico and Maquiladora products. Moreover, through the Maquiladora system, American companies can also enjoy lower operating costs than in the United States. Generally, real estate, construction, electricity, natural gas, and water, cost less in Mexico than in America.[129]

Because of Mexico's close proximity to the American market,

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122. For a discussion of this modification *see infra* notes 136-38 and accompanying text.

123. Farnsworth, *Congress Voices Concern over Trade Pact with Mexico*, N.Y. Times, June 15, 1990, at D2, col. 1.

124. Limitations on placing foreign staff in Mexico are, for the most part, minimal requirements for obtaining working visas.

Generally, visas issued to foreign employees working at Maquiladora sites in Mexico are not subject to quotas, restrictions on the activity, national origin, or residence. Also, the company requesting the permit does not need to technically justify the need for the foreigner in Mexico. *General Population Law*, D.O., Jan. 7, 1974, arts. 32, 34, 37, fraction III, art. 48 fraction VI, and art. 119 fraction II.

125. *Id.*

126. U.S. INT'L TRADE COMM'N, HARMONIZED TARIFF SCHEDULE OF THE U.S., ch. 98, at 9-10 (1990) (U.S. Tariff Schedule Numbers 9802.00.60, and 9802.00.80).

127. U.S. Trade Act of 1974, § 502-506, 19 U.S.C. § 2461-2466 (1988).

128. *Id. See also* SPECIAL FORM No.1, supra note 41.

129. *See* Overturf, *Japanese Maquiladoras get the most out of an open door*, THE TRADER, 11 (Nov./Dec. 1989).

American companies also benefit from close supervision over the Mexican operation, as well as reduced freight costs. Close supervision is not available to United States owned plants in Asia unless such companies have a permanent managerial team in place. In contrast, under the Mexican Maquiladora system, it is possible for American technicians and supervisors to commute daily to their plants in Mexico. More importantly however, freight costs to the American market are reduced by the close proximity between the manufacturing plant and the United States consumer markets.

The benefits Mexico receives from the Maquiladora program are not as numerous as those received by the United States, but they may have a more vital function. Most importantly, the Maquiladora program creates employment and foreign exchange. In recent years, the Maquiladora industry has become the second highest source of foreign exchange in Mexico, second only to oil exports.[130] There are currently close to 1,500 Maquiladoras in operation which employ 450,000 workers[131] and create two billion dollars yearly in foreign exchange.[132] To accommodate this thriving industry the laws governing the Maquiladora process have steadily evolved over the past twenty-five years. Initially, Maquiladoras were limited to the border areas and were subject to strong government scrutiny; however, the program's success prompted the Mexican government to expand the geographical areas permitting Maquiladoras, and to somewhat relax the government restrictions of them. Thus, as the need to increase foreign investment capacity has arisen, the Mexican government has responded by slowly yielding new avenues and opportunities for foreign presence through the Maquiladoras.

Although the Maquiladora system has been successful in promoting foreign exchange in Mexico and in providing jobs to its citizens, this system has its share of problems and limitations. These debilities run from high employee turnover,[133] to the inability of small companies to obtain financing for Maquiladora developments.[134] Further, cultural differences between Mexico and the mostly-American-owned parent companies with regard to labor, have created friction between employees and employers.[135]

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130. AN OVERVIEW OF THE MAQUILADORA PROGRAM IN MEXICO, published by the Committee for the Promotion of Investment in Mexico, at 3, Jan. 1990.

131. *Id.* at 6. *See also* tables *id.* at 23 showing an increase of Maquiladora jobs, from 18,500 in 1970 to present level.

132. *Id.* at 2.

133. N. CLEMENT, R. JENNER, P. GANSTER, & A. SETRAN, MAQUILADORA RESOURCE GUIDE at 16 (1989) [hereinafter CLEMENT & JENNER].

134. *Social Costs and Gains from the Maquila Industry (Costos sociales e ingresos de la industria maquiladora)*, 39 FOREIGN COMMERCE (COMERCIO EXTERIOR) 893 (Oct. 1989).

135. *See generally* Overturf, *supra* note 129.

1. The Maquiladora Law of 1989

President Salinas took steps to further open Mexico to foreign investment in 1989 through the issuance of a new Maquiladora decree (law).[136] This decree abrogated the 1983 Maquiladora law and renewed the government's commitment to the Maquiladoa program by promoting new business incentives, technical transfers, and the importation of computer and telecommunication equipment.[137] The new Maquiladora law also permits, in most cases, the sale of up to fifty percent of the goods produced by the Maquiladora into the Mexican domestic market.[138] This law appears to deviate from the original policy reasons for the Maquiladora program. Initially, Maquiladoras were to be used mainly to provide employment, and foreign ownership was tolerated only because it could be controlled and the products were exported. However, with the new Maquiladora decree, Maquiladoras are now producing goods for sale within Mexico.

B. The New Foreign Investment Regulations of May 16, 1989

While the changes in the Maquiladora law were significant, the new Foreign Investment Regulations decreed by President Salinas on May 16, 1989,[139] have been the most crucial step in opening Mexico to foreign investment. The Regulations have created a new opportunity for foreign investment beyond the scope and the purpose of the existing Maquiladora program. Most importantly, in addition to existing foreign ownership provisions found in the Maquiladora laws, these Regulations allow 100 percent foreign ownership of certain other industries.[140] Moreover, these Regulations have opened many previously closed industries to foreign ownership. Furthermore, the land trusts through which foreigners hold a thirty year fee interest in real estate in otherwise "restricted zones,"[141] were for the first time given a renewal clause in the Regulations which promise an addi-

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136. *Decree for the Promotion and Operation of the Maquiladora Industry for Exportation*, D.O., Dec. 22, 1989, at 12 [hereinafter *New Maquila Decree*].

137. *Id.* at ch. I, art. 1, ch. II, arts 5, 6, 10 and Transient Provision art. 2.

138. *Id.* at art. 20. *See also An Overview of the Maquiladora Industry in Mexico*, *supra* note 130, at 11. The 1983 Maquiladora law provided that only twenty percent of all production could be sold domestically and then only with certain items. *Maquila Decree*, D.O., Aug. 15, 1983, ch. II, arts. 12, 13.

139. *Regulations*, D.O., May 16, 1989, at 11.

140. *Id.* at appendix.

141. For a discussion of the trust system ("Fideicomiso") *see supra* notes 93-94 and accompanying text and *infra* note 161 and accompanying text.

tional thirty year ownership interest to foreign landowners.[142]

The Regulation's main purpose of attracting foreign investment is to be accomplished by creating new investment opportunities and consolidating all of the previous confusing and inconsistent investment laws.[143] With this single consolidated law, potential investors can be more secure in their investments. The new Maquiladora decree,[144] which was made some six months after the May 16, 1989 Regulations, reinforced and expanded the Regulations, and ultimately helped create consistency among the multiple legislative endeavors initiated to attract foreign investment.

Also, both the Regulations and the new Maquiladora decree, to a large degree eliminated bureaucratic requirements and procedures. Each set up certain bodies and procedures for advising, developing, and promoting foreign investments, however, without the strictness of previous laws. Thus, for the first time in many years, the historically protectionistic Mexican legislators adopted a "laissez-faire" attitude towards investment.

1. The Impact of the 1989 Regulations

The 1989 regulations and subsequent reforms reflect the importance of what Mexico expects to achieve through its current efforts to attract outside capital. By establishing the framework for a wide range of investment opportunities in the industrial and commercial sectors, the Regulations are indicative of the nation's new goal of cultivating a favorable climate for economic growth.

The 1989 investment changes allow for varying degrees of foreign ownership depending on a classification given to the industry. There are seven specific categories of industries which may be summarized into three general classifications: reserved, restricted, and unrestricted.[145] Ownership of reserved industries is reserved solely for the Mexican government and/or Mexican nationals and do not permit any percentage of foreign ownership.[146] Restricted industries permit foreign ownership of thirty-four, forty, and forty-nine per-

142. *Regulations*, D.O., May 16, 1989, at ch. III, art. 20.

143. Rohter, *Stop the World, Mexico is Getting On*, N. Y. Times, June 3, 1990, at § 3, F1.

144. *See supra* notes 136-38 and accompanying text.

145. A complete list of industries and activities and the percent of foreign participation allowed in each is found in the "Mexican Catalogue of Economic and Productive Activities" located in the appendix of the May 16, 1989, Regulations. *Regulations*, D.O., May 16, 1989. For a discussion of the May 16, 1989 regulations *see supra* notes 139-44 and accompanying text.

146. The activities reserved solely for the state and Mexican nationals are those directly related with oil, gas, uranium, radioactive minerals, electrical energy, and currency. Among other industries reserved are forestry, transportation, and television and radio transmissions. *Regulations*, D.O., May 16, 1989, at appendix.

cent.[147] In the industries that allow thirty-four and forty percent foreign ownership, a foreigner cannot increase his or her ownership interest.[148] However, in the industries open to forty-nine percent foreign ownership, a foreigner can increase his or her ownership percentage[149] by receiving approval from the Ministry of Commerce. This option is only available with approval by the Foreign Investment Commission.[150] Unrestricted industries include all industries not mentioned in the May 16, 1989 Regulations.[151] These unrestricted industries permit one hundred percent foreign ownership, and do not require approval by the Ministry of Commerce if certain general guidelines are met.[152]

Government approval of one hundred percent foreign ownership of a business within an "unrestricted" industry is now automatic under the Regulations if: 1) the project is funded by money from abroad; 2) the investment in fixed assets is less than $100,000,000 before the start of operations; 3) the accumulated foreign exchange flows are anticipated to be in balance over the first three years of production; 4) the investment will create permanent jobs; 5) the investment complies with environmental requirements; and, 6) the project is not located in geographic zones with a heavy industrial concentration.[153] But even if a project fails to meet these qualifications, a permit for ownership may still be granted by SECOFI (Ministry of Commerce).[154] Upon application, SECOFI examines the characteristics of a proposed investment and will approve it if it conforms to the government's rationale behind liberalizing foreign investment; i.e., does the investment bring the appropriate type of capital into Mexico. Moreover, any permit application which does not receive a for-

147. Industries allowing thirty-four percent foreign ownership include coal and iron extraction, anything relating to the automobile industry may only have forty percent foreign ownership, and industries such as mining and fishing can have up to forty-nine percent or it can be more if approval is received by the foreigner from the Ministry of Commerce. *Id.*

148. *Id.* at tit. II, ch. 1.

149. *Id.* at ch. 1, art. 10, 11, 12.

150. *Regulations*, D.O., May 16, 1989, at arts. 13-15 and 23-26.

151. *Id.* at art. 5.

152. *Id.* at ch. I, art. 5. Approval from the Commission was required in the past even to obtain a minority interest. *See*, *Foreign Investment Law*, D.O., March 9, 1973, at art. 5.

153. *Regulations*, D.O., May 16, 1989, at art. 5, Transient Provision Four. Cities within geographic zones with a heavy industrial concentration include Mexico City, Monterrey, and Guadalajara.

154. *Id.* at art. 2, ¶ 1. This process in not explicitly stated in the regulations, however, in a practical sense the permit is obtainable. *See* discussion on AT&T *infra* text accompanying notes 156-57.

mal response from SECOFI within forty-five working days of submittal will be deemed automatically approved.[155]

In response to Mexico's liberalization of foreign investment through the 1989 regulations, various American companies have already established operations in Mexico, or are in the process of acquiring permits to establish themselves as wholly foreign-owned subsidiaries. For example, AT&T, which already employs over 1,000 workers in two factories in Mexico, announced that it would expand its operations by constructing a plant in Guadalajara. This plant would provide 3,000 jobs by 1991. The fact that AT&T is able to construct its plant in the major industrial city of Guadalajara, a location restricted by the regulations,[156] signifies that the regulations' limitations on locations for foreign-owned plants may be surmounted by SECOFI approval. Additionally, although Mexico's investment policy favors investment for export markets, the AT&T application was granted by SECOFI even though much of the telephone equipment to be manufactured would be sold in Mexico under an agreement with Mexican-owned Telmex Telecommunications Company.[157]

As another example, Louisiana-Pacific, though it was set up as a Maquiladora, invested 100 million dollars in a wood processing plant in Ensenada, Mexico. This project processes lumber barged in from Northern California. The facility employs 1,000 workers, and is destined to become the largest lumber operation in Latin America according to officials with the Mexican government and lumber industry.[158]

One might argue that the establishment of these types of American subsidiaries in Mexico is adverse to the success of American firms and the American economy in general. This argument is based on the concept that Mexican firms take away production which would otherwise be accomplished in the United States. This notion, however, is not completely true, and in application is contradicted by both the examples of AT&T and Louisiana-Pacific.

Without the viable alternative of manufacturing in Mexico, economic realities might require that the products of these two American companies still be produced in other countries with inexpensive

155. *Id.* at ch. I, art. 2.

156. *See id.* at art. 5, ¶ III and corresponding administrative provisions. *General Regulation Number Two to Establish Criteria for the Application of Several Provisions for the Regulations to the Foreign Investment Law*, D.O., June 21, 1989, at Rule 2. *See* note 153 and accompanying text.

157. *AT&T plans Mexico factory for machines now made in China*, San Diego Union, Nov. 30, 1989, at D1, col. 1.

158. *Firm pushes Baja lumber mills start*, San Diego Union, Dec. 11, 1989, at A3, col. 1.

labor;[159] however, these other countries would be further away from America than Mexico, and therefore have higher freight costs. For example, Louisiana-Pacific would suffer if it had to pay United States labor costs. In the United States, Louisiana-Pacific would have to pay higher wages which could render it uncompetitive in the world market, and ultimately not only affect the jobs which were transferred to Mexico, but also the service and distribution related jobs and profits in the United States. Therefore, bargain labor costs and diminished freight costs to and from Mexico, keep some United States companies in operation, offering benefits that alternative labor sites in Asia cannot offer.[160]

To date, the 1989 Regulations which liberalized investment of the type enjoyed by AT&T and Louisiana-Pacific, have not allowed foreigners to avoid the thirty year trust system of ownership of real property in the "restricted" zones.[161] The 1989 Regulations, while not guaranteeing full perpetual ownership of land, do broaden and liberalize the earlier trust provisions. Under the new 1989 Regulations, previous trusts and any future trusts can be renewed automatically for additional periods of thirty years if such renewal is requested prior to the expiration of the original trust period.[162] The trust can be renewed without change, transfer cost (excluding the bank fee), or property tax assessments if the terms and conditions of the initial trust remain materially unchanged and if the trustee is the same.[163] The ability to add thirty years to an ownership interest may allay some of the insecurities past investors have had of committing capital to Mexico's border and coastal areas. Yet, there are still those who are unwilling to invest in land which cannot be owned outright. However, the trust renewal program does give foreign investors some assurance of stability, and it enables foreigners to make

159. *See U.S. Jobs Lost to Maquiladoras Would Not Remain in U.S., Fed. Economist Finds*, 6 Int'l Trade Rep. (BNA) at 1661 (Dec. 20, 1989). Typically, many Asian countries are associated with inexpensive labor.

160. *See supra* pp. 36-37; *see also infra* text pp. 65-68.

161. For purposes of review, before the Executive Order of 1959, foreigners were not permitted to own any type of interest in land within these zones. The Mexican Foreign Investment Law of 1973, reconfirmed this stance but allowed an ownership interest that was limited in duration. The 1973 law granted foreigners the opportunity to hold a fee interest through a Mexican financial institution by trust or fideicomiso. These trusts empower the foreign owner to use, rent, lease, sell, transfer, or alienate an entire fee interest in the property. However, under the original 1959 order and subsequent 1973 law, trusts could not be renewed. *See supra* notes 72, 93-94, 139-42 and accompanying text.

162. *See supra* notes 139-42 and accompanying text.

163. *Regulations*, D.O., May 16, 1989, at art. 21.

long-range plans concerning Mexican land.

The 1989 Regulations also established other programs to promote foreign investment. For example, a decree made after the enactment of the Regulations promotes foreign industrial investment in Mexico's northern frontier by creating a type of neutral zone between the United States and Mexico.[164] Within this zone foreign companies may establish plants and, unlike Maquiladoras, they may sell their entire output in various northern Mexican cities without restriction.[165] Additionally, import duties are not imposed on the machinery and equipment, including communication and computer hardware, required for production.[166] The decree also permits Mexican companies to import the above-mentioned items duty free in order to supply the Maquiladoras and other border industries.[167]

Another similar program, established prior to the 1989 Regulations, is "Temporary Imports for Manufacture of Exports".[168] This program allows foreigners the ability to temporarily import into Mexico, raw materials, machinery, and components for use in the production of exports.[169] This program suspends import duties and license requirements for goods and machinery for three years if they are used in export production.[170] The law permits sales in Mexico of up to twenty percent of a company's total production, and up to thirty percent if at least ten percent of those sales are made close to the border or in a free zone.[171]

2. *The Weaknesses of the 1989 Regulations*

Although the 1989 Regulations seem beneficial to Mexico's goal of attracting foreign investment, they do have inherent weaknesses. Importantly, the Regulations are not law in the strict sense.[172] The Regulations were unable to pass congressional approval in Mexico

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164. The neutral zone is composed of northern Mexican border cities, where foreigners may set up manufacturing facilities that import materials needed for manufacturing free of Mexican duties. The goods produced in these facilities may be sold within any northern Mexican border city. This is in contrast to a Maquiladora, which may be located almost anywhere, not just in a northern Mexican border city and can sell only up to 50% of its production in Mexico without paying import duties. *Decree to Promote Industry in the Northern Bordering and Free Zones of Mexico*, D.O., Oct. 31, 1989 at 5.

165. *Id.* at arts. 1, 2, 3.

166. *Id.* at art. 7.

167. *Id.* at art. 8.

168. *Decree to Establish Temporary Imports for the Production of Exports*, D.O., May 9, 1985 [hereinafter *Temporary Import Decree*]. This 1985 Decree was replaced and modernized by a new interpretation in 1990. *Decree to Establish Temporary Imports for the Production of Exports*, D.O., May 3, 1990.

169. *Id. See also* INT'L TRADE ADMIN, OVERSEAS BUS. REP., U.S. DEP'T OF COM., MARKETING IN MEXICO, Aug., 1990, at 11.

170. *Temporary Import Decree*, D.O., May 9, 1985.

171. *Id.*

172. Rohter, *supra* note 143.

and were therefore relegated to executive decree status. Accordingly, the Regulations are subject to eventual weaknesses in application.[173] It has been contended that by circumventing the Congress, the president exceeded the scope of Mexican law by allowing, through the Regulations, higher percentages of investment ownership than what the congressionally accepted foreign investment laws and the Constitution permit.

In response to this contention, the Regulations are enforceable because they were issued by the president through the exercise of two constitutional provisions which, when taken together, authorize the president to legally regulate foreign investment.[174] When the president acts under the auspices of these provisions, under Mexican law, the only type of challenge which could defeat the validity of the act, in this case the Regulations, would be an "Amparo" challenge.[175] Amparo (which literally means protection) is a concept similar to U.S. jurisprudence constitutional concepts of "Habeas Corpus," "due process," or "equal protection." Through an Amparo claim, a citizen can attack an act (e.g., the Regulations) made by any branch of the government which would seemingly infringe upon any rights guaranteed under the Constitution. The text of the Constitution's articles relating to foreign presence in Mexico do not permit some of the investment opportunities being offered in the recent liberalization of the Regulations.[176]

Some Mexican industrialists and entrepreneurs were tempted to challenge the Constitutionality of the Regulations through the Amparo process. However, because Article 5 of the 1973 Foreign Investment Law permits the president's actions,[177] these claims would most likely have failed and were not made. This possible con-

173. *Foreign Investment: The Open Door (Inversion extranjera: A Puerta Abierta)*, Expansion (Expansion) 30, at 38 (July 5, 1989).

174. CONST., *supra* note 65, at arts. 89, fraction I and art. 131.

175. *Amparo Law (Ley de Amparo, Reglamentaria de los Articulos 103 y 107 de la Constitucion Politica de los Estados Unidos Mexicanos)*, D.O., Jan. 10, 1936 [hereinafter *Amparo*]; at arts. 103 and 107 for the Constitutional guidelines regarding Amparo law.

176. For example, originally the text of the Constitution prohibited ownership rights for foreigners in border and coastal areas. That right, however, has since been granted to foreigners through a trust system that has been expanded by the Regulations. *Compare* CONST. *supra* note 65, at ch. I, art. 27, § I and Regulations, D.O., May 15, 1989, at art. 20. For an expanded discussion see Gomez-Palacio, *supra* note 84, at 258-63.

177. Article 5 of the 1973 Foreign Investment Law applies to Constitutional Art. 131, and through this application grants the president power to regulate foreign investment. *Foreign Investment Law*, D.O., Mar. 9, 1973, at art. 5.

flict between the Constitution and the 1973 Foreign Investment Law is one of the inconsistencies which the 1989 Regulations has attempted to solve. It seems that the 1973 law gives powers to the president which were exercised in the 1989 Regulations to avoid having to modify fixed constitutional limitations. Thus, President Salinas used the 1973 and 1989 investment laws to implement new trade policies which otherwise may have required an amendment to the Constitution.

However, in actuality, challenges to the Regulations are ineffective. First, an Amparo challenge by a citizen against a state act, such as the Regulations, is only relevant to the individual who made the claim.[178] Therefore, if a law is found to violate a petitioner's rights under the Constitution, and this determination is reached by Amparo procedures, the determination is only applicable to the actual petitioner. Though Amparo ruling precedents may be argued by other individuals in subsequent judicial proceedings, the Amparo precedent may not be binding on the second court unless it has become "jurisprudence".[179] Therefore, practically, individual Amparo decisions do not apply to the general population.

Second, a short statute of limitations on an Amparo challenge thwarts most viable claims for relief. For example, once the government publishes a decree, an individual has only thirty days to file an Amparo claim with the courts.[180] However, a separate fifteen days is given to a potential Amparo petitioner when the decree is specifically enforced upon him.[181] Under this system, every citizen who desires to challenge a decree must petition the court within one of these two periods.[182] With regard to the 1989 Regulations, the Amparo statute of Limitations has run, therefore, no one would currently have standing to challenge the Regulations on a Constitutional Amparo ground.

Because an Amparo challenge against the Regulations is practically ineffective due to the above limitations, the only real way that the Regulations could be defeated, would be through a change in Mexico's current political structure. However, until such a change occurs, the current government has carte blanche to fully execute all of the provisions of the Regulations without challenge, even though they may conflict with both congressional law and the Mexican Con-

178. *Amparo*, D.O., Jan. 10, 1936, at ch. X.

179. "Jurisprudence" in this sense is the binding effect of Superior Court decisions on inferior courts' decisions once the decisions have met certain requirements; i.e., that which is decided and sustained in five Superior court judgments, uninterrupted by any in the contrary, and approved with certain voting percentages within the Supreme Court. *See id.* at tit. IV, arts. 192, 193, 194, 196, 197b.

180. *Id.* at ch. III, art. 22, fraction I.

181. *Id.* at ch. III, art. 21.

182. *Id.*

stitution. A change in the current political make-up of Mexico may likely occur in the next general election in 1993. If this does occur, the Regulations may not have the political force necessary to be upheld.[183]

The Regulations clearly show the government's intention, for foreign investment, but they have not been sufficient to transform the Mexican economy into a completely open market. Nonetheless, the Regulations are allowing foreign investment into Mexico, and do act as a preparatory step towards the FTA. The Regulations were not intended to be a long-term solution, but rather, were issued in haste (without congressional approval) and thus may not be perceived as permanent. However, the Regulations do pave the way for foreign investment by reforming the spirit of the Constitution (or eventually its text), without effectively breaking the law or changing the Constitution. And, through the Regulations, President Salinas has effectively precluded any legal challenge to the opportunities now given to foreigners who wish to invest in Mexico under the Regulation's guidelines.

3. *The Government's Plans to Further Liberalize Foreign Investment*

A few months after enacting the Regulations, President Salinas began to take further steps to open Mexico to outside investment. In an address to the United States Congress on October 4, 1989, he announced plans to further liberalize economic opportunities in Mexico beyond the scope of the May Regulations.[184] He cited a desire to spur economic growth, increase global competitiveness, fight poverty, and modernize Mexico through increased international trade.[185] This unqualified statement directly opposed Mexico's prior general policy against foreign investment which had been intact for fifty years. However, not forgetting the past completely, President Salinas briefly reminded the United States Congress of Mexico's historical aversion to foreign intervention and its strong feeling of nationalism by stating that wealth is not always measured in economic terms.[186] Thus, in this address, President Salinas stated the paradox which foreign investment creates in Mexico: do the benefits of modern trade liberalization exceed the need to follow the historical rationale

183. *See generally infra* p. 89-93.
184. C. Salinas, *Address*, *supra* note 21.
185. *Id.*
186. *Id.*

against foreign investment.

However, despite the nationalistic concerns President Salinas expressed to the U.S. Congress, he did concede that in this rapidly changing world, trade liberalization is necessary. And under this concession, Mexico would be compelled to accept a position of global interdependence which heretofore was undesirable and unwarranted. As Mexico's global interdependency expands, the benefit of such expansion — the possibility of economic prosperity, will have to be reconciled with the fears generated by Mexico's history of foreign intervention. Because President Salinas enacted the May, 1989, Regulations, it appears that he has concluded that liberalization is necessary to preserve the freedom and justice won by the Revolution and Constitution; that trade regulations promote the economic recovery essential to Mexico's self-determination.

IV. Other Measures And Changes To Lure Foreign Investment To Mexico

In addition to the 1989 Regulations, Mexico has taken other steps to lure foreign investment. These steps include changes in foreign investment policy to convince foreigners that Mexico is a safe location for foreign investment. Mexico has also recently adopted new trade promotion measures.

A. Changes in Foreign Investment Policy

The following sections briefly present some of the scattered measures completed by Mexico in the 1980s to attract investment. The actions discussed in the six sections below have all been implemented to show the world that Mexico is a safe forum for foreign investment. These changes should help foreigners regain confidence in Mexican industry; confidence which may have been lost when Mexico's oil industry was nationalized in 1938.[187]

1. The Privatization of Public Enterprise

Since 1983, Mexico has privatized public enterprises to modernize Mexico's economy.[188] This privatization has achieved a substantial influx of foreign exchange, eliminated the burdens of inefficiently run enterprises (the legacy of a government controlled economy), and attracted Mexican capital which had fled during the earlier crisis years

187. *See generally* A. Riding, *supra* note 24, at 54-55, 160-161. *See supra* note 85 and *infra* note 275.

188. Work & Bussey, *supra* note 63, at 96; *Mexico: State Run Telephone Company to Go Private, With Foreign Investment Limited to 23 Percent*, Int'l Trade Rep. (BNA) 1198 (Sept. 20, 1989).

(1982-88).[189] Furthermore, to curb inflation, the government began to pay the domestic debt with proceeds obtained from the privatization process.[190] Through the divestiture of these public companies, Mexico has enjoyed a capital injection which has strengthened the public sector and provided new economic opportunities.[191]

2. *Controlling the Value of the Peso*

Mexico has also taken steps to stabilize its currency. President Salinas' administration decided to gradually reduce the pace of the Mexican peso's devaluation to the United States dollar.[192] To prevent increases in the rate on January 1, 1990, a slide of one peso per day on average was instituted against the United States' dollar.[193] This trend was further reduced during 1990 to .8 pesos a day and then to .4 pesos, to make Mexican currency more predictable.

3. *Changes in the Tax System*

Mexico has also begun to slowly change its tax system. This includes a gradual reduction of the personal income tax rate from fifty percent in 1986, to thirty-five percent in 1991, and in the corporate rate from fifty-six percent to thirty-five percent in the same period.[194] Further, a system of equal application in the income tax laws has been established to eliminate former loopholes which were used to exempt or apply reduced rates to certain industries.[195] These measures are being supported by stronger enforcement of the tax laws.[196]

4. *The Restructure of Debt Payments*

In March 1990, Mexico finalized a foreign debt restructuring agreement with the International Monetary Fund (I.M.F.) which reduced yearly debt payments by four billion dollars through a decrease in interest rates.[197] Most likely this reduction was not a result

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189. Ortiz, *Mexico's Been Bitten by the Privatization Bug*, Wall St. J., Sep. 15, 1989, at 13.
190. *See* Work & Bussey, *supra* note 63.
191. Ortiz, *supra* note 189.
192. Rohter, *New Leader Drops Freeze on Prices, Wages, and Currency*, N.Y. Times, Dec. 13, 1988, at D1, col. 6.
193. *Mexico's Economic Control Program*, 6 Int'l. Trade Rep. (BNA) 820 (June 21, 1989).
194. *New Tax Law*, D.O., Dec. 31, 1986, at arts. 801, 803.
195. *Mexico: The New Model Debtor*, *supra* note 31, at 87.
196. *Id.*
197. *Communique from the Mexican Ministry of Finance in Regards to the For-*

of negotiating skill, but rather, was the result of pressure on the I.M.F. from the United States. The United States pressured I.M.F. concessions, to prevent an increase in illegal Mexican immigration.[198]

5. *Efforts to Curb Drug Trafficking and Corruption*

Mexico has also taken steps to curb drug trafficking and corruption. Mexico has increased its efforts to combat drugs being trafficked through Mexico.[199] President Salinas has focused special attention on this problem, and has thus demonstrated his willingness to assist the United States in its war against this scourge.[200] President Salinas has taken these steps to create a climate of confidence in his administration, and to demonstrate that his government can control activities occurring within Mexico's borders.

Furthermore, since early in his term, President Salinas has held firm to his commitment against corruption by sending numerous corrupt leaders of influential organizations to prison.[201] This includes the labor union chief of the Mexican oil company, and other important and wealthy bankers who participated in stock exchange frauds and scandals.[202]

6. *The Privatization of Mexican Banks*

One of the most important and meaningful steps illustrating Mexico's desire to attract foreign investment is the privatization of Mexican banks. Previously, foreigners could not have any ownership interest in Mexican Financial institutions.[203] However, on July 18, 1990, a new banking law was issued, and under its regulations, foreigners may have up to thirty percent ownership in Mexican financial institutions. Foreign individual holdings may reach up to ten percent of the total capital with government authorization, and up to five percent without it.[204]

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eign Debt Restructure (Comunicado dela SHCP en torno de la firma del paquete financiero), 40 FOREIGN COMMERCE (COMERCIO EXTERIOR) 371 (Apr. 1990).

198. *Mexico: The New Model Debtor*, *supra* note 31, at 86.

199. Pastor, *Another Revolutionary Comes Calling*, L.A. Times, June 8, 1990, at § B, at 7, col. 2. *See also Mexico Tough on Drugs*, The L.A. Daily J., Jan. 3, 1990, at 6, col. 1.

200. *Mexico Tough on Drugs*, *supra* note 199, at 6, col. 1.

201. Pastor, *supra* note 199, § B, at 7, col. 2.

202. *See* Moffett, *New Union Chief Reins in Mexico Oil Worker*, Wall St. J., Oct. 19, 1989, at A15, col. 2.

203. In September 1982, Financial Institutions in Mexico were nationalized disallowing any foreign ownership. Though the nationalization was effective immediately, the Constitution had to be modified before the actual law could be enacted.

204. *The New Credit Institutions Law*, D.O., Jul. 18, 1990, at tit. II, ch. 1, art. II, fraction III, and arts. 15, 17.

Privatizing Mexican banks is a significant step, because unlike all of the other changes mentioned in this section, Salinas' administration reformed the Mexican Constitution to permit foreign investment into banks.[205] It is especially significant because this privatization has occurred only eight years after the 1982 nationalization of all banks.[206] This major shift in Constitutional policy was possible partly because the banking industry does not have the same historically deep-rooted national sentiment as the Constitutional provisions relating to labor and land.

B. *New Trade Promotion Measures to Open Mexico to Foreign Investment and the FTA*

Besides the new foreign investment policies, Mexico has also recently adopted new trade promotion measures. The government's trade policies have laid the foundation for Mexico to enter into a free trade agreement. The following sections present some of the measures recently completed by Mexico to lower trade barriers and to promote global exchange.

1. *External Trade Measures (Reduction of Tariffs, etc.)*

At the end of 1987, Mexico reduced tariffs from an average of forty percent to a maximum of twenty percent, and also dramatically reduced the number of products subject to prior import permits from 12,000 items to only 330.[207] Mexico has also discontinued the system of official prices for custom's valuation purposes, and has eliminated the export development tax on imports.[208]

2. *Changes to Copyright, Trademark, Patent, and Immigration Laws*

Mexico's legislative branch has given special treatment to issues which not only promote the influx of investment, but that also make Mexico a better candidate for the North American trade alliance. Among the trade laws modified by the legislators were laws relating

205. *Decree that Controls the Reforms to the Constitution Regarding Article 28 Paragraph 5*, D.O., June 27, 1990.
206. *See generally* Uchitelle, *When Going Private is a Very Public Affair*, N.Y. Times, Aug. 25, 1990, at 33.
207. Brisson, *supra* note 35, at 7.
208. *Id.*

to technology transfers and patent protection, with new regulations issued on January 9, 1990;[209] and immigration, with regulations issued on July 17, 1990.[210] In the former, tougher and longer protective terms have been given to inventions; and, in the latter, longer and easier terms were granted for obtaining business visitor visas. These concessions enabled Ms. Carla Hills, the U.S. Trade Representative, to announce that Mexico has been excluded from the priority observation list of Special Amendment 301 to Section 201 of the Omnibus Trade Act.[211]

Although the steps previously discussed, standing alone, may not appear to be in preparation or furtherance of the FTA, they, in conjunction with other changes, have paved the way for such an agreement.[212] These other changes include several agreements that have been recently signed or renewed between Mexico and the United States.

3. *Other Agreements To Promote Trade*

The most important of these agreements is the "U.S.-Mexico Bilateral Framework on Trade and Investment" originally signed in 1987.[213] This agreement was renewed in March 1989, and covers the topics of steel, electronics, textiles, agriculture, tariffs, foreign investment, intellectual property, transportation, and insurance services. In October, 1989, both governments signed several additional agreements regarding investment and trade.[214] These agreements encompass the areas of petrochemicals, agronomy, cattle, steel, textiles, apparel, duties, and subsidies.[215] Also established was the Joint

209. Regulations to the Law on the Control and Regulation of Technology Transfer and the Use and Exploitation of Trademarks, D.O., Jan. 9, 1990; *see also Marketing in Mexico*, *supra* note 169, at 15.

210. *New Credit Institutions Law*, D.O., Jul. 17, 1990.

211. Section 301 broadly states that if the U.S. Trade Representative (U.S.T.R.) determines any of the United States Trade rights under any trade agreement are being denied, that the U.S.T.R. may take action against the offending nation. This action may include suspending trade benefits, imposing duties, or entering into further agreements, etc., to eliminate the prior trade breach. Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 2901, at sec. 2251 (Title II. ch. 1, sec. 201), sec. 2411 (Title III. ch.1, sec. 301). *See also generally* Mohn, *Mexico's New foreign Investment Regulations Signal Commitment to Become an Open, Modern Economy*, Bus. Amer., Dec. 4, 1989, at 5.

212. Baker, *Mexico: A New Economic Era*, Bus. Wk., Nov. 12, 1990, at 105.

213. *U.S. and Mexico Sign Bilateral Framework on Trade*, 4 Int'l. Trade Rep. (BNA) 1378 (Nov. 11, 1987) for text of agreement see same at 1410.

214. Special Form No. 1, Bancomext, *supra* note 41, at 3.

215. For discussion and text of the agreements see Special Form No. 1, Bancomext, *supra* note 41, at 3; *Mexico, U.S. to Sign Procedural Agreement Setting Guidelines For Bilateral Trade Talks*, 6 Int'l. Trade Rep. (BNA) 1253-1254 (Oct. 4, 1989); *U.S.-Mexico Understanding Sets Up Process for Negotiating Expanded Trade, Investment*, 6 Int'l. Trade Rep. (BNA) 1290-91 (Oct. 11, 1989), for text of agreement see same at 1325-27 [hereinafter *Understanding*].

Committee for Investment and Trade.[216]

V. Analysis of the Need for an FTA

A. The Types of Investments to be Generated by the FTA

The most natural consequence of a free trade agreement is the relocation of American assembling, manufacturing, and labor intensive industries to Mexico, where labor is inexpensive and available. The increased investment into Mexico resulting from such relocation will create opportunities in Mexican industries and expand markets within Mexico. This is especially true for regional agriculture, as well as for Mexican industries which have adequate markets, but which are currently underdeveloped due to lack of capital (i.e., heavy industry, services, transportation, and telecommunications).

The FTA should target three major types of investment; relocation of manufacturing and industrial plants, heavy industry investment, and agricultural investment. From a Mexican perspective, two of these three major types of investments should enjoy fairly prompt success. With regard to the relocation of manufacturing and industrial plants, the construction of these plants will generate investment in Mexico. Also, heavy industry investments have already increased because Mexico's liberalized foreign investment policies, through the May 1989, Regulations, and this type of investment should continue to grow as the FTA is enacted. Foreign agricultural investment in Mexico, however, may not enjoy such success. Restrictions placed on agriculture, such as the "ejido" system implemented by the Mexican Constitution, do not freely allow change or investment.[217] Thus, foreign investment in agriculture would be more heavily regulated than the other activities and, in some circumstances, may only occur if the Constitution is modified.

Although not completely problem free, Mexico's recent liberalized foreign investment policies appear to have been successful. After the enactment of the Regulations, and following discussions of the FTA, foreign investment in Mexico has increased substantially. Data from Mexico's Ministry of Trade has concluded that investment in the first nine months of 1990 has already surpassed ten percent of the cumulative total of all foreign capital in the country.[218] Among

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216. *Understanding, supra* note 215, at 1290.

217. For a discussion of the "ejido" program *see infra* notes 287-95 and accompanying text.

218. *Mexico Economic Newsletter*, Published by the Committee for the Promotion

projects which can be cited as a direct consequence of Mexico's new investment policies are plants established by Nissan,[219] Ford, Volkswagen, Goodyear, Bosch, Nestle, Rhone-Poulenc, and Pepsi Co.[220] Further, in the tourism industry, American and British groups have invested two billion dollars in the Cancun area. This success in both industry and tourism, should continue to grow after the FTA is enacted.

B. *Why America Needs the FTA*

For Americans with foresight, the FTA is a reasonable method of strengthening the economy and preparing for America's economic future. The agreement holds the keys to benefit many sectors of the American economy. As nations have become more interdependent[221] division of production is used to promote greater efficiency as international trade tends to make the world more specialized.[222] Working with Mexico as an ally in a trade block would give the United States the ability to use Mexican labor to exercise the theory of comparative advantages and allow both the United States and Mexico to face international competition more efficiently.[223] Without the ability to utilize the geographically near and less costly Mexican labor, American jobs would have to go somewhere else. Considering the global economic trends that are giving rise to warlike trade competition, some jobs cannot remain in the United States.[224] Ultimately, if the United States cannot remain competitive in these jobs, it will have to choose whether to only produce other non-labor intensive products or to become economically isolated and protectionistic.

To offset America's impending inability to compete with labor intensive manufacturers in other regions, other types of manufacturing must be pursued. This would include technological and capital intensive production. The United States, however, could still participate in labor intensive manufacturing by investing in Mexico through the FTA. As other developed nations scramble to find competitive labor sources and to take advantage of comparative costs, the United States will already be able to enjoy this advantage with Mexico. If the United States holds back and does not hedge its future by secur-

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of Investment, Fall 1990, at 3.

219. Guiles, *Nissan Begins Big Expansion of Mexico Site*, Wall St. J., Apr. 20, 1990, at A4.

220. *Mexico Economic Newsletter*, *supra* note 218.

221. Sanchez, *Mexico's New Foreign Investment Climate*, 12 HOUS. J. OF INT'L. L. 246 (1990).

222. P. SAMUELSON, *supra* note 1, at 647.

223. *North American Trade Free Zone Would Top EC in Population, Output, Mexican Official Says*, *supra* note 9.

224. *Experiences Learned from U.S.-Canada FTA will Help Talks with Mexico, Official Says*, 8 Int'l. Trade Rep. (BNA) 122 (Jan. 23, 1991).

ing a competitive labor source, it could possibly find itself competing against labor rich nations, such as Mexico, in the world market. And due to wage disparities, the United States will find itself being undersold.[225] However, through the FTA, United States' firms can remain globally competitive by utilizing the same asset that it could be competing against, low cost labor in Mexico.

The practice of producing off-shore, is not new to the United States or to other developed countries. Alternative labor sources have been used widely and their use will increase.[226] In some instances, United States labor intensive production has already turned to other labor sources in Asia and the Maquiladoras in Mexico to remain competitive.[227] In some instances, Maquiladoras are providing labor to American companies that, without the Maquiladoras, would turn to Asian labor sources or be forced to stop business.[228] For example, an American manufacturing plant that has difficulty competing with Asian manufactured goods can turn to a Mexican operation and still be competitive.[229] Thus, production in Mexico (through a Maquiladora or straight investment under the FTA) is an alternative to closing shop or moving production to an Asian country. A United States-owned Mexican operation is significantly better because none of the Asian alternatives will soon have an FTA with the United States, and are thus unlikely to provide a market. In addition, use of an Asian alternative would result in more raw materials and components used to manufacture the goods in Asia, being purchased from Asian sources, not American, since many of the labor rich Asian countries are in a trading block with each other. In this case, the more viable option of producing in Mexico is obvious, where materials and components to a large degree will come from the United States.

Moreover, under the benefits of the FTA, American firms can accrue additional benefits exceeding those that are now being reaped through the Maquiladoras and Asia. When compared to the Maquiladora program, under the FTA, American domestic products will

225. *Debt relief to Boost Mexico's Economy Would Increase U.S. Exports, JEC Reports*, 5 Int'l. Trade Rep. (BNA) 1399 (Oct. 19, 1988).

226. W. Johnston, *Global Workforce 2000: The New World Labor Market*, 69 HARV. BUS. REV. 115 (Mar.-Apr., 1991).

227. *U.S. Jobs Lost to Maquiladoras Would Not Remain in U.S., Fed Economist Finds*, *supra* note 159, at 1661.

228. *Id.*

229. A. PASTOR & J. CASTAÑADA, *supra* note 37, at 209-10. In this example, Zenith's Chairman, Jerry Pearlman, claimed that if Zenith had not saved $400 million a year by producing in Mexico, that it would be out of business.

have an increased marketplace in Mexico. Many experts believe that Mexico is poised to become a great market,[230] which, if America gets in on the ground floor, may be the biggest benefit of the FTA. Mexico's emerging market will be bolstered by the new employment and revenue to be generated by the FTA. This increased employment in Mexico is especially important when one realizes that many of the jobs created in Mexico are low wage jobs manufacturing products that, if not produced in Mexico, would most likely be produced in Asia. Having these items produced in Mexico is more advantageous to America because much of the revenue earned from Mexican exports will be spent in the United States while that earned in Asia will not.[231] This means a benefit to the United State's economy. Furthermore, it has been projected that for every billion dollars exported through a North American trade agreement, that 25,000 jobs would be created.[232] Thus, even if it were assumed that all of these jobs were created in Mexico, the United States would still receive a vast benefit as the revenue earned from increased Mexican exports would generally be spent in the United States by the Mexican workers.[233] Not only will the new jobs and production affect American firms and workers but with new jobs and capital in Mexico a greater market is created. A market, which under the FTA, could have direct and possibly complete access to American goods or materials. This access for American goods is not practically available in Asia or under the Maquiladora system where domestic sales are limited to a set percentage. Moreover, for American firms manufacturing in Mexico, transportation costs to return goods back to the United States for sale in the United States will be much less than if the same goods were being shipped from Asia.

The FTA also contributes a benefit to U.S. consumers. The price paid in America for Mexican-made consumer goods, components, or raw materials will be affordable and readily available in the United States market. Moreover, items imported to the United States from Mexico are much more likely to use American resources and materials in production than items imported to the United States from Asian countries.[234]

It is understood that for many Americans, especially those work-

230. *House Agriculture Committee, supra* note 39; *Free Trade Pact with Mexico Earns General Support, Though Reservations are Expressed,* 7 Int'l. Trade Rep. (BNA) 1002 (July 4, 1990).

231. *Free Trade Pact with Mexico Earns General Support Though Reservations are Expressed, supra* note 230.

232. *Id.*

233. *Id.* Approximately seventy percent of Mexico's imports currently come from the United States. See MEXICO 1990, *supra* note 18, at 126.

234. *North American Free Trade Zone Would Top EC in Population, Output, Mexican Official Says, supra* note 9, at 51.

ing in industrial areas, that the FTA could mean a job redistribution or a temporary job loss. However, without the FTA, long-range American job security and availability may be at a higher risk. Job availability, especially for people working in the manufacturing sector, will ultimately be permanently diminished if trade barriers have to be erected to protect existing American and Canadian jobs or if jobs are lost because American/Canadian production is not competitive internationally.

Though important, the quantity of labor-intensive manufacturing jobs in the United States should not be the only touchstone to measure America's economic success. This is especially true if the markets for American goods are alienated by higher American prices. Though manufacturing jobs may be redistributed to other sectors, the overall outlook for jobs in the United States should not decrease because of the FTA. Due to increased competition, the United State's employment may not always remain consistent. If any drop in employment levels do occur, the FTA should not be blamed for that drop. More logically, the drop will be a response to other factors such as the high cost of American made products competing against products made by less expensive labor. The FTA, in practice, should be a counter weight to a slide in employment by helping to keep job and commerce levels constant by increasing trade and exports. The FTA should enhance the North American block's export ability by supplying competitive products via less expensive labor in Mexico. With part of America's manufacturing jobs going to Mexico, more jobs will focus on the sales, distribution, marketing, and services sectors of American employment. These should ultimately be more stable to workers than previous manufacturing jobs because wage competitiveness is not so much a factor and the jobs are not unnaturally sustained by subsidies or artificial markets but as a result of market forces.

If the FTA is entered into, the American firms that stay competitive will continue; other firms will have the option to stay competitive by producing in Mexico. This Mexico option facilitates the preservation of those American businesses. To American corporations, Mexico provides the option to preserve some jobs rather than to lose entire industries.[235] Without the FTA, American firms will have to face the choice of closing shop within this generation, reducing salaries within the next few years or moving to other more distant labor

235. See A. PASTOR & J. CASTAÑEDA, *supra* note 37, at 209.

markets. Thus, by accepting the implementation of the FTA, Americans will have a greater ability to control their own future. Through the FTA, America can remain active and competitive in global commerce, create and maintain domestic employment, gain access to a large emerging market in Mexico, and enjoy lower consumer costs at home.[236]

Indirect benefits will also be enjoyed after the FTA is enacted. By moving production to Mexico more Mexicans will be prone to stay at home because adequate employment would be available.[237] The resulting lack of impetus to leave Mexico should naturally curtail immigration to the United States. Without the FTA, if growth continues in Mexico, pressure on the border will intensify, and, unless it is relieved, the social and economic problems of illegal immigration will grow with Mexico's population. Thus, in addition to economic matters, a grave social concern can be alleviated by the FTA.

C. *Why Mexico Needs an FTA: The Turning Point*

Sometime between November, 1988, and June, 1990, President Salinas changed his position on the feasibility of a free trade agreement. When Presidents-elect Bush and Salinas met in Houston in November, 1988, to discuss economic issues between their countries, they did not discuss trade liberalization, even though at that time, a trade agreement between the United States and Canada was being negotiated.[238] This silence on the topic was consistent with President Salinas' previous statement in 1988, that he did not believe such a common market would provide an advantage to either country.[239]

Just prior to accepting the idea of an FTA, President Salinas visited Japan and Europe in attempts to attract foreign investment to Mexico. Though the countries he visited recognized and praised Mexico's efforts to encourage foreign investment, because of a global shortage of capital, their responses fell far short of what Salinas and

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236. In a United States International Trade Commission report, the "overwhelming majority" of experts surveyed supported the concept of a bilateral free trade agreement between the United States and Mexico. According to the report, the experts agreed that the FTA would provide the following advantages to the United States: 1) enhance the competitive position of the United States among emerging trade blocks; 2) help develop the U.S. border area; 3) create jobs in the United States; 4) give certainty and predictability to U.S. investors by making Mexican economic liberalization permanent; and 5) decrease the flow of illegal immigrants to the United States. *ITC Report Finds Broad Support for Concept of Bilateral Free Trade Accord with Mexico*, 7 Int'l. Trade Rep. (BNA) 1622 (Oct. 24, 1990).

237. *Legislators Urge that U.S.-Mexico Free Trade Talks Also Address Drug Problem*, 7 Int'l. Trade Rep. (BNA) 903 (June 20, 1990).

238. Rohter, *North American Trade Bloc? Mexico Rejects Such an Idea*, N.Y. Times, Nov. 24, 1988, at D23, col. 1.

239. *Id.*

his group had anticipated.[240] In Europe, Salinas was completely rejected. The Europeans were too busy with the new democracies, especially Germany, as well as the changes in the Soviet Union. They were not ready to commit money to Mexico when opportunities were presented closer to home in Eastern Europe.[241]

Japan's answer to President Salinas' request was less direct. Japan responded that it would invest in Mexico if Mexico would guarantee certainty for Japan's investments, as well as access to the United States market for Japan's Mexican made products.[242] Japan's qualified assurances were too remote and conditional for the urgent needs of Mexico; therefore, because President Salinas could not rely on Japanese investment, he had to alter his plan of diversification of capital.

Upon his return, Salinas, disappointed in the results of his trip, realized that the agreement between the United States and Canada was beginning to produce favorable results.[243] Mexico had been excluded from the United States/Canada Free Trade Agreement, and if it vacillated, it could be excluded from a future trade block to be formed by the United States, Canada, and other countries in the region.[244] The possibility of exclusion concerned President Salinas.[245] If Mexico did not participate in a regional free trade agreement, it might become isolated and would suffer from a continued lack of capital. Also, without an FTA, modernization of Mexico would be more difficult because Mexico would have less access to foreign technology and goods based on the theory of comparative costs or advantages.[246] This latter effect would be similar to what occurred when Mexico abstained from the GATT.[247]

Only months after President Salinas rejected the possibility of a free trade agreement, both countries' governments issued a joint communique unveiling their intentions to eventually sign a pact.[248]

240. Kaslow, *supra* note 9.
241. *Id.*
242. Pastor, *supra* note 199.
243. Mohn, *U.S.-Mexico Free Trade Agreement Means Greater Mutual Prosperity*, Bus. Amer., Oct. 8, 1990, at 3-4.
244. Pastor, *supra* note 199.
245. *See* Auerbach, *Mexico Comes Calling for Free Trade*, Wash. Post, June 10, 1990, at H1.
246. *See supra* note 1 and accompanying text.
247. For a general overview of Mexico's accession to the GATT, *see* English, *The Mexican Accession to the General Agreement on Tariffs and Trade*, 23 TEX. INT'L. L.J. 339 (1988).
248. *Bush and Mexican President Salinas Agree to Move Toward Free Trade Agreement*, *supra* note 37; Auerbach, *supra* note 245, at H1.

What were the reasons for such a sudden change in position? Most likely the disappointment of not receiving European and Japanese commitments to invest in Mexico, as well as Mexico's fear of being excluded from a North American trade block in the rapidly aligning world.

After failing to obtain investment from other sources, President Salinas concluded that an FTA was desirable.[249] He realized that even with all of Mexico's recent economic achievements, there was still an urgent need to generate one million jobs every year.[250] Foreign investment is necessary to create jobs, and the FTA is the best available course to accomplish this goal.[251]

In November, 1988, President-elect Salinas argued that Mexico's participation in the GATT eliminated the need for a free trade agreement. The need, however, could reappear with the possible collapse of GATT.[252] Without the GATT, unless Mexico enters into the FTA, Mexico will find itself in a vulnerable position, without any type of membership in a trade alliance. Except for the FTA, no other apparatus currently exists which can generate the foreign investment and economic support that Mexico requires. Thus, changes in the world are further pushing Mexico into the FTA.

Isolation is not advantageous for Mexico.[253] If Mexico does not take this one step forward of entering into the FTA, it may end up having to take two steps back. Mexico is in need of capital, markets, and technology that it cannot acquire from its South or Central American neighbors. However, this desperate need may place Mexico in a diminished bargaining position as negotiations on the FTA begin.

VI. Japan And Other Countries' Reaction To The FTA And Recent Changes In Mexico

The United States is not the only country positioning itself in Mexico. Japan, Korea, Hong Kong, and Taiwan have also been attracted to production in Mexico but through indirect investing through the Maquiladora program.[254] However, Japan's reaction to recent changes in investment policy merits special attention because

249. Rohter, *Free-Trade Talks With U.S. Set Off Debate In Mexico*, N.Y. Times, Mar. 29, 1990, at A1, col. B.

250. *See* C. Salinas, *supra* note 100. *See also* Salinas de Gortari, *supra* note 22; Auerbach, *supra* note 245.

251. *See* generally C. Salinas, *supra* note 100.

252. *See Executives Regret Collapse of GATT Negotiations*, Wall St. J., Dec. 13, 1990, at A2, col. 1. *See also*, Longworth, *supra* note 4.

253. *See generally*, Salinas Address, *supra* note 21.

254. *An Overview of the Maquiladora Industry*, *supra* note 130, at 7. *See also*, *House Judiciary Panel Hears Mixed Reviews on Economic Effects of Foreign Takeovers*, 5 Int'l Trade Rep. (BNA) 300 (Mar. 2, 1988).

it was one of President Salinas' specific targets in his quest for outside capital. Therefore, Japan will be used as a specific example to illustrate that generally, because of the uncertainty of Mexico's current legal regime, countries are reluctant to directly invest in Mexico. However, as a consequence of the FTA between the United States and Mexico, certainty in Mexico should increase and help boost foreign investment in Mexico by other nations. As the FTA becomes more of a reality, Japan will increasingly invest into Mexico.

Japan is considered to be a key source of investment that Mexico cannot afford to alienate.[255] Japan has made some investments in Mexico, but relative to Japan's total foreign spending, Mexico cannot be considered to be a big Japanese investment target. Japanese investment into Mexico accounts for only five percent of Japan's total foreign investment.[256]

Generally, the Japanese are skeptical of doing business in Mexico.[257] With regards to Japanese investment in Mexico, Japan wants to follow the traditional investment strategy profile that has made its empire so strong; e.g., thorough research of the economic situation, and assurance that a viable market exists before expenditures are made.[258] Because of the inconsistency of Mexican investment policies, the Japanese have especially relied on their traditional investment strategy profile, instead of direct foreign investment through the 1989 Regulations. This reliance is illustrated by Japanese investment in the Maquiladora program, where the majority of Japanese capital in Mexico has been invested.[259] The benefits of the Maquiladora program to the Japanese, are that a Maquiladora can have 100 percent foreign ownership, preferential treatment is given in the American market, and Maquiladoras can be geared to service the American market.[260] Additionally, the Japanese have more confidence in Maquiladora investment than in direct investment through the Regulations because Japan does not yet view the Regulations as a solid or permanent legal investment apparatus. However, Japan

255. Szekely, *When Two Paths Are Better*, L.A. Times, Apr. 6, 1990, at B7, col. 4.
256. Moffett, *supra* note 21, at A8.
257. Larmer, *Mexico Looks to Asia for Economic Boost*, Christian Science Monitor, Aug. 8, 1989, at 1, col. 1; *Trilateral Report Notes Progress, Potential in Latin America and Mexico*, 7 Int'l Trade Rep. (BNA) 595 (Apr. 25, 1990).
258. The authors base this determination on personal experience with Japanese investors in various geographic regions.
259. Larmer, *supra* note 257, at 2, col. 3.
260. *See supra* pp. 33-36.

would most likely increase its presence in Mexico in methods other than the Maquiladoras if certain conditions were met.

The most basic of these conditions, certainty, is something that the Japanese have rarely found in their incursions into Mexico. For the Japanese, it is harder to predict Mexico's "mañana,"[261] than earthquakes. Uncertainty surfaces in part, as in many other aspects of Mexican daily life, because of the way in which Mexico modified it's Foreign Investment Law through the Regulations. As stated by the President of the Industrial Bank of Japan, the Regulations did not gain approval through the strong leftist factions of the Mexican Congress, and hence, the non-congressionally approved Regulations do not "give sufficient 'certainty to' . . . bosses in Japan".[262]

The Japanese most likely, will not invest in Mexico through the Regulations until Mexico demonstrates that it is serious and will not capriciously change the law. Again, Japan lacks confidence that Mexico's foreign investment policy will remain unchanged, and thus Japan is reluctant to invest in Mexico. Although Japan is reluctant to invest directly in Mexico (i.e., through the Regulations) it will invest in Mexico if it has substantial assurances of access to the United States market.[263] The FTA would provide these assurances. Through the FTA, Mexican products financed by Japanese capital would have access to the United States market. Consequently, as the FTA is enacted, Japan will increase investment in Mexico; thus, with the FTA, Mexico's missing element of "certainty" appears.

Absent the FTA, it is unlikely that much Japanese capital, outside the Maquiladora industry, would be committed to Mexico in the near future.[264] Instead, Japan may decide to invest in other geographic areas closer to home, such as the Soviet Union,[265] China,[266] Germany, or the new East-European markets of Czechoslovakia, and Hungary.[267]

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261. Mañana in this sense means a "tomorrow attitude" or "no one knows exactly when but sometime in the future". The word is used quite often by Mexicans in this context, though literally translated manana means "tomorrow". *See generally* A. RIDING, *supra* note 24, at 6.

262. Moffett, *supra* note 21.

263. Larmer, *supra* note 257, at 1, col. 1.; Pastor, *supra* note 199.

264. *See* Yasaku, *Free Trade Agreement: Consequences of the Maquiladora*, Nikkei Economic Journal, Dec. 14, 1990, at 9 (translated from Japanese).

265. *When Bears Sniff Chrysanthemums*, ECONOMIST, Sep. 15, 1990, at 16.

266. McGregor, *Japan Manufacturers Flock to Manchuria*, Wall St. J., Dec. 13, 1990, at A11, col. 1.

267. *Japanese Business in Eastern Europe; Window Shopping*, ECONOMIST, Feb. 17, 1990, at 75.

VII. THE SCOPE AND APPLICATION OF THE FTA

Given the historical, geographical, sociological, and political circumstances shared by the United States and Mexico, it is most likely that a United States/Mexico free trade agreement will not be framed to deal exclusively with trade and direct economic issues. A classical FTA would focus on the gradual and comprehensive elimination of trade barriers for goods and services. However, in negotiating an FTA between Mexico and the United States, additional considerations beyond those normally contained in an orthodox accord must be addressed.[268] These other considerations included immigration, investment, and labor.[269] The following is a brief presentation of the major issues.

For Mexico, it will be important to negotiate an FTA with the ultimate goal of increasing foreign investment,[270] yet, Mexico will attempt to protect its culture and sovereignty. The United States, on the other hand, would try to establish concrete regulations on intellectual property rights, investment in strategic areas, as well as access to Mexico's oil, agriculture, and financial markets.[271] Moreover, entrance to service type industries, such as insurance banking, and securities will definitely be sought by United States negotiators.[272]

However, the production of manufactured goods and agricultural products will be the most extensively negotiated issues of the FTA. This is mostly due to concerns of labor and union leaders and agricultural producers. American labor and union leaders state that the FTA will take jobs and lower wages for Americans by giving employment to Mexicans.[273] Agricultural concerns, among others, in-

268. *See* Baker & Bialos, *U.S.-Mexico Trade Talks: A Preview*, 20 ABA Lawyers 6 (Win. 1991); Lawrence, *Free Trade Agreement Between the U.S. and Mexico May Cover Even More*, San Diego Union, Nov. 23, 1990, at B11, col. 1 (Negotiations may include, *inter alia*, a social charter, stringent environmental reforms, and illegal drug trafficking).

269. *See Agenda for Bilateral Free Trade Agreement Talks Said to be Wide Open at this Point*, 7 Int'l. Trade Rep. (BNA) 956 (June 27, 1990); *see also Border Businesses Called on to Lead Fight for Fast Track Status for FTA Negotiations*, 8 Int'l Trade Rep. (BNA) 354-55 (May 6, 1991).

270. *See* Agenda for Bilateral Free Trade Agreement, *supra* note 269, at 956.

271. Miller, *Salinas is Eager to Nail Down A Pact*, L.A. Times, June 9, 1990, at A3, col. 4.

272. Hills, Statement by Ambassador Carla Hills, U.S. Trade Representative, Before the Committee on Finance, U.S. Senate (Feb. 6, 1991) at 6 [hereinafter Hills' Statement].

273. *Key Legislators Urge Bush not to Limit Agenda in FTA Negotiations with Mexico*, 8 Int'l Trade Rep. (BNA) 19 (Jan. 2, 1991). This idea is discussed in more detail *infra* notes 278-86 and accompanying text.

clude phasing out subsidies and dealing with the technological diversities among individual farmers and between the nations.[274] Also, there exists a conflict regarding one of Mexico's most important natural resources: oil. Mexican authorities have consistently repeated that its oil sector will not be part of the FTA. Mexico based this opposition on Constitutional principles.[275]

On June 11, 1990, in anticipation to FTA negotiations, both governments officially issued a joint communique expressing their intention to open their countries to free trade, agreeing in principle that such an agreement should include: a) a gradual elimination of tariffs, b) an elimination or reduction of non-tariff barriers, c) the establishment of mechanisms that would grant efficient protection to intellectual property, d) the establishment of fair and fast procedures to solve controversies, and e) the means to develop and expand the traffic of goods, services, and investments between the two countries.[276] Specifically left out of this communique were the more difficult areas of agriculture, labor, and oil. These more difficult and emotional issues will need to be addressed at the negotiating table.

VIII. Obstacles to the Free Trade Agreement

To minimize the conflicts and pains that a comprehensive agreement implicitly produces, the FTA would necessarily have to evolve over a period of time through negotiation. Throughout negotiations, the pact will most likely be modified with political compromises made, until it is acceptable to most facets of both countries. Consequently, the agreement would not be completely "free" because it is highly likely that each government will protect some industries.[277]

However, before an agreement is finalized, there are certain organized forces on both sides (the United States and Canada on one and Mexico on the other) which will strongly oppose the FTA, or

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274. *Border Business Called on to Lead Fight for Fast-Track Status for FTA Negotiations*, 8 Int'l Trade Rep. (BNA) 356-57 (Mar. 6, 1991). This is discussed in more detail *infra* notes 284-95 and accompanying text.

275. *See* Const. art. 27, para. 4; *see also Mexico Repeats Insistence that Oil Sector Will not be Part of FTA Negotiating Agenda*, 8 Int'l Trade Rep. (BNA) 201 (Feb. 6, 1991). Interestingly, when article 27 of the Mexican Constitution was enacted in 1917, its text, denying ownership right of oil to foreigners, caused such a stir that war between the United States and Mexico almost broke out. See L. Meyer, *supra* note 26, at 183-90. Thus, any foreigner who ever owned oil rights in Mexico acquired those rights before the 1917 Constitution was adopted and lost any such rights in 1938 when Mexico's oil industry was nationalized. For information regarding the nationalization of Mexico's oil industry in 1938 see *supra* note 85 and accompanying text.

276. Special Form No. 1, *supra* note 41, at 1-5.

277. *See generally* the Free Trade Agreement between the United States and Canada, *supra* note 4. Currently, there are still sectors of commerce between the U.S. and Canada which are not completely open to free trade. Logically, with the U.S./Mexican FTA some trade barriers will exist, especially when the agreement is first implemented. Likely sectors include textiles and agriculture.

will at least try to exclude areas from the agreement which could specifically affect them. These groups (labor unions, special interests, etc.) will try to delay the agreement, hoping for concessions from the other side, or for wanes in the agreement's political popularity.

A. American Labor and Agriculture

Logically, from the American perspective, manufacturing and agriculture are the most important areas which will be affected by the agreement. For example, the AFL-CIO argues that the FTA would compel many American firms to move south, thus affecting American jobs and the economy.[278] In response to this argument, it must be remembered that United States labor intensive industries have already pursued inexpensive labor in other countries for some time.[279] If United States industries are going to continue to pursue inexpensive foreign labor, it would be most beneficial for American firms to seek this labor in Mexico. Due to global changes, certain jobs cannot remain in the United States and be competitive.[280] These jobs can either go to Asia or Mexico. Mexico's a better alternative from an American perspective because seventy percent of its imports come from the United states and by creating more and better jobs for Mexico, United States' exports will increase.[281] If American firms were to move to the low cost Asian labor markets, there is no guarantee that the markets there would be accessible to American goods, and freight costs to bring the items back to the United States would be much greater than if shipped from Mexico. For the most part, these are the same benefits that the successful Maquiladora program offers.[282] Furthermore, the movement of American industrial plants to Mexico would eventually anchor Mexican workers to their cities; thus, preventing them from migrating to the north,[283] which will indirectly assist the maintenance of higher United States wages and will stem immigration to the United States. Additionally, capitalizing on inexpensive Mexican labor will reduce the costs of goods

278. American Survey, *From The Yukon To The Yukatan*, ECONOMIST, June 16, 1990, at 21.
279. Markside & Berg, *Manufacturing Offshore Is Bad Business*, 88 HARV. BUS. REV. 113, 115 (1988).
280. *Experience Learned from U.S.-Canada FTA Will Help Talks with Mexico, Official Says*, 8 Int'l. Trade Rep. (BNA) 122 (Jan. 23, 1991); *see supra* notes 226-230 and accompanying text and *supra* pps 35-36.
281. *Id.*
282. *See supra* pps 35-36.
283. J. WANNISKI, *supra* note 44, at 146.

which are brought to the United States market for consumers.

Although Mexico is already one of the largest markets for American agricultural products,[284] the creation of a trade agreement may create opportunities for Mexican vegetables, grains, and fruits to compete in the United States market. American agriculture will most likely attempt to get safeguards in the agreement to prevent Mexican access to United States markets. Without such safeguards, arguably, American agriculture would suffer. However, several factors may justify the rejection of such safeguards. First, because of the tremendous growth of the Mexican population and the United States' new apparent ability to freely export to a more affluent Mexico under the FTA,[285] United States agricultural concerns caused by Mexican access to the United States market should be tempered considerably. Second, if American agricultural firms begin to produce in Mexico, they will reduce their labor costs, which will improve their competitiveness,[286] and thus, their market share in other export markets. Finally, the average American consumer will benefit from lower produce prices, as well as a greater variety of produce.

B. Mexican Labor and Agriculture

From a Mexican perspective the enigmatic problems of land and labor will be obstacles to an FTA. The provisions of the Mexican Constitution concerning land will be a significant obstacle for the agreement. The Mexican Constitution, through a mechanism called the "ejido",[287] attempted to abolish the exploitation of peasants by owners of large pieces of agricultural land. The ejido concept divided huge single owner properties in favor of peasants. The Constitution, to a large degree, prohibits any form of agricultural land tenure other than the ejido, and it bans foreign ownership in ejidos.[288]

The Mexican government grants ejido land to a community of farmers. These grants have been used by the P.R.I., the incumbent political party since the 1917 Constitution, to cultivate votes.[289] The ejido land is inalienable, nontransferable, and nonattachable.[290] Because half of Mexico's arable land is ejido,[291] these characteristics of

284. Hills' Statement, *supra* note 272, at 4.
285. J. WANNISKI, *supra* note 44, at 146.
286. *Mexican Farm Trade May Move On 2-Way Street*, L.A. Times, Feb. 6, 1989, at V1, col. 1.
287. CONST., *supra* note 65, at art. 27, § VII, VIII.
288. *Id.* at art. 27, VII. By specification in this article, ejido rights only attach to centers of population which "by law or in fact, possess a 'communal' status." As interpreted, this status only applies to Native Mexicans.
289. *See Mexico, The New Model Debtor*, *supra* note 31, at 87.
290. CONST., *supra* note 65, at ch. I, art.27.
291. Oranday, *Elements to Discuss about the Ejido in Mexico (Elementos para la discusion sobre el ejido en Mexico)*, 40 FOREIGN COMMERCE (COMERCIO EXTERIOR),

the ejidos have caused nationwide agricultural production to decline.[292] Because of the uncertainty in ownership,[293] the lack of proper insurance, the insufficient credit available to farmers, and the precarious land distribution system, Mexican agricultural production has suffered, and thus in its current state does not have much export capacity. Together, all of these obstacles have discouraged agricultural investment and have thrust farmers into vast urban concentrations.

To have an effective FTA, changes would have to be made in the ejido. However, as noted, the ejido concept is strictly protected by the Constitution[294] and cannot be easily changed.[295] Moreover, attempting to change the ejido provision of the Mexican Constitution to allow foreign participation would have dramatic political overtones.

Ejido ownership is more than just a real estate ownership system, and it cannot be cast aside as only affecting land. Changes in the ejido system would cause serious political and social unrest. The ejido is one of the major issues for which more than one million Mexicans died in the Mexican Revolution. Therefore, President Salinas will face serious political risk if he modifies this institution without the proper safeguards or the right circumstances. Although the ejido must be changed to be efficient, meddling with this institution has always been politically taboo. However, because of Mexico's need for foreign capital and modern farming techniques, it would not be surprising to see a gradual modification of ejido law as the FTA comes closer to fruition. President Salinas and his political party, the P.R.I., may be able to convince Mexicans that the benefits of foreign capital and technology outweighs the rationale for the ejido system.

Labor, the other major Mexican concern, is governed by Article 123 of the Constitution. Article 123 was a reaction against tyrannical employers and was designed to counter balance the power of cap-

830, 842 (Sep. 1990).

292. Knochenbauer, *The Modernization of Agriculture in Mexico (La modernizacion del agro en Mexico)*, 40 FOREIGN COMMERCE (COMERCIO EXTERIOR) 830, 832 (Sep. 1990).

293. Loss of ownership rights is a viable fear to farmers. They are often reluctant to invest time and money in ejido land, fearing that it might be taken from them by the government through an eminent domain type procedure in favor of another farmer or petitioner. This uncertainty has kept land from being productive because farmers and investors have been unwilling to work land that could be taken from them.

294. *Mexico, The New Model Debtor*, *supra* note 31, at 87.

295. *See* Rohter, *supra* note 143.

ital.[296] In 1917, Article 123 was enacted to change the abhorrent working conditions that existed at that time. However, from a modern perspective, Mexican companies are at an acute international competitive disadvantage because to some degree, Article 123 hinders productivity and places cumbersome restrictions upon capital and labor.[297]

To increase national productivity, and thus to be more competitive internationally, Article 123 must also be reformed. Consequently, the President must revoke some of the rights which labor now enjoys.[298] However, any reform of Article 123 will run a risk, similar to the changing of the ejido law, by upsetting long established constitutional provisions which were paid for by the deaths of many Mexicans; such changes will not be accepted without fervent opposition.

The inextricable problems of land and labor will not be an absolute bar to a free trade agreement. However, if these problems are not solved before signing, they will greatly interfere with the success of the agreement. The Salinas administration has recognized that if these problems are not resolved, they will deter the influx of foreign investment, and will thwart Mexico's ultimate objectives of free trade. However, if Salinas drastically alters the protected issues of land and labor he may risk the loss of political popularity, as well as grave political unrest.

C. *Mexico's Political Obstacles to the FTA*

President Salinas' political party, the P.R.I., has widely identified with the historical and popular issues of land and labor. Yet, the party's recurrent efforts to manipulate votes in elections has recently bolstered the popularity of opposing political parties.[299] An emerging dilemma for the P.R.I. and Salinas, is that to fully and effectively implement the FTA, they will need to at least partially sacrifice their sacred cows (land and labor); both issues upon which P.R.I. has based the legitimacy of its power since the Mexican Revolution. Without the ability to rally voters around the emotional and tradi-

296. B. Trueba & J. Trueba, FEDERAL LABOR LAW (LEY FEDERAL DEL TRABAJO) XX, XXI (1990) at points 2, 3, 5.

297. For a more detailed discussion on the restrictions imposed by Article 123, *see supra* notes 74-75 and accompanying text.

298. Based on the authors' personal opinions, the rights most likely to be abrogated will concern mandatory profit sharing (which is guaranteed to all workers under Article 123 of the Mexican Constitution) as well as the unions' liberal rights to strike. See CONST. at art. 123, frac. IX, XVII, XVIII. Presently, the P.R.I.'s policy is to weaken unions to make business more efficient. See Silver, *Mexico Has Its Own Reform Movement*, San Diego Union, Oct. 21, 1990, at C5, col. 1.

299. S. Gomez, *It's Difficult to Lose: The Official Party in the 1988 Election (La Dificultad de Perder: El Partido Oficial en la Cayuntura de 1988)*, MEXICAN SOCIOLOGY JOURNAL (REVISTA MEXICANA DE SOCIOLOGIA) 242 (OCT.-DEC. 1989).

tional appeal of the land and labor issues (the anti foreigner and revolutionary issues), the P.R.I. may have little to offer voters, and thus fail to stay in power. In the 1991 midterm elections, the FTA will be a major issue.[300] Salinas will have to convince the Mexican people that the P.R.I.'s changed economic policies are producing beneficial results that exceed the appeal of the emotional issues of land and labor. Salinas will also have to convince the voters that the benefits from the FTA and the opening of Mexico's economy will compensate for any security that is lost by the compromise of constitutional land and labor protection; indeed, P.R.I.'s future may depend on it.

If foreign investment does not increase significantly in the near future, thereby improving Mexico's economic climate, the P.R.I. will surely face tremendous problems in the next presidential election in 1994.[301] Over optimistic expectations about the FTA may help empower a new political party if the voters believe that the P.R.I. has not fulfilled its promises, or has not chosen the right course. If another political party does come to power, there is no guarantee that it would honor the Regulations and the FTA: a position which could be harmful to Mexico and to the United States.

With these political obstacles in mind, President Salinas must push for a rapid acceptance of the FTA, so that it is producing fruits at the time of the next presidential election. Accordingly, he has urged that the FTA be expedited by requesting President Bush, on August 21, 1990, to have the negotiation done under United States' Congressional fast track procedures.[302] Fast track procedures require that the treaty be presented directly to Congress in its entirety to be accepted or rejected. Without the fast track process each detail of the agreement would have to pass through Congressional scrutiny individually. Under United States procedural law, this fast track process should ensure a final determination on the FTA within two years.[303]

In addition to legal and political obstacles to the FTA, there are those economic and cultural obstacles which are deeply rooted in the 1917 Constitution. Constitutional provisions which were not created in response to particular historical struggles and events may be

300. Rohter, *supra* note 238, at D23, col. 1.
301. *See* Rohter, *supra* note 143.
302. Mohn, *supra* note 243, at 4. The Fast Track Procedures are codified at 19 U.S.C. § 2903(b) (1988).
303. Mohn, *supra* note 243, at 4.

changed relatively easily, as shown by the reprivatization of the banking industry.[304] However, in contrast, fundamental Constitutional principles like a one term presidency, the anti-religious status of government, the existence of ejidos, and the worker protection rules are still considered sacred. It is extremely difficult to change Constitutional provisions related to these past social struggles. However, to cope with a changing world and to truly commit to the FTA, parts of the Constitution must be changed to allow foreigners more economic access to Mexico. This may be unpopular because of Mexico's strong ties to its historical roots.

Therefore, the P.R.I. must make a difficult decision: either continue to uphold the original ideals of the Revolution (continued protection if land and labor) and risk economic disaster, or change its historical support of these certain constitutional dogmas and risk rejection by the voters. The P.R.I. has apparently chosen the latter, and now it must convince the populace that the changes are absolutely needed and justified due to the emergence of new international economic realities. The decision to abandon the Constitutional dogmas of land and labor is a watershed decision for the P.R.I., and the P.R.I. must justify this decision to the people if it is to endure. International economic realities forced the P.R.I. to embrace the FTA. Now, the P.R.I. must convince the Mexican people that the fundamentals upon which it has traditionally based its power (protecting land and labor) are no longer the paramount concerns of the country, and that these fundamental principles have become outdated.

In summary, to ensure the success of an FTA, fundamental Constitutional principles must be compromised. However, the process of change and adaptation are difficult for Mexico because of its ossified political system and because of the memories of foreign interventions.

D. Timing: Why so Fast?

Both Mexico and the United States have strong reasons to hasten the implementation of the FTA.[305] For both sides the pressures are obviously economic. For the United States quick action is necessary to hedge against, and to ensure competitiveness with other economic blocks.[306] For Mexico, the FTA is a decision of destiny. The race between Mexico and other developing nations for a limited amount of foreign investment capital is intense.[307] Without obtaining a share

304. *See supra* note 204 and accompanying text.

305. For a discussion of the rationale for an FTA, see *supra* text 6-13 and 64-75.

306. *Facing Increased International Competition, supra* 17, at 122. *See also* text at 8-9.

307. *See* Kaslow, *supra* note 9.

of this limited capital, Mexico will be unable to create the one million new jobs[308] it needs each year to employ its growing population.

With the possible future dissolution or eventual ineffectiveness of GATT,[309] a trade vacuum will arise. An FTA between the United States and Mexico will hedge against this vacuum and should be able to supply Mexico with the capital and jobs it desperately needs. Moreover, a western hemisphere common market[310] sets the stage for the region to compete with the European Economic Community (EEC) and Asia.[311] By joining with the United States now, Mexico will already be reaping the benefits of an economic block, while other western hemisphere nations scramble to join an alliance.

Although both countries have reasons to enter into an FTA quickly, people are justifiably concerned with the timing of the agreement.[312] A hastily negotiated agreement could cause inadvertent mistakes. These mistakes would cause long lasting and irreparable harm to the economic and political relationship between the United States and Mexico, as well as within each nation itself. In Mexico, even some opponents of the current government do not attack the economic reforms or the FTA; they do criticize, however, the speed at which it is being negotiated, because important issues may be mishandled in the haste.[313] Any resulting give-aways would be construed by the nationalistic Mexican people not only as negotiating failures, but more importantly as a partial loss of sovereignty, much like the loss of territory.

IX. CONCLUSION

To many Mexicans, the FTA could be a bitter pill to swallow, since to be effective it will require the destruction or compromise of many principles upon which Mexico has staked its identity over the past three-quarters of a century. However, economic changes and reforms in the world, the United States, and in Mexico, have given

308. C. Salinas, *supra* note 21 at H6563.

309. *See Executives Regret Collapse of GATT Negotiations*, *supra* note 252; Longworth, *supra* note 5.

310. Truell, *supra* note 7.

311. *Poll Shows U.S. Support for Extension of U.S.-Canada Trade Pact to Include Mexico*, 7 Int'l. Trade Rep. (BNA) 848 (June 13, 1991); *Facing Increased International Competition*, *supra* note 17, at 122.

312. *American Survey, From the Yukon To The Yucatan*, *supra* note 278, at 21.

313. C. Cardenas, *Misunderstanding Mexico*, 78 Foreign Policy 113-30 (Spring, 1990); Rohter, *Free Trade Talks with U.S. Set of Debate in Mexico*, N.Y. Times, Mar. 29, 1990, at D23, col. 1.

birth to this agreement. Although the FTA will encounter obstacles, because of strong international and domestic economic pressures, it is a necessary and natural progression. Far too many serious economic problems will result if the agreement is not formed.

The FTA is a consequence of the evolution of world economics. Born as a defensive weapon to hedge against an emerging trade war amongst geographical blocks, it may also become the best strategic tool to advance the United States and Mexico into the next millennium.