

COMMENT

MEXICO'S 1989 FOREIGN INVESTMENT REGULATIONS: A SIGNIFICANT STEP FORWARD, BUT IS IT ENOUGH?

INTRODUCTION

On May 16, 1989, Mexico's President Carlos Salinas de Gortari announced a dramatic liberalization of the rules governing foreign investment in Mexico.¹ The Salinas administration promulgated the new Foreign Investment Regulations (New Regulations)² under the auspices of Mexico's Foreign Investment Law (FIL)³ which has been in effect since 1973. Authorization for these actions is derived from the regulatory powers granted to President Salinas by the Mexican Constitution.⁴

The purpose of the New Regulations is to promote public and private investment by providing incentives for investor participation, simplified administrative procedures, and an environment of legal certainty.⁵ The New Regulations were formed in response to Mexico's profound economic troubles and were designed to promote critically needed economic growth within the country.⁶

This Comment provides an examination of Mexico's motivation for changing its investment regulations, a general overview of the New Regulations,⁷ and a consideration of investors' responses to the New Regulations. Further, this Comment argues that, while the New Regulations may significantly improve the economy, true recovery will require that

1. Moffett, *Mexico Loosens Investment Rules for Foreigners*, Wall St. J., May 16, 1989, at A11, col. 3.

2. *Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, 427 Diario Oficial [D.O.] 11, May 16, 1989 [hereinafter New Regs.].

3. *Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, D.O., Mar. 9, 1973 [hereinafter FIL]. The actual effective date was May 8, 1973.

4. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, D.O., Feb. 1, 1917 [hereinafter CONST.] art. 89, § I.

5. Preamble, New Regs., *supra* note 2. Investment procedures "must be changed accordingly and simplified." Moreover, "investment processes call for a legal system that affords certainty, permanence, transparency and safety" [translation by D.R. Hoagland y Jauregui, S. C., 1989]. *Id.*

6. *Mexico Opens the Door*, EUROMONEY, Sept. 1989, at 233 [hereinafter EUROMONEY].

7. In light of the detailed discussion of the New Regulations in recent legal articles, this Comment only presents an overview of the recent regulations. For further information, see Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of a New Economic Model*, 12 HOUS. J. INT'L L. 1 (1989) [hereinafter Camil]; Palacio, *The New Regulation on Foreign Investment in Mexico: A Difficult Task*, 12 HOUS. J. INT'L L. 253 (1990).

Mexico, when politically feasible, take additional steps toward improving economic conditions.

I. MEXICO'S MOTIVATION FOR CHANGE

Mexico's impetus for change stems from the country's turbulent economic history. After continuous economic growth from 1960 to 1980, the Mexican economy underwent a dramatic decline precipitated primarily by the sudden drop in world oil prices. Sustained growth averaged five percent annually during the 1960s and 1970s,⁸ however, Mexico's economy experienced a dramatic decline when petroleum prices plummeted in the early 1980s.⁹

Subsequent years brought soaring inflation rates,¹⁰ exploding external debt of over 100 billion dollars,¹¹ and tremendous flight in capital also involving billions of dollars.¹² Additionally, Mexico has experienced a reduction in its standard of living.¹³ According to a United Nations study, more than half of all Mexicans, some 42.5 million people, currently live below minimum international nutritional standards.¹⁴ Moreover, since 1982, Mexico has witnessed a fifteen percent reduction in per capita income¹⁵ and persistent widespread unemployment.¹⁶

President Salinas responded to these ills by initiating economic restructuring. Among the measures taken, Salinas has maintained an anti-

8. *Salinas Assesses State of Nation*, Houston Chron., Nov. 2, 1989, at A10, col. 3.

9. *Id.*

10. *Mexico Looks for Relief and a Chance to Grow After Years of Austerity*, N.Y. Times, July 25, 1989, at D8, col. 3 [hereinafter *Mexico Looks for Relief*].

11. Peterson, *Mexican Reform Will Give U.S. Investors a New Lease on Life*, L.A. Times, May 22, 1989, § IV, at 2, col. 1 [hereinafter *New Lease on Life*]. Mexico's foreign debt burden, as of May 1989, was estimated at \$108 billion. *Id.* Additionally, in the past 6 years, it has been estimated that Mexico has paid out \$56 million more to foreign banks in debt interest than the country has received in new bank loans. *Mexico Opens Doors to Foreign Investors*, Wash. Post, Aug. 6, 1989, at H5, col. 1 [hereinafter *Mexico Opens Doors*].

12. Rother, *Mexico Sees Gains in Debt Accord*, N.Y. Times, July 31, 1989, at D10, col. 1. Since the economic crisis, approximately \$50 billion in capital has been estimated to have left the country. *Id.* For a thorough discussion of Mexico's capital flight, see Zamora, *Mexico and the Global Financial Market: Capital Flight as a Factor in National Economic Policy Making*, 18 CAL. W. INT'L L.J. 35 (1987).

13. *Mexico Looks for Relief*, *supra* note 10. According to a national food-producers group, "Mexicans of limited means eat only a bit more meat than the inhabitants of India, Iran, Ethiopia and Kenya where consumption is below 30 grams a day." *Id.* Moreover, "the average annual wage of farm workers dropped from \$412 in 1982 to \$163 two years later and industrial workers now can afford one liter of milk a week instead of two." *Mexico Opens Doors*, *supra* note 11.

14. *Mexico Looks for Relief*, *supra* note 10, at col. 2.

15. *U.S.-Mexico Relations*, 89 DEP'T ST. BUL. 73 (July 1989) [hereinafter *Mexico Relations*].

16. *Id.*

inflation pact¹⁷ with labor and business, advocated privatization of certain state companies,¹⁸ and successfully negotiated a debt reduction package¹⁹ with creditors.

The anti-inflation agreement, The Pact for Stability and Economic Growth (PACT), reduces inflation by controlling prices, wages, import duties, and the rate of exchange. Originally established during the Miguel de la Madrid administration, the PACT has dramatically reduced inflation.²⁰ The results of the PACT have been remarkable in permitting Mexico to cut its annual inflation rate. By September 1989 the country reached its lowest inflation rate of the decade.²¹

As an additional response to the poor Mexican economy, President Salinas looked for aid from the private sector. In hopes of reducing the state bureaucracy and thereby freeing funds for more pressing social needs, the Salinas administration embarked on a privatization program.²² By selling state-owned businesses to the private sector, Salinas hopes not only to free resources for other uses, but also to accumulate the capital needed to modernize key areas of the economy.²³ This divestment endeavor has evolved into a key element in Salinas' overall plan to modernize and expand the Mexican economy.²⁴ The resulting benefits have been significant and include an estimated 2.5 billion dollars in revenues from sales as of September 1989.²⁵

17. *Presidencia de la República, Dirección General de Comunicación Social, Renewal of the Pact for Stability and Economic Growth* (1989).

18. *Mexico Goes in Search of More Foreign Investment*, J. OF COM. & COMMERCIAL, June 5, 1989, at 12A, col. 1. Mexico would like to sell some 750 remaining state companies. Ten of the top candidates might provide as much as \$10 billion. *Id.*

19. Rother, *supra* note 12, at D10, col. 1. This agreement will result in an estimated annual debt reduction of \$1.5 billion. *Id.* The debt-relief agreement was signed by both Mexico and its creditor banks on February 7, 1990. Wall St. J., Feb. 7, 1990, at A10, col. 5.

20. Camil, *supra* note 7, at 5. The PACT was originally established in 1987 during the Madrid administration. In late 1988, the Salinas administration renewed the PACT until March 31, 1990. *Id.* On May 27, 1990, Salinas joined business, labor and farm leaders in extending the PACT till January 31, 1991. *New Wage-Price Control Pact Slows Devaluation of Currency in Mexico*, Houston Chron., May 29, 1990, at 2B, col. 1 [hereinafter PACT Renewal].

21. *Salinas Assesses State of Nation*, *supra* note 8, at A10, col. 1. The inflation rate for September 1989 was 17.3%. *Id.*

22. *President of Mexico Defends Plan to Sell State-Owned Concerns*, Wall St. J., Sept. 11, 1989, at A8, col. 6.

23. Work, *Bienvenidos to a Fire Sale*, U.S. NEWS & WORLD REPORT, Oct. 16, 1989, at 96 [hereinafter Work]. The national telephone company, Telmex, is a case in point. Although one of the largest state companies, Telmex has had tremendous maintenance problems and currently only services some 20% of Mexico's homes. The Salinas administration has elected to sell up to 49% of the company in hopes of using the funds to modernize the enterprise. It is hoped that this policy will bring about modernization of Mexico's communications system without siphoning off limited financial resources that could be dedicated to the country's pressing social needs. *Id.*

24. Ortiz, *Mexico's Been Bitten by the Privatization Bug*, Wall St. J., Sept. 15, 1989, at A11, col. 3.

25. *Id.* According to Guillermo Ortiz, Mexico's Undersecretary of Finance, the net fiscal

Salinas' most recent action to fight economic stagnation has been the successful negotiation of international debt reduction.²⁶ After months of protracted negotiation²⁷ between Mexico and its commercial creditors, an agreement was reached that reduced domestic interest rates from fifty percent to thirty-eight percent, thereby saving Mexico some ten billion dollars annually.²⁸ This reduction in interest rates will likely lower the dangerous potential for explosive inflation and should stimulate productive investment by Mexico's private sector.²⁹ However, creditor response to the reduction plan has been disappointing: only a limited number of banks have agreed to provide fresh loans to Mexico.³⁰ The full impact of the agreement, positive or negative, still remains to be seen, but the early signs are troubling.

While all of these actions have been helpful, the road to recovery is long and arduous. By adopting new investment regulations and attracting foreign investment, the Salinas administration hopes to continue reversing Mexico's economic plight.

Another primary motivation behind the Salinas government's embracing of the new investment regulations is that the former regulations performed so poorly.³¹ The old regulations were derived from the 1973 Foreign Investment Law (FIL)³² which has been the foundation for Mexico's foreign investment policy for almost two decades.³³ The FIL

benefit of the privatization program is much larger than just the \$2.5 billion in revenues. Since many state-owned companies operated at a loss, no additional resources will now be distributed to them. Additionally, Mr. Ortiz notes that the privatization program will increase general economic efficiency, expand employment in more efficient private businesses, and allow the government to focus on the foundational tasks of civil liberties and general economic prosperity. Key enterprises that have been privatized include the national airlines, the largest five-star hotel chain, almost 20 sugar mills and numerous companies dealing in capital-goods. *Id.*

26. Rother, *supra* note 12, at D10, col. 1.

27. *Rhodes to Latin America*, FORBES, Sept. 4, 1989, at 142. The negotiations took almost 14 weeks and both sides began some \$21 billion apart. The agreement gave the commercial banks three options: (1) the banks could reduce loan principal by 35%, (2) the banks could reduce interest rates from 10% to 6.25%, or (3) the banks could make new loans. *Id.* [hereinafter *Rhodes*].

28. Work, *supra* note 23, at 96.

29. Cornelius & Peres, *All Mexico Needs Now Is Good-Faith Investors*, L.A. Times, Aug. 16, 1989, § II, at 7, col. 4.

30. Work, *supra* note 23, at 96. As of October 1989 the only two banks agreeing to provide fresh loans were Citicorp and Lloyds. Other lenders chose instead to boost reserves against potential loan defaults. *Id.*

31. *Mexico Opens Doors*, *supra* note 11, at H5, col. 1. Compared to 1987 figures, foreign investment in Mexico declined 18% in 1988 to \$3.1 billion. This figure amounted to less than 5% of the gross domestic product. *Id.*

32. FIL, *supra* note 3.

33. For an excellent discussion of the 1973 FIL and Mexico investment restrictions, see Maviglia, *Mexico's Guidelines For Foreign Investment: The Selective Promotion of Necessary Industries*, 80 AM. J. INT'L L. 281, 290-294 (1986) [hereinafter Maviglia].

restricts foreign investment in economic activities reserved for the Mexican Government³⁴ and for Mexican investors,³⁵ by limiting foreign participation to forty-nine percent.³⁶ Although issuance of more liberal regulations over the years has increased foreign investment activity, overall foreign investment has remained low and has declined even further in recent years.³⁷

Not only did foreign investment decline in recent years, but operating within the old regulations proved to be cumbersome, arbitrary, and limited.³⁸ These factors, combined with the forty-nine percent equity ownership limit, likely "discouraged worthy projects and inhibited the contribution of state-of-the-art technology."³⁹

Similarly, the desire to participate in the evolving international economy encouraged Mexico's development of new regulations. According to Fernando Sánchez Ugarte, Mexico's Undersecretary of Industry and Foreign Investment, regardless of the debt problem, Mexico "had to confront two inescapable challenges: its need to stimulate internal economic growth and the equally important need to participate in the evolution of an interdependent world economy based on trade, technology and the productive movement of international investment capital."⁴⁰

Continuous capital is necessary for economic growth, but from what source will it be derived? In the previous decades, Mexico largely depended on large amounts of borrowed funds to fuel its economy. The alarming amount of foreign debt, and its consequent negative impact on the economy, has altered prevailing attitudes as to acceptable sources of investment capital. Mexican officials have now moved from an emphasis on borrowed funds to that of increased foreign investment.⁴¹ As Fernando Sánchez Ugarte has pointed out, "[i]n the past, we overborrowed . . . [n]ow we know we need an adequate balance between direct investment and loans. We restricted direct foreign investment too much. We

34. FIL, *supra* note 3, art. 4. Activities reserved to the Mexican government include oil and gas production, industries supplying nuclear and electrical energy, banking, railway transportation, telegraphs, minting of coins, and extraction and use of uranium. *Id.*

35. FIL, *supra* note 3, arts. 4-5. Activities reserved to Mexicans include the regulation of national air, maritime and auto transportation, regulation of forestry, distribution of gas, control of certain financial services and credit institutions, and regulation of radio and television production.

36. *Id.*

37. *Mexico Relations*, *supra* note 15.

38. Moffett, *Pressure Building Inside, Outside Mexico to Liberalize Its Investment Regulations*, Wall St. J., Dec. 23, 1988, at A8, col. 5 [hereinafter *Pressure Building*].

39. Camil, *supra* note 7, at 14.

40. *Mexico Opens Doors*, *supra* note 11, at H5, col. 1.

41. Green, *Mexicans Divided on Benefits of U.S. Trade Deal*, J. COM. & COMMERCIAL, Nov. 15, 1989, at 5A, col. 1.

need a source of foreign capital to grow."⁴² The New Regulations represent a vehicle for this growth.

II. THE NEW REGULATIONS

The ultimate objective of the New Regulations is to promote foreign investment, thereby modernizing the Mexican economy, creating jobs, fostering competition, inducing technology transfer, increasing exports, and advancing Mexico's ability to compete internationally.⁴³ President Salinas issued the New Regulations under the constitutional authority of article eighty-nine of the Political Constitution of the United Mexican States,⁴⁴ and upon publication, repealed all former administrative investment regulations.⁴⁵ The New Regulations promote foreign investment by permitting 100 percent foreign ownership in Mexican businesses, and by relaxing other regulations regarding investment in existing businesses and in real estate.

A. Investment Incentives via 100 Percent Ownership

The New Regulations liberalize foreign investment by, among other actions, allowing 100 percent ownership of historically restricted business⁴⁶ that meet certain criteria.⁴⁷ These criteria require that:

- (1) investments must be fixed assets not to exceed 100 million dollars;
- (2) investments must be funded by outside sources;
- (3) projects must be located outside the growth-controlled geographical zones;
- (4) aggregate foreign exchange balances must be anticipated to balance after three years of operation;
- (5) investments must create permanent jobs and establish worker training and development programs; and
- (6) investments must employ proper technology and meet environmental requirements.⁴⁸

These criteria appear to have been inspired by governmental policies designed to encourage foreign investment that will complement and bolster the Mexican economy. These policies concentrate on promoting investment that will bring significant capital into the economy, develop

42. *Id.*

43. New Regs., *supra* note 2, Preamble. See also, EUROMONEY, *supra* note 6, at 233.

44. New Regs., *supra* note 2, Preamble.

45. *Id.*, arts. 2-3 transitory.

46. See *supra* notes 34-35 and accompanying text where restricted activities are discussed.

47. New Regs., *supra* note 2, art. 5.

48. *Id.* Outside sources mentioned in criterion (2) mean investments from outside Mexico. Criterion (3) growth-controlled geographical zones include Mexico City, Guadalajara, and Monterrey. *Id.*

additional geographical areas outside of the currently highly industrialized zones in Mexico, produce a positive balance of payments, promote employment, and expand personnel training and the use of beneficial technology.

The newly established 100 percent foreign ownership rules represent a dramatic deviation from the earlier rules limiting foreign investment to forty-nine percent⁴⁹ and should significantly advance investment prospects for Mexico. Indeed, many companies frustrated by mandatory minority control may now consider new investments in Mexico.⁵⁰

For those investments that do meet the outlined criteria, approval is automatic and does not require approval of the National Foreign Investment Commission (FIC),⁵¹ historically a long and cumbersome process often taking many months to complete.⁵² Projects not meeting the above criteria, as well as those that fall within a restricted area, must still be submitted to the FIC; however, if the FIC does not return a formal response within forty-five business days, approval is granted automatically.⁵³ The automatic approval provision contrasts sharply with the former lengthy approval process. This limited window of response time should greatly encourage potential investors who normally would have waited months for approval.⁵⁴ Moreover, this requirement should go a long way toward fulfilling the Salinas administration's goal of streamlining the approval process that has traditionally impeded foreign investment.⁵⁵

B. Investment in Maquiladoras and in Existing Mexican Businesses

The New Regulations also announce that foreign investors may incorporate or acquire stock in *maquiladora* and export operations without FIC approval.⁵⁶ Additionally, the regulations allow for expansion⁵⁷ of

49. Maviglia, *supra* note 33, at 290-291.

50. EUROMONEY, *supra* note 6, at 233. Apparently, American and Canadian companies were particularly troubled by the 49% limit, especially when they desired to expand. These companies were understandably disgruntled when they would be called upon to supply debt financing for expansions, yet could not always receive a corresponding increase in equity. The removal of the 49% limit on investment may result in numerous companies, already in Mexico, attempting to purchase the remainder of the business from their Mexican partners. *Id.* at 233-236.

51. New Regs., *supra* note 2, art. 5.

52. Maviglia, *supra* note 33. Applications submitted to the FIC for approval generally required 4 to 16 months before being accepted. *Id.*

53. New Regs., *supra* note 2, art. 2. This requirement greatly speeds up the formerly time-consuming approval process.

54. Maviglia, *supra* note 33, at 292.

55. *Comite para la Promoción de la Inversión en Mexico, Mexico and the Foreign Investor - A Partnership for Growth* (1989).

56. New Regs., *supra* note 2, art. 6. For a good overview of the *maquiladora* industry, see *infra* note 62.

57. New Regs., *supra* note 2, arts. 27-29.

existing *maquiladora* or other export-oriented operations through new projects,⁵⁸ product lines,⁵⁹ or economic activities⁶⁰ without specific FIC authorization.

Maquiladora industries, established under special provisions of Mexican and American law,⁶¹ have been an economic boon to Mexico and continue to grow in numbers.⁶² Under Mexican law, if at least eighty percent of production is exported, imports of machinery and equipment for manufacturing or assembly of such exported goods are duty-free.⁶³ American law provides that finished goods assembled in Mexico for import to the United States will be assessed duty charges only on the value added to American-made components.⁶⁴

Maquiladoras benefit the Mexican economy by increasing employment, producing foreign exchange, and improving local management skills.⁶⁵ The New Regulations will further encourage the growth of this important economic sector by permitting the infusion of capital through foreign investment.

The New Regulations also permit foreign investors to invest, through the use of temporary trusts, in areas normally restricted to Mexican investors.⁶⁶ However, the trust mechanism is generally available only for those companies that are either in financial difficulty or need

58. New Regs., *supra* note 2, art. 27. New projects include industrial facilities (manufacturing, production, assembly, etc.), commercial facilities (distribution centers, financial processing centers, etc.), and service facilities (any for-profit service activity center). *Id.*

59. New Regs., *supra* note 2, art. 28.

60. *Id.*

61. Taylor, *Japanese Moving into Maquiladora Territory*, J. OF COM. & COMMERCIAL, Oct. 25, 1989, at 8A.

62. Clement, *An Overview of the Maquiladora Industry*, 18 CAL. W. INT'L L.J. 55 (1987). This article provides a good description of the *maquiladora* industry. The article also defines *maquiladora* as "a generic term for those firms which 'process' (assemble or transform in some way) components imported into Mexico which are then re-exported" or in the alternative, "an economic unit for the production of goods or services based on the temporary importation of raw materials and equipment to be transformed in Mexico and subsequently sold abroad." *Id.* at 56.

63. *Id.*

64. *Id.*

65. *U.S.-Mexico Industrial Integration Today and Tomorrow*, 10 (Dec. 1989) (unpublished final report of the 1989 Woodlands Conference on file with HOUSTON JOURNAL OF INTERNATIONAL LAW) [hereinafter Conference]. The three-day conference consisted of 84 academic, business and government experts who met to examine trade and economic relationships between the U.S. and Mexico. *Id.* at 3. Among other actions, the participants strongly encouraged continued support for the *maquiladora* industry. *Id.* at 10. *See also*, Houston Chron., Dec. 11, 1989, at 1B, col. 4.

66. New Regs., *supra* note 2, arts. 23-26. For a discussion of activities reserved for Mexican investors, *see supra* note 35.

assistance in modernizing or expanding facilities.⁶⁷ Moreover, temporary trusts are limited to a maximum of twenty years and must be approved by the FIC.⁶⁸ Although limited in scope, these trust regulations represent a further relaxation of Mexico's restrictive investment policy in areas traditionally limited to Mexican investors.

C. Investment in Real Estate

The New Regulations entitle foreign investors to make investments in real estate located within the "restricted zone." The "restricted zone" represents real estate that foreigners are constitutionally excluded from owning.⁶⁹ The zone includes all land within 100 kilometers of Mexico's borders and within 50 kilometers of the coastline.⁷⁰

Although not granted ownership, the New Regulations permit foreign investors to obtain full beneficial rights in restricted real estate by establishing real estate investment trusts.⁷¹ The real estate trust may have a life of thirty years and may be renewed for additional periods of thirty years if requested on a timely basis.⁷² The real estate trust is another example of the new flexibility afforded foreign investors by the New Regulations.

Overall, the New Regulations represent a significant liberalization of Mexico's foreign investment rules. Yet, the success of these regulations will largely depend on the response of the foreign investment community.

III. INVESTORS' RESPONSE

The New Regulations have significantly altered the investment environment for potential foreign investors. While many foreign investors have responded favorably, investor response to the New Regulations appears to be mixed, and many deterrents to significant foreign investment remain.

The Salinas administration is hoping that the New Regulations will boost foreign investment from 3.1 billion dollars in 1988 to 4.5 billion dollars in the mid-1990s.⁷³ In light of the challenges ahead, these goals

67. New Regs., *supra* note 2, art. 23. Financial difficulty might include companies facing very unstable finances, borderline insolvency, or bankruptcy. *Id.* Expansion and modernization activities must significantly benefit the exportation of goods before approval will be granted. *Id.*

68. New Regs., *supra* note 2, art. 23. For additional information on temporary trusts, see Camil, *supra* note 7, at 15-18.

69. CONST., *supra* note 4, art. 27.

70. *Id.*

71. New Regs., *supra* note 2, arts. 16-20.

72. *Id.*, arts. 20-21.

73. *Mexico Opens Door*, *supra* note 11, at H5, col. 1.

appear overly optimistic.

One impediment to success of the New Regulations is the skepticism of some potential investors. Some businessmen are skeptical that regulations alone will provide the appropriate receptive signal to foreign investors. These businessmen believe that a real increase in investment will only follow if the FIL itself is overhauled.⁷⁴ Along these lines, foreign investors who remember the 1982 nationalization of Mexico's banks,⁷⁵ and the sometimes indiscriminate application of previous investment rules,⁷⁶ may desire more concrete assurances that the New Regulations will justify investor reliance.

Of course, if the administration's goals are not achieved through the regulations, President Salinas may always return to Congress and attempt to pass a new investment law; however, such a course of action entails significant political risk.⁷⁷ In light of Mexico's historic nationalistic tendencies,⁷⁸ any more rapid change would be subject to great debate and might have dire negative consequences. Indeed, the leftist opposition and the left wing of the Institutional Revolutionary Party (PRI) would probably create major obstacles to enactment of a new foreign investment law.⁷⁹

Another deterrent to investment is Mexico's poor infrastructure.⁸⁰

74. *Pressure Building*, *supra* note 38, at A8, col. 5. Moreover, other investors are skeptical because Mexico has discontinued profitable debt-equity swaps. Mexico considers these programs inflationary. *Id.*

75. Murphy, *Expropriation and Aftermath: The Prospects for Foreign Enterprise in the Mexico of Miguel de la Madrid*, 18 TEX. INT'L L.J. 431 (1983). President José López Portillo nationalized the Mexican banking system in 1982. *Id.* at 444.

76. Williams, *Has Mexico Kept the Promise of 1984? A Look at Foreign Investment Under Mexico's Recent Guidelines*, 23 TEX. INT'L L.J. 417, 427 (1988) [hereinafter Williams]. In the mid-eighties, investors watched the FIC apply current investment rules in an inconsistent manner. *Id.*

77. *Pressure Building*, *supra* note 38, at A8, col. 5. President Salinas' PRI holds only a slim majority in the Mexican Congress. *Id.* Moreover, violent confrontation still occurs between supporters of leftist opposition parties and governmental authorities. *Two Leftists, Policeman Killed in Mexico Clash*, Houston Chron., Mar. 1, 1990, at 1A, col. 1. "[P]olitical confrontation and violence threaten investment and employment." *Id.*

78. Williams, *supra* note 76, at 419-427. A central portion of this Note discusses the historic interplay of Mexican nationalism and foreign investment law. *Id.* In commenting on the 1984 Mexican foreign investment guidelines, the author states that "Mexico has given no indication that this nationalist attitude has drastically changed. On the contrary, the sentiment still seems very much in force." *Id.* at 427; *see also, Id.* at 419-420 for a discussion of Mexico's passionate nationalism.

79. *Pressure Building*, *supra* note 38, at A8, col. 5.

80. *Foreign Plants on Rise in Mexico*, L.A. Times, Jan. 10, 1989, § IV, at 2, col. 4. Availability of power has proved especially burdensome for *maquiladora* setups. In the short term, this problem can only worsen with increased investment projects. *Id.* *See also*, Nazario, *Boom and Despair*, Wall St. J., Sept. 22, 1989, at R26, col. 1. Growth of the *maquiladora* industry has tremendously weakened an already-shaky infrastructure. *Id.* Moreover, approximately 10% of Mexico's current population of 80 million citizens does not have electricity, drinking water or sewer service. *Salinas Builds Road to Reform*, Austin-American Statesman, Feb. 25, 1990, at D5, col. 1 [hereinafter *Road to Reform*]. For purposes of this Comment, the term

Some potential investors believe that the Mexican infrastructure, particularly the telecommunications and transportation systems, must be developed before Mexico will see significant gains.⁸¹ For example, although improvements are planned,⁸² many local businesses must maintain two telephone lines since at least one is constantly out of order.⁸³ Such fundamental problems deter investment by impeding basic business operations.

Mexico's 100 million dollar limit for automatic approval by the FIL⁸⁴ may be another obstacle to significant investment. The concern among some critics is that the 100 million dollar ceiling will promote ten to twenty million dollar projects, but will not encourage critically needed large foreign investments.⁸⁵ Other investors note that 100 million dollars is still significant and are unconvinced that the upper limit will deter anyone.⁸⁶

Additionally, interested investors should realize that the 100 million dollar limit is subject to alteration by the Ministry of Trade and Promotion⁸⁷ and may be overcome by participating in the standard FIC approval process which mandates a forty-five day response time.⁸⁸ Considering the Salinas administration's pro-investment attitude, investment projects exceeding 100 million dollars should be looked upon favorably.

Furthermore, Mexico's internal political environment may put pressure on the Salinas administration to produce quick results or alter the New Regulations. Salinas can expect criticism from leftists and labor leaders who will claim, in typical nationalistic fervor,⁸⁹ that the President is allowing the exploitation of Mexico's workers and resources.⁹⁰ On the

infrastructure should be understood to include public utilities, transportation, communications systems, and water and sewage treatment facilities.

81. EUROMONEY, *supra* note 6, at 236. In response to a question regarding why the company would never set up a plant in Mexico, the chairman of a leading California computer company stated that "it's because the phones don't work, plain and simple." *Id.*

82. See Baker, *Down and Out in Latin America*, BUSINESS WEEK, July 10, 1989, at 45. The Mexican government is planning a \$12 billion overhaul of the telecommunications system. *Id.*

83. Work, *supra* note 23, at 96. Some 80% of Mexican homes lack telephone service and long distance rates can be three times as expensive as those outside the country. However, President Salinas is attempting to transfer Telmex, the national telephone company, into private hands in hopes of raising capital and advancing modernization. *Id.*

84. New Regs., *supra* note 2, art. 5.

85. Sardovi, *Investors Peer Through Wider Door*, Christian Sci. Monitor, Aug. 3, 1989, at 9, col. 2.

86. EUROMONEY, *supra* note 6, at 236. According to one view of the situation, "[y]ou can put up a very substantial plant here [Mexico] for \$100 million." *Id.*

87. New Regs., *supra* note 2, art. 5, art. 4 transitory.

88. New Regs., *supra* note 2, art. 2.

89. See Williams, *supra* note 78, and accompanying text.

90. *Mexico Gets Down to Business*, L.A. Times, May 19, 1989, § II, at 6, col. 1. Salinas'

other end of the political spectrum, Salinas will hear complaints from conservative Mexican businessmen interested in maintaining their currently protected status.⁹¹ If the political pressure is intense and the regulations are perceived to be subject to alteration, potential investors may be wary of fully committing to new investments.⁹² Additionally, some critics of the new policies believe that investment will also be deterred because the New Regulations are difficult to interpret.⁹³

In spite of all the potential deterrents, many investors expect positive results from Mexico's New Regulations.⁹⁴ Mexico has long been attractive to potential investors because of its proximity to the United States.⁹⁵ The almost 2,000 mile border between the United States and Mexico provides a tremendous opportunity for investment and trade between both nations.⁹⁶

Mexico is also an attractive location for investment because of its cheap and plentiful labor force.⁹⁷ Present average hourly wages in Mexico can range from \$0.85 to \$1.40 per hour.⁹⁸ These rates are some of the most competitive in the world⁹⁹ and offer powerful incentives for companies to locate labor-intensive operations in Mexico. However, some observers note that many products once assembled by hand are now being produced by machine.¹⁰⁰ As this trend toward increased automation continues, the demand for manual labor will decrease and so too will the attractiveness of Mexico's cheap labor.¹⁰¹

To many, Mexico's recent actions signify an important change in investment philosophy—a philosophy no longer dictated by minority

further efforts to open up the generally closed and protected Mexican economy will undoubtedly subject him to abundant criticism from both sides of the political spectrum.

91. *Id.*

92. See *supra* notes 74-76 and accompanying text.

93. *Mexico's New Investment Rules Greeted with Caution in U.S.*, L.A. Times, May 17, 1989, § IV, at 6, col. 2 [hereinafter *Investment Rules Greeted with Caution*]. Investors and business executives have struggled to interpret the 27 page regulations. *Id.*

94. *New Lease on Life*, *supra* note 11, § IV, at 1, col. 5. A group of California investors foresee rising investment, especially in tourist properties. Among others, these properties might include Mexican hotels, resort complexes, villas and condominiums. *Id.*

95. *Investment Rules Greeted with Caution*, *supra* note 93, at 6, col. 1.

96. *Id.* Mexico shares a 1,952 mile border with the United States. *Mexico Relations*, *supra* note 15, at 73.

97. *Id.*

98. EUROMONEY, *supra* note 6, at 236.

99. Nazario, *Boom and Despair: Mexican Border Towns Are a Magnet for Foreign Factories, Workers and Abysmal Living Conditions*, Wall St. J., Sept. 22, 1989, at R26, col. 1. The following list details the 1988 average hourly wages for manufacturing industries in selected countries: Mexico = \$.88, Taiwan = \$2.71, Korea = \$2.46, Singapore = \$2.67, Hong Kong = \$2.43, Japan = \$13.14, and the United States = \$13.90. *Id.*

100. *Id.*

101. *Id.*

ownership.¹⁰² Others have noted that Mexico's actions promote investor confidence and they argue that confidence will in turn attract capital.¹⁰³ A return of at least 800 million dollars of flight capital associated with the debt reduction agreement indicates that some confidence already has been restored.¹⁰⁴ Additionally, the Mexican Commerce Ministry reports that some two billion dollars in new projects have been approved since the New Regulations were issued.¹⁰⁵ However, in the first half of 1989, only 323 million dollars actually came into Mexico¹⁰⁶ and among those investing, new investors appear particularly scarce.¹⁰⁷

The Salinas administration's admirable effort to reconstruct the Mexican economy does show signs of producing some positive economic results. Mexico's 1990 government budget projects that the 1990 government deficit will drop to 1.6 percent of gross domestic product—the lowest in twenty years.¹⁰⁸ Moreover, the Mexican government also projects economic growth to rise from 2.5 percent in 1989 to 3.5 percent in 1990.¹⁰⁹

However, in light of the continued debt problem and other economic challenges, these improvements appear to be inadequate to properly meet the demands of the Mexican people. The recent debt reduction package, while rendering some assistance, apparently will not provide the required funds to adequately move the economy forward.¹¹⁰ Current estimates show that Mexico will probably only receive some 4.5 billion dollars in new loans when it had hoped to receive 9 billion dollars.¹¹¹ Under the debt reduction plan, covering some 52.7 billion dollars of Mexico's medium and long-term commercial debt, creditor banks had the option to reduce principal on the loans by 35 percent, reduce the loan interest

102. *New Lease on Life*, *supra* note 11, at 2, col. 1. Forming a 100% ownership company may no longer require a Mexican partner or approval from the national commission. *Id.*

103. *L.A. Times*, May 17, 1989, § IV, at 6, col. 1. However, this confidence could quickly erode if the economy does not produce positive results. Baker, *supra* note 82, at 42.

104. Cornelius & Peres, *supra* note 29, at 7.

105. *Work*, *supra* note 23, at 100. *See also*, Baker, *supra* note 82, at 42. Some \$700 million from May 1989 to July 1989 had been earmarked for new investment projects. These projects include \$500 million from Marriott Co. for new hotels, \$300 million from Ford Co. to expand and retool a stamping plant, \$300 million from Nestle for additions to food operations, \$100 million from General Electric for stove production, and \$94 million from Procter & Gamble to modernize and add product lines. *Id.*

106. *Id.*

107. *Id.*

108. Truell, *Brady Plan to Cut Poorer Nations' Debt May Have to Be Revised to Achieve Goals*, *Wall St. J.*, Nov. 16, 1989, at A8, col. 1.

109. *Id.*

110. Moffett, *Mexico's Capital Flight Still Racks Economy, Despite the Brady Plan*, *Wall St. J.*, Sept. 25, 1989, at A1, col. 5. Three large New York banks are boosting reserves for losses instead of providing fresh loans. *Id.*

111. Fuerbringer, *Adjustments Expected in Mexico Pact*, *N.Y. Times*, Nov. 13, 1989, at D1, col. 6.

rate, or provide new loans.¹¹² Numerous banks have elected not to provide new loans.¹¹³ Many international banks are largely disenchanted with Latin America and are hesitant to lend critically needed new money to Mexico under the Brady Plan.¹¹⁴

In the present environment, significant repatriation of capital flight seems unlikely.¹¹⁵ According to Mexican officials, out of the approximately 84 billion dollars of flight capital outstanding,¹¹⁶ only an estimated 2.3 billion dollars has returned within the first seven months of 1989.¹¹⁷ A good portion of the lost capital is invested in fixed assets which may be more difficult to repatriate.¹¹⁸ Additionally, numerous smaller Mexican investors may be waiting for the large bank investors to move more capital into Mexico, an increasingly unlikely prospect.¹¹⁹ Finally, although Mexican interest rates have dropped following the debt reduction agreement,¹²⁰ they remain high and most of Mexico's savings are invested in volatile, short-term instruments.¹²¹ Upward pressure on interest rates could quickly dampen optimism.¹²²

V. RECOMMENDED ACTIONS

Under the economic conditions outlined previously, additional steps by Mexico's leadership will be required in order to promote significant

112. Rhodes, *supra* note 27, at 142.

113. Fuerbringer, *supra* note 111.

114. See *Mexico's Bankers Head for The Border*, ECONOMIST, Aug. 12, 1989, at 63 [hereinafter *Bankers*]. "A well-provisioned bank is more likely to pack its bags and leave." *Id.*

115. Moffett, *supra* note 110. According to one Mexican businessman, "[g]etting that capital back to Mexico will be like trying to reverse the law of gravity." *Id.* Even a Mexican government tax amnesty program targeted at Mexican investors who possess flight capital and have not properly reported investment income, may not provide sufficient motivation to return capital to Mexico. Additionally, in hopes of recouping more flight capital, Mexico has also made efforts to strictly enforce tax evasion laws. *Id.* Along these lines, a recent U.S.-Mexican tax agreement authorizing sharing of tax information between Mexico and the United States should aid Mexico in enforcing the country's tax laws. *U.S.-Mexican Tax Pact*, Houston Chron., Jan. 24, 1990, at 6B, col. 1. See also Karlin, *The U.S. and Mexico Agree to Exchange Tax Information*, 19 INT'L FIN. L. REV. 35 (1990). However, some observers believe that if Mexico's tax evasion laws are strictly enforced on flight capital in the U.S., Mexican flight capital would probably be moved to out of reach offshore shelters. Moffett, *supra* note 110 at A1.

116. Moffett, *supra* note 110, at A1. The Salinas administration estimates that the actual amount of capital flight is about \$40 billion. Truell, *Salinas Asks U.S. to Open Further to Mexican Goods*, Wall St. J., Oct. 3, 1989, at A18, col. 3.

117. *Mexico Posts New Capital Inflow*, Wall St. J., Oct. 2, 1989, at A15, col. 1. Other sources estimate that only \$800 million had returned by August, 1989. Cornelius & Peres, *supra* note 29, at 7.

118. Moffett, *supra* note 110, at A1. Fixed investment assets range from art galleries to auto dealerships. *Id.*

119. *Id.* Also, most financial institutions who currently possess Mexican flight capital will be fighting hard to maintain this customer base. *Id.*

120. See generally Work, *supra* note 23.

121. Moffett, *supra* note 110, at A10.

122. *Id.*

economic growth. Since foreign investment does not exist in a vacuum, Mexico should consider a wide variety of economic actions. The Salinas administration should begin by further liberalizing the investment regulations. The regulations should be altered to raise the current 100 million dollar automatic approval ceiling. Even though approval for greater than 100 million dollar investments can be obtained through the normal approval process, raising the ceiling would promote larger investments that will have a greater positive impact on the Mexican economy.

Similarly, the New Regulations should be relaxed by allowing foreign investment in areas restricted for Mexicans via Mexican trusts, regardless of the financial health of the enterprise or export capability.¹²³ This action could greatly encourage investment and title would still be held for only twenty years with the remainder held by a Mexican investor. Moreover, even if a change in the FIL is politically unfeasible,¹²⁴ investors should constantly be made aware that the commitment to open investment is real and concrete.

Mexico must also make additional efforts to improve the country's infrastructure. After numerous years of neglect, this problem can no longer go unaddressed. Companies are hesitant to invest when water, transportation, and telephone service is less than adequate.¹²⁵ Mexico should continue modernizing facilities and establish creative ways of encouraging foreign investors to participate in the funding of these operations.

The policy of privatizing nonstrategic, state-owned enterprises should be maintained and encouraged.¹²⁶ Selling off non-priority state assets will provide badly needed funds for modernization and social projects,¹²⁷ promote economic efficiency,¹²⁸ and enhance investor confidence.¹²⁹

123. See *supra* notes 66-68 and accompanying text.

124. See *supra* notes 77-79 and accompanying text.

125. See *supra* notes 80-83 and accompanying text.

126. Currently, the Mexican government plans to reduce the number of state-owned enterprises from 1,100 to 400. Kearns, *Mexico Lowers Trade Barriers*, J. OF COM. & COMMERCIAL, Nov. 6, 1989, at 8A, col. 1.

127. See *supra* notes 22-23 and accompanying text.

128. See *supra* note 25 and accompanying text.

129. Baer, *Mexico's Race Against the Clock*, Wall St. J., Sept. 29, 1989, at A15, col. 2. Investor confidence would be strengthened by additional privatizations in the steel, fertilizer and banking areas of the economy. *Id.* Mexican officials should be praised for announcing plans to privatize two large state-owned steel companies in recognition of the fact that privatization is an incentive to investment. *Mexico Will Sell 2 Large Steel Firms*, Houston Chron., Mar. 8, 1990, at 14A, col. 2. Moreover, the Salinas administration should also be praised for proposing a constitutional amendment that would allow Mexico to privatize large portions of the country's banking system. Approval of this amendment would reverse eight years of total state ownership of banks and should dramatically boost the general investment climate. Puga, *Mexico May Sell Its Banks*, Houston Chron., May 3, 1990, at 24A, col. 1.

Further steps must also be taken to encourage the return of flight capital.¹³⁰ Although the tax amnesty program and evasion enforcement is helpful,¹³¹ the most important element in this campaign is promoting investor confidence.¹³² Tax incentives could also encourage the return of flight capital.¹³³

Mexico should also make efforts to maintain the current anti-inflation pact¹³⁴ with labor. Although real wages have not risen and labor's patience may be growing thin, the massive reduction in inflation must be allowed additional time to fully stir economic growth.

Finally, Mexico should continue progress toward a free-trade agreement with the United States. In response to the emerging global trading blocs in Europe and Asia, a United States-Mexico free-trade agreement would provide a prosperous market for Mexico and enhanced global competitiveness for the United States.¹³⁵ With forty-four billion dollars in two-way trade, Mexico is already the United States' third largest trading partner.¹³⁶ Moreover, the United States represents more than sixty percent of the twenty billion dollars in foreign direct investment in Mexico.¹³⁷ From this backdrop, a free-trade agreement could be formed resulting in numerous benefits for both countries.

A free-trade agreement would also stimulate commerce between the nations and develop new opportunities for growth in the private sector. Furthermore, a free-trade agreement would enhance Mexico's and the United States' competitive position versus the emerging regional trade blocks in Europe and Asia,¹³⁸ thereby assuring a brighter economic future for both nations. Additionally, a United States-Mexico free-trade agreement, when compared with negotiations under the General Agreement on Tariffs and Trade (GATT), would provide a more flexible economic forum to discuss the particular needs of each country.¹³⁹

130. See *supra* notes 115-119 and accompanying text.

131. See *supra* note 115 and accompanying text.

132. Moffett, *supra* note 110, at A10.

133. *Mexico's Virtue Goes Half Rewarded*, ECONOMIST, Aug. 12, 1989, at 64. Removing the tax levied on returning capital has been an incentive for capital return. *Id.* Additional incentives should be considered by Mexico. America should also consider tax breaks in order to encourage large banks to loan new money to Mexico. Bankers, *supra* note 114, at 64.

134. PACT Renewal, *supra* note 20. The current pact between government, management, and labor is scheduled to expire in January of 1991. *Id.*

135. Baer, *supra* note 129, at A15. See also, Weintraub, *Free-Trade—Both Mexico, U.S. Stand to Gain*, Houston Chron., May 14, 1990, at 13A, col. 3.

136. *Mexico Relations*, *supra* note 15, at 73.

137. *Id.*

138. Conference, *supra* note 65, at 8. The 84 academic, business and government experts recommended that Mexico and the U.S. seek a free-trade agreement and achieve full economic integration. *Id.* See also Beachy, *Call To Open Up Trade*, Houston Chron., Dec. 11, 1989, at 1B, col. 4.

139. Baucus, *A New Trade Strategy: The Case for Bilateral Agreements*, 22 CORNELL INT'L L.J. 1, 8 (1989).

Of course, any free-trade agreement will be opposed by elements in both countries. Indeed, in Mexico, Salinas' political opposition has been critical of almost all efforts to open the Mexican economy including privatizing state enterprises, opening foreign investment, and negotiating debt reduction.¹⁴⁰ The opposition objects to these activities on the grounds that Mexico's sovereignty and independence is jeopardized by these actions.¹⁴¹ This opposition will likewise argue vehemently against a free-trade agreement. However, after years of economic stagnation,¹⁴² a fifty percent drop in real wages,¹⁴³ and a nation plagued by hunger,¹⁴⁴ even the political opposition should consider abandoning the nationalistic policies of the past for the economic benefits of the future.

In the United States, political opposition would arise from labor groups and businesses concerned about the availability of inexpensive labor in Mexico.¹⁴⁵ However, the creation of employment opportunities flowing from new export and trade prompted by such an agreement should help appease these concerns. Likewise, some argue that a free-trade agreement would undercut the GATT process and harm individual nations' long-term interests.¹⁴⁶ Yet, even some of these critics admit that a United States-Mexico free-trade agreement presents a unique case.¹⁴⁷

Others argue that differences in the economies of the United States and Mexico would hinder the preparation of a United States-Mexico free-trade agreement.¹⁴⁸ Notwithstanding that the current disparities between the two economies might impede the negotiation process, significant steps toward an agreement should nevertheless be made.¹⁴⁹

Finally, some are concerned that a trade agreement would harm the *maquiladora* industry. Even if *maquiladoras* would be subverted by a

140. Rohter, *President of Mexico Awaits Action on Debt*, N.Y. Times, Nov. 2, 1989, at D7, col. 4.

141. *Id.*

142. *Poll: Despite New, Tougher U.S. Laws, Thousands in Mexico Still Look to North*, L.A. Times, Aug. 21, 1989, § I, at 10, col. 1.

143. *Id.* Some 20 million Mexican people earn less than \$3 per day for their labor. *Road to Reform*, *supra* note 80, at D5, col. 1.

144. *Id.*

145. Farnsworth, *Mexican-U.S. Pact Reached on Trade and Investments*, N.Y. Times, Oct. 4, 1989, at D6, col. 4. U.S. labor would be concerned about being displaced by low-wage Mexican workers and businesses would be concerned about competing against companies with reduced labor expenses. *Id.* See also, Clayton, *Chipping Away at Barriers*, Houston Chron., June 12, 1990 at C1, col. 6.

146. Aho, *More Bilateral Trade Agreements Would Be a Blunder: What the New President Should Do*, 22 CORNELL INT'L L.J. 25-26 (1989).

147. *Id.* at 26.

148. *Mexico Relations*, *supra* note 15, at 73. See also, *New North-South Harmony*, L.A. Times, Oct. 8, 1989, § V, at 4, col. 1.

149. Baucus, *supra* note 139, at 17. According to Senator Max Baucus, when evaluating candidates for a bilateral trade agreement with the United States, "[t]he case for Mexico seems particularly compelling." *Id.*

free-trade agreement,¹⁵⁰ the economic benefits for Mexico and the United States would outweigh the sacrifice. In the final analysis, a United States-Mexico free-trade agreement should be pursued.

In fact, significant progress toward a United States-Mexico trade agreement appears to have already begun. Recent accords¹⁵¹ between the Bush and Salinas administrations may well represent the initial stages of the free-trade negotiation process. In October 1989, Presidents Bush and Salinas, during a state visit by the Mexican leader, signed agreements to expand trade and investment opportunities between the United States and Mexico. At ceremonies surrounding the signing of these agreements, both leaders expressly recognized the importance of United States-Mexico relations and the need to further strengthen trade between the two countries.¹⁵² These accords formed the most extensive economic agreement ever made between the two countries and were largely made possible by Mexico's new openness to trade and foreign investment.¹⁵³

The Bush and Salinas agreements encompassed six separate accords¹⁵⁴ including agreements to:

- (1) Negotiate regularly on opening trade and investment opportunities between both countries;
- (2) establish a Joint Promotion Committee for Investment and Trade;
- (3) promote tourism in each country;
- (4) cooperate in fighting pollution in large sister-city metropolitan areas along the United States-Mexico border;
- (5) jointly build a United States-Mexico international sewage treatment plant near Tijuana; and
- (6) cooperate to reduce pollution in Mexico City.¹⁵⁵

At the time of the signing, United States officials hailed the trade and investment accords as substantial progress, but indicated that a free-trade agreement, if possible at all, would be a "long way off."¹⁵⁶ Even without an immediate free-trade agreement, United States officials did note that the signing of the United States-Mexico accords represented a "significant evolution" in the trading relationship between the two

150. *Manufacturing in Mexico on Uncle Sam's Coat-Tails*, ECONOMIST, Sept. 16, 1989, at 82.

151. Farnsworth, *supra* note 145, at A1, col. 4.

152. *Visit of Mexican President Salinas*, 89 DEP'T ST. BUL. 1 (Dec. 1989).

153. Farnsworth, *supra* note 145, at A1.

154. Clayton, *Bush, Salinas Sign 6 Accords Covering Trade, Environment*, Houston Chron., Oct. 4, 1989, at A9, col. 1 [hereinafter Clayton]; see also Beachy, *Mexico Pact May Hike Texas Exports*, Houston Chron., Oct. 8, 1989, at 1G, col. 1. Texas exports should increase as a result of the U.S.-Mexico accords.

155. Beachy, *supra* note 154.

156. Clayton, *supra* note 154, at A9, col. 2.

countries.¹⁵⁷

Yet, the logical result of this evolutionary process is a United States-Mexico free-trade agreement. If Mexico and the United States continue the policies of open markets and increased cooperation, a free-trade agreement is a natural culmination to these efforts. In the words of one observer, "[w]e are heading in the direction of a free-trade agreement. It is only natural to formalize the integration of our two [Mexico and the United States] countries . . . [a] silent agreement is in place and an agreement will only formalize it under a corpus of law . . . [c]onditions for an agreement could proceed out of negotiations on textiles, electronics and autos."¹⁵⁸

Along these lines, Bush administration comments indicate that a United States-Mexico free-trade agreement may only be a matter of time. In October 1989, during a Senate hearing discussing the Latin American debt situation, Commerce Secretary Robert A. Mosbacher predicted that a free-trade agreement between the United States and Mexico would eventually be consummated.¹⁵⁹ Mosbacher visualizes a possible trade pact among all of the Latin American countries by year 2010.¹⁶⁰

Later, in March, 1990, the Bush administration announced that "preliminary discussions" toward a United States-Mexico free-trade agreement had actually been held with Mexico.¹⁶¹ Although both countries emphasized the preliminary nature of the discussions, this announcement represents an additional step toward the possible completion of a bilateral free-trade agreement.¹⁶²

Mexico has recently demonstrated additional movement toward a future United States-Mexico free-trade agreement. In May of 1990, Salinas received legislative recommendations from the Mexican Senate to seek a free-trade agreement with the United States.¹⁶³ According to Salinas, the recommendations will serve as a framework for future trade

157. *Id.*

158. Kurtzman, *Prospects: Free Trade with Mexico*, N.Y. Times, Oct. 22, 1989, at F1, col. 1.

159. Farnsworth, *Mosbacher Sees a Free-Trade Pact with Mexico*, N.Y. Times, Oct. 19, 1989, at D9, col. 1. See also, Kurtzman, *supra* note 158; *Mosbacher Sees a Trade Pact for Hemisphere*, J. OF COM. & COMMERCIAL, Oct. 19, 1989, at 1A, col. 4 [hereinafter Mosbacher].

160. Mosbacher, *supra* note 159.

161. Mintz, *U.S., Mexico Begin Talks Aimed at Free-Trade Pact*, Houston Chron., March 28, 1990, at 1B, col. 3.

162. *Id.* at 4B, col. 2. See also Moffett, *Moves by Mexico Toward U.S. Free-Trade Pact Means Salinas Must Walk Domestic Tightrope*, Wall St. J., March 30, 1990, at A8, col. 4.

163. *Salinas Backs Lawmakers' Plan for Free Trade Pact with U.S.*, Houston Chron., May 23, 1990, at 2B, col. 4. The 64 member Mexican Senate is the only legislative body that must approve presidential agreements with foreign countries. The recommendations also encouraged Salinas to take advantage of Mexico's strategic location next to the United States to expand trade with Europe and Pacific Rim countries. *Id.*

negotiations.¹⁶⁴ In June of 1990, soon after receiving his legislative mandate, Salinas actually came to America to personally discuss with President Bush the possibility of a United States-Mexico free-trade agreement.¹⁶⁵ While both leaders agreed that a United States-Mexico free-trade agreement would be in the interest of both nations and that negotiations should be pursued, they also acknowledged that significant concerns would need to be addressed before an agreement could be consummated.¹⁶⁶

Arguably, the exact timeframe for completion of a bilateral trade agreement will vary widely depending on each respective government's desire to negotiate, and the obstacles hindering progress toward such an agreement.¹⁶⁷ However, the foundation for progress toward a United States-Mexico free-trade agreement is in place, and further negotiations should be pursued.

Although the obstacles, especially political sensitivities on both sides of the border,¹⁶⁸ are considerable, adoption of a United States-Mexico free-trade agreement would bring substantial benefits to the Mexican people.

164. *Id.*

165. Truell, *Bush, Salinas To Seek Pact On Free Trade*, Wall St. J., June 12, 1990, at A2, col. 4.

166. *Id.* In a joint statement, the two presidents declared that "[f]ree trade between Mexico and the U.S. can be a powerful engine for economic development, creating new jobs and opening new markets." *Id.* Although a bilateral trade agreement would be beneficial, both nations maintain certain reservations. Some United States officials express concern that United States labor and farmers would be adversely affected by a free-trade agreement. Moreover, the Bush administration notes that despite Mexico's recent economic moves "the U.S. would like to see Mexico take additional steps to: eliminate or reduce nontariff barriers (particularly in agriculture), further liberalize its investment regime and implement more extensive intellectual property protection." *Id.* From the Mexican point of view, Salinas acknowledges that a negotiated bilateral trade agreement with the United States "depends on many circumstances." Clayton, *Optimistic Salinas Heads Home*, Houston Chron., June 13, 1990, at 22A, col. 6. See also *supra* notes 140-145 and accompanying text.

167. See *supra* notes 165-166 and accompanying text. Rohter, *Salinas Defies Policy of Economic Nationalism, Enters Trade Talks with U.S.*, Houston Chron., March 30, 1990, at 18A, col. 1. The United States and Mexico both agree that no time table currently exists for talks regarding "formal integration between the two countries." The countries also agree that the obstacles toward such economic integration could be significant. *Id.* United States officials recently pointed out the difference in the size and sophistication of the two economies as a significant obstacle to the adoption of a free-trade agreement. Mintz, *supra* note 161, at 4B, col. 2. One observer argues that certain conditions should be met before Mexico considers even a limited free-trade agreement with the United States. This observer believes that Mexico should not conduct further bilateral trade negotiations with the United States without (1) the Mexican people's "informed and democratically expressed consent", (2) a "long-term, well-thought-out political and economic strategy," and (3) a determination to include protection of Mexico's "main export to the United States, now and in the foreseeable future: people." Castaneda, *Free-Trade Pact with U.S. Could Cost Mexico Dearly*, Houston Chron., April 8, 1990, at 4D, col. 1.

168. See *supra* notes 140-145 and accompanying text.

VI. CONCLUSION

Mexico's 1989 New Regulations represent a dramatic effort to boost foreign investment and thereby promote the general welfare of the Mexican people. Many years of economic turbulence have devastated Mexico's economy and prompted an array of new initiatives by the Salinas administration. The New Regulations represent an effort by Mexico to greatly liberalize current investment policies, significantly simplify administrative procedures, and establish a level of legal certainty. Through its efforts, the Salinas administration has substantially improved the climate for foreign investment. This notable achievement truly enhances the road to economic recovery and stability.

Although some investors have expressed skepticism and doubt that the initiatives will succeed, many investors are very pleased with future investment prospects and have responded by making foreign investment commitments. The real question is whether the current liberalization of investment regulations will be enough to meet the economic goals of Mexico. To date, Salinas has orchestrated economic restructuring with consummate political skill, but much work remains before economic recovery is achieved. When Mexico's tremendous economic needs are juxtaposed against the foreign investment community's less than dramatic positive response, further steps by the Salinas administration appear necessary.

Steps for improvement might include further loosening of investment regulations (including raising the 100 million dollar ceiling for automatic approval), continued efforts to improve the infrastructure, keeping inflation in check, additional incentives to reverse capital flight, continued privatization of state-owned enterprises, and adoption of a bilateral trade agreement with the United States.

Salinas faces quite a challenge since any of these steps must be accomplished in an environment of political uncertainty. Yet, if Salinas can maintain a steady political environment, begin to meet the consumer needs of the population, and continue significant economic restructuring, the prospects for success in Mexico are bright.

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