

COMMENTS

CHAPAPOTE: INTERDEPENDENCE AND THE LIBERALIZATION OF THE OIL INDUSTRY IN MEXICO

I. INTRODUCTION

Aztecs burned what they called *chapopote* for tribute to the gods.¹ They smeared the dark, viscous substance on their skin, believing it contained healing properties and also used it for the “practical” purposes of dye and glue.² *Chapopote*, extracted from the earth prior to the 1519 Spanish conquest, was uniquely tied to the native peoples’ worship and livelihood.

In the late 19th Century, after both domestic and foreign exploration, *chapopote* or *petróleos* became a profit-making commodity. But the profits increasingly ran to foreigners, to whom the Mexican government granted generous extraction rights. In a highly symbolic move, President Lázaro Cárdenas (1934-1940) expropriated oil fields on March 18, 1938, claiming that foreign capitalists thwarted the sovereignty of the nation.³ Cárdenas’ action further supported Article 27 of the 1917 Mexican Constitution, declaring the nation to be the original owner of all lands and minerals, including “petroleum and all hydrocarbons, solid, liquid or gaseous.”⁴ By 1940, Cárdenas consolidated all exploration, exploitation, refining and marketing of petroleum into a single state-operated enterprise: *Petróleos Mexicanos* or PEMEX.⁵

Like the Aztecs four centuries earlier, oil represents much more to the Mexican people than a commodity for its “practical” purposes. It carries healing qualities, representing a restoration of natural resources to Mexico. Oil is symbolically linked to the Mexican Revolution, representing Mexico’s sovereignty in standing up to the largest and most powerful international corporations in the world.⁶

In Mexico’s internal politics, oil is an important commodity for labor.⁷ The expropriation began as a labor dispute⁸, and the Oil Worker’s Union has emerged as a key element in the PRI’s corporatist structure of government.

1. GEORGE W. GRAYSON, *THE POLITICS OF MEXICAN OIL* 3 (1980).

2. *Id.*

3. *Id.* at 15.

4. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27, para. 4 (México).

5. Christopher C. Joyner, *Petróleos Mexicanos In A Developing Society: The Political Economy of México’s National Oil Industry*, 17 *GEO. WASH. J. INT’L L. & ECON.* 63, 69 (1982).

6. Ernest E. Smith & John S. Dzienkowski, *A Fifty-Year Perspective on World Petroleum Arrangements*, 24 *TEX. INT’L L.J.* 13, 30 (1989).

7. *See infra* Section IB.

8. *See infra* Section IA.

Fifty-four years after expropriation, at PEMEX's anniversary, current Mexican President Carlos Salinas remained adamant that "the property of oil stays uniquely and firmly under control of the Mexican state."⁹ His political rhetoric courts the nationalism that oil belongs to Mexicans and that PEMEX is best suited to preserve the resource for the people. In excluding oil from free trade negotiations, Salinas said, "Our Constitution will not adjust itself to the free trade agreement. The oil industry will continue to be the exclusive patrimony of *Mexicans*."¹⁰ One official commented that PEMEX is

like the Church . . . the political realities are such that you can't think about change there. It may not make economic sense. It's a matter of public opinion, and it is immutable.¹¹

But Mexico is not solely shaped by nationalist impulses, for it is also effected by its relationship with other countries in a global economy. Since World War II, the world has become more interdependent¹² as countries are reliant on each other for international trade, communications and transportation. Internal economic choices do not operate in a domestic vacuum, but are sensitive to global concerns of international competition. Thus, interdependence has led to changes in oil policy, the symbol for Mexican nationality.

Despite the pervasive nationalism associated with the state-controlled oil, PEMEX is loosening its stubborn hold over all aspects of the petroleum industry.¹³ Though drilling is controlled by PEMEX, new opportunities exist for participation in production, including joint ventures for refinery and foreign investment in "secondary petrochemicals."¹⁴ New proposals suggest that Mexico might allow even further privatization of its oil industry.

This comment addresses the tension in Mexican oil policy between internal political forces and the external compulsion to compete in a global economy.¹⁵ Part 2 discusses oil's socio-political significance in Mexican

9. Damine Fraser, *Mexico Faces Hard Choice in Keeping Oil Out of NAFTA*, FINANCIAL TIMES, June 11, 1992, at 3.

10. *Oil's Role in Free Trade Agreement Crux of Mexico's Petroleum Sector Dilemma*, OIL & GAS JOURNAL, Feb. 3, 1992, at 16 (emphasis added).

11. Tim Golden, *One of Mexico's Proud Symbols Slowly Bows to Change*, N.Y. TIMES, May 31, 1992, at 4-5.

12. For discussion on interdependence see *infra* note 122 and 123 and accompanying text.

13. For discussion see *infra* Section III C.

14. Secondary petrochemicals are those chemicals determined by the Mexican government to not be "primary." See *infra* note 169 and accompanying text.

15. Mexico's economy can be characterized, in the words of Thomas M. Callaghy, as "embedded liberalism." The political economy of states as a compromise between state-society relations and pristine liberalism. Callaghy calls this compromise "embedded liberalism": political elites use state power simultaneously with liberalism in the interest of both domestic social stability and international economic adjustment. The state pursues international economic liberalism, but it is compromised by being "embedded" in the political and economic realities of state-society relations that are difficult to challenge. The developing world, argues Callaghy,

society as (1) symbolic of sovereignty, (2) symbolic of the alliance between the PRI and labor and (3) a cornerstone for the PRI economic development strategy. Part 3 analyzes the ramifications of the interdependent relationship between the United States and Mexico on the PRI's economic development strategy and the oil industry. Part 4 examines the North American Free Trade Agreement as a regime to manage the interdependent relationship between Mexico and the United States and its effect on Mexican oil. Part 5 concludes that policies of increased foreign investment in Mexico's oil contributes to political liberalization and the decay of support for the authoritarian governing party.

II. OIL'S SOCIO-POLITICAL SIGNIFICANCE IN MEXICO

Oil is symbolically important for the ruling *Partido Revolucionario Institucional* (PRI), the party that institutionalized the Revolution's ideals and social participants now entrenched in the political system.¹⁶ President Lázaro Cárdenas expropriated oil in 1938 from foreign control, making oil a national symbol of Mexico's sovereignty.¹⁷ Oil also represents support of the ruling party for labor interests.¹⁸ In expropriation, the revolutionary party, the PRI, co opted labor interests into its ruling coalition. Political elites then used oil to help finance economic development, prioritizing the domestic economy with protectionism.¹⁹

A. Oil as a Symbol of Nationalism

Oil's importance as a national symbol began prior to the 1910 revolution when popular sentiment rejected policies that allowed outright foreign

has difficulty pursuing policies of economic liberalism because the states are not insulated from threatening political and societal pressure. See Thomas M. Callaghy, *Toward State Capability and Embedded Liberalism in the Third World: Lessons for Adjustment*, in FRAGILE COALITIONS: THE POLITICS OF ECONOMIC ADJUSTMENT 115 (John M. Nelson, ed., 1989). For specific application to Mexico, see 123.

16. A revolution occurs when societal values, or shared explanations of a social situation and the standards of appropriate action to manage the situation, are in disequilibrium with the reality of a society's division of labor. For a further explanation see CHALMERS JOHNSON, *REVOLUTIONARY CHANGE* (2d ed. 1982). Thus, a revolution involves (1) societal change of constitutional principles, or who legitimately can exercise authority within society, and (2) distributive justice, or who gets scarce resources and how they are distributed. The PRI institutionalized the Revolution, determining the legitimate exercise of authority and matters of distributive justice. Political authority would be vested in a strong executive who could act against foreign influence and labor would be a chief beneficiary of societal goods.

17. See *infra* note 48 and corresponding text.

18. The party controls *Sindicato de Trabajadores Petroleros de la República Mexicana* [STPRM], or the Union of Oil Workers of the Mexican Republic, and has acted as the defender of labor interests. See Section IIB.

19. See *infra* Section IIC.

ownership of petroleum.²⁰ President Porfirio Díaz created a climate for foreign exploitation as a part of his conviction that Mexican social advancement would come through industrial modernization.²¹ The Díaz regime granted generous concessions to the oil companies, believing that the resulting modernization would benefit Mexico.²²

Allowing concessions, Díaz (1876-1880, 1884-1911) altered Spanish legal principle of land and mineral rights. At least dating to 1387, the traditional mining code declared that title to mineral substances, including petroleum, was in the sovereign, who granted rights and governed the working of the mines as desired.²³ Díaz's change in the 1884 Mining Law provided that petroleum and natural gas were the "exclusive property of the owner of the soil."²⁴ The 1892 Mining Law stated that ownership of

20. The era from the first oil well in Mexico in 1876 to the revolution was marked by increasing anti-Americanism and economic nationalism. Anti-Americanism originally stemmed from the invasion of the U.S. into Mexican territory in 1846, when the U.S. campaign of "Manifest Destiny" expanded over half of Mexico. The exploitation of Mexico's oil and the willingness of great powers to support their industry at the expense of Mexican sovereignty fanned the flame of resentment toward the northern power. These attitudes culminated "economic nationalism" and finally in expropriation of oil in 1938. See RICHARD MANCKE, *MEXICAN OIL AND NATURAL GAS* 18 (1979).

21. *Id.* at 19. Díaz surrounded himself with *científicos*, who encouraged foreign investment as a means to better the Mexico's economic position. As a result of financial reforms, Mexico maintained impressive industrial and commercial growth. In 1895, the federal government produced a budget surplus and Díaz managed to balance the budget thereafter. See THOMAS E. SKIDMORE & PETER SMITH, *MODERN LATIN AMERICA* 223 (2d ed. 1989).

22. An example is in 1885, when Waterson Pierce Co., an affiliate of Standard Oil of the U.S., secured a importing concession from Díaz. Pierce would import crude from Pennsylvania, taking advantage of low import duties, and refine and sell the kerosene in the Mexican market. The company secured a monopoly on the kerosene market. Mr. Pierce then acquired a controlling interest in the Mexican Central Railroad, and used his influence to acquire a sure supply of oil for Standard Oil in New England. Specifically, he hired Edward Doheny to prospect for Mexican oil near the railroad's right-of-way. Pierce promised to use the oil for fuel. When oil was struck, the railroad did not use the oil, but Standard oil agreed to purchase the oil and Doheny's Mexican Petroleum Company maintained supplied 20 million barrels in 1921 to New England. See MANCKE, *supra* note 20, at 22-25.

23. MANCKE, *supra* note 20, at 42. Charles III of Spain codified the law for *Nueva-España* in 1783. It read :

Mines are the property of my royal crown, both by their nature and their origin . . . without separating them from my royal patrimony I grant them to my subjects . . . upon two conditions, that they shall contribute to my Royal Treasury the prescribed portion of metals; and second, that they shall work . . . the mines complying with what is prescribed . . . whenever a failure shall occur in complying with those ordinances . . . they may be granted to any person who for that cause may denounce them.

(Bitumens or juices of the earth were included in the definition of minerals.) *Id.*

24. To protect the investment of foreigners, Díaz first amended the Constitution, bringing mining matters into national jurisdiction. The mining code of 1885 read :

Article 6. Foreigners may acquire mining property on such terms and with such limitations as the law of the republic granted them the capacity to acquire, own and transfer ordinary property . . .

Article 10. The following substances are the exclusive property of the owner of the land, who may therefore develop and enjoy them, without the formality of entry or

mining property "shall be irrevocable and perpetual," and oil and gas could be exploited without first obtaining a concession agreement.²⁵ In 1909, another Mining Law declared that "deposits of mineral fuels, of whatever form or variety were the exclusive property of the owner of the soil."²⁶ Oil companies interpreted these laws as granting them common law fee simple absolute in the surface as well as subsurface rights.²⁷ Thus, companies purchased Mexican land outright in order to gain ownership of the petroleum.²⁸ By the Mexican Revolution, much of the subsoil was claimed by foreign companies.²⁹ In 1910, only 834 Mexican men shared one-fourth of Mexican land.³⁰

The revolution that began in 1910³¹ was largely a reaction to the Díaz policies that may have spurred impressive economic growth³², but benefitted only a few Mexican elite and many foreigners.³³ Common threads seemed to run through the civil war that ensued between 1910 and 1917: land and

special adjudication.

Smith & Dzienkowski, *supra* note 6, at 13. See MANCKE, *supra* note 17, at 43.

25. *Id.* The 1892 Mining Law read:

Article 4. The owner of the land may freely work, without a special franchise in any case whatsoever, the following mineral substances : mineral fuels, oils and mineral waters.

Article 5. All mining property legally acquired and such as hereafter may be acquired in pursuance of this law shall be irrevocable and perpetual, so long as the Federal property tax be paid, in pursuance of the provisions of the law creating said tax.

Id.

26. *Id.*

27. Smith & Dzienkowski, *supra* note 6 at 28-29.

28. For example, one extractor, Edward Doheny purchased 450,000 acres of land surrounding an area he discovered oil. See MANCKE, *supra* note 20, at 23.

29. Smith & Dzienkowski, *supra* note 6, at 28.

30. MANCKE, *supra* note 20, at 27.

31. The call for revolution came in 1910, when Francisco Madero campaigned against Díaz in the general election. When Díaz won the election, Madero called for armed resistance. In weakness, Díaz resigned and left the country in May, 1911. *Id.*

32. Examples of economic growth included railroads. In four years, track grew from 750 miles to 3600 in the 1880's. Foreign trade increased dramatically. The U.S. became the largest trading partner. See SKIDMORE & SMITH, *supra* note 21, at 223.

33. The economic progress had its cost. Concessions came from the state while needed investment came from abroad. The result was that (1) the wealthy prospered but the masses remained in poverty and (2) Mexico never developed an entrepreneurial class. They remained dependent on foreign countries for their growth. Mexico suffered from a labor surplus and wages remained low as a consequence. Skidmore and Smith describe the situation as follows: In 1990, 29% of all male children died in the first year of life, labor hours were 12 hours a day in sweatshops, and three-fourths of the population was illiterate. See SKIDMORE & SMITH, *supra* note 21, at 224.

labor.³⁴ Supporting agrarian and labor interests meant eradicating foreign control over industry and land. Thus, the revolutionary process had a necessary anti-American bent.³⁵

In institutionalizing the revolution, Venustiano Carranza's government produced a new Mexican Constitution in 1917 which supported agrarian reform and labor interests.³⁶ Part of land reform revoked Díaz's legislation and returned minerals to state ownership.³⁷ Article 27 of the 1917 Constitution vests in the nation direct ownership of all natural resources, solid, liquid or gaseous hydrocarbon, whose character is distinct from the components of the soil.³⁸

The Mexican Constitution, Article 27 places "direct dominion" over "petroleum and all solid, liquid or gaseous hydrocarbons" with the state. Further, no "concessions or contracts" are to be granted, and the "Nation will carry out the exploitation" of those hydrocarbons. A narrow reading of

34. Land reform remained the main issue through the following years of turmoil. Zapatistas, led by Emiliano Zapata, sought to regain the land usurped by foreign interests. Joined with the landless peasants, they mounted resistance against the government.

Another challenger, Venustiano Carranza attached to labor in his accession to power. He agreed with labor leaders to institute favorable labor laws in return for backing. Labor continually disputed the difference in wages between U.S. employees and Mexican employees at the same plants under the Díaz regime.

For a concise description of the Revolution see SKIDMORE & SMITH, *supra* note 21, at 224-33.

35. Continued U.S. involvement throughout the turmoil only increased sentiments of anti-Americanism. Evidence suggests that Standard Oil had a part in overthrowing Díaz. Díaz increasingly supported concessions to British oil companies in order to prevent U.S. domination. Standard, desiring more concessions, had incentive to overthrow the Díaz regime and replace it with one more amenable to their interests. The U.S. Justice Department threatened investigation. A Senate investigating committee also investigated, but disbanded prior to issuing a report. Curiously, during 1911-12, Texaco, Gulf and Standard Oil were able to invest more in Mexico. Standard Oil purchased 400 acres of land in Tampico.

Madero's attempt to tax oil \$.03 per barrel, sparked enormous criticism from U.S. oil interests. The U.S. issued an ultimatum, claiming that the tax, which applied non-discriminately to all oil producers, was discriminatory and taxed the oil companies "beyond endurance." Circumstantial evidence exists that the U.S. ambassador was involved in Madero's overthrow and death on February 18, 1913.

Oil interests supported the next regime led by General Huerta, who granted generous concessions, but as civil war gripped the country, oil fields were often the object of contention and under fire by rebel causes. U.S. President Woodrow Wilson refused to recognize the subsequent Huerta government, sent marines to occupy Veracruz after an incident involving the arrest of U.S. sailors. Unable to deploy troops to counteract the American invasion and the rebellion, Huerta left the country in August, 1914. See MANCKE, *supra* note 20, at 32, 34; SKIDMORE & SMITH, *supra* note 21, at 29.

36. Article 123 of the Constitution contained labor reform, most important the right to organize, bargain and strike. See *infra* note 57.

37. Other land reform was in Article 127 which gave government power to redistribute land. See SKIDMORE & SMITH, *supra* note 21, at 229.

38. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27, para. 4 (Mexico).

the Constitution strictly requires the state to maintain a monopoly in oil.³⁹

Pursuant to the Constitution, Carranza enacted legislation that required registration of foreign holdings with the government, which foreign corporations saw as an attempt to force endorsement of the Constitutional principle.⁴⁰

The Constitution replaced outright oil ownership with concession agreements. President Plutarco Calles enacted the first concession agreement legislation in 1925, requiring companies to obtain new government concessions for all land rights.⁴¹ By 1936, under President Lázaro Cárdenas, the legislature approved a bill that gave the government the right to expropriate.⁴² Not surprisingly, the oil companies viewed the Constitution and subsequent statutes as a threat to their ownership and in many cases outright refused to comply.⁴³

But the closing act had already been written, and Cárdenas clearly supported labor against foreign oil magnates in order to remain in power.⁴⁴ A labor dispute led to expropriation in 1938. Exercising their right under Article 123 of the Constitution, the STPRM organized a strike in early 1936 for higher wages, better conditions and increased fringe benefits.⁴⁵ The STPRM submitted the contract dispute to the Board of Conciliation and

39. A proposed alternative to the narrow interpretation is to treat oil as the government has treated lands within the "prohibited zone" within certain distances of Mexico's borders and seacoasts. Article 27 also prohibits alien ownership of "direct dominion" of lands and waters within this "prohibited zone." But Mexico has circumvented the prohibition with legislation that allows Mexican trustees to hold legal title in trust for the economic benefit of alien beneficiaries. This trust system is the foundation for the *maquiladora* industry. The same system could be developed for hydrocarbons, with PEMEX creating a subsidiary state corporation which would act as trustee for foreign investors. See Edwell E. Murphy, Jr. *The Dilemma of Hydrocarbon Investment in Mexico's Accession to the North American Free Trade Agreement*, 9 J. ENERGY NATURAL RESOURCES L. 261, 270-71 (1991).

40. Smith & Dzienkowski, *supra* note 6, at 28. Specifically, the executive decrees required the government to grant drilling permits for any new wells (which were often refused) and that petroleum land be registered with the federal government. New taxes were imposed on lands held by leases prior to the May 1, 1917 Constitution. *Id.*

41. The Petroleum Law of 1925 required companies to obtain concessions for all rights, derived from land on which oil production had begun prior to May 1, 1917 and all rights derived from contracts entered into before May 1, 1917, by the surface owner or his agents with the express intention of exploiting oil. The new concessions limited concession rights to 50 years. *Ley reglamentaria del artículo 27 constitucional en el ramo de petróleo*, in 5 PETROLERA: LEYES, DECRETOS Y DISPOSICIONES ADMINISTRATIVAS REFERENTES A LA INDUSTRIA DEL PETRÓLEO 51 (1925).

Under an agreement with the U.S. ambassador, known as the Calles-Morrow Agreement, Mexico eradicated the limitation. MANCKE, *supra* note 20, at 39.

42. *Id.* at 51.

43. Smith & Dzienkowski, *supra* note 6, at 30. The companies made two legal arguments for their position. (1) Article 14 of the Mexican Constitution, provided that no law would have a retroactive effect to the prejudice of any person. They argued that the concession requirements imposed a new condition on previously granted property rights. (2) They argued that they owned the subsoil, and thus had no concession to confirm. *Id.*

44. The corporatist structure Cárdenas created that included labor is discussed *infra* Section IIB.

45. MANCKE, *supra* note 20, at 52.

Arbitration, which held against the companies. The Mexican Supreme Court upheld the decision. When the oil companies refused to comply with the High Court's ruling, President Cárdenas announced expropriation.⁴⁶

Through expropriation, Mexico merely enforced its own internal law and respected the highest tribunal of its laws. But nationalization was more than an isolated demagogic act; it solidified the revolution by defining the contours of a sovereign nation. To a progressive president, attempting to define his nation following decades of bloody ambivalence, expropriation represented national sovereignty.⁴⁷ Mexico and not foreigners would control Mexico's minerals in the land. Cárdenas' raspy voice delivered what later was dubbed "the Declaration of Mexico's Economic Independence":

It is the sovereignty of the nation which is thwarted through the maneuvers of foreign capitalists who, forgetting that they have formed themselves into Mexican companies, now attempt to elude the mandates and avoid the obligations placed upon them by the authorities of this country.⁴⁸

Profit from the oil would be directed to the state. The state created a separate entity, Petroleos Mexicanos (PEMEX), and has accounted its income separately. The government increased its taxes on PEMEX as its income increased in the 1970's. By the mid-eighties, PEMEX provided 40% of

46. Smith & Dzienkowski, *supra* note 6, at 29.

47. GRAYSON, *THE POLITICS OF MEXICAN OIL*, *supra* note 1, at 15.

48. *Id.* The Decree of Expropriation read:

Article 1—The machinery, plants, oil pipes, refineries, storage tanks, communication ways, tank cars, distribution stations, sea carriers, and all other movable and immovable properties belonging to [list of all oil companies], are hereby declared expropriated, for cause of public utility, vesting them in the Nation, in so far as, in the opinion of the Department of the national Economy, it may be necessary, for the discovery, extraction, storage, refining and distribution of the products of the petroleum industry.

Article 2—The department of the National Economy and the Department of the Treasury intervening therein as administrator of the properties of the National Economy, it may be necessary, for the discovery, extraction, storage, refining and distribution of the products of the petroleum industry.

Article 3—The Department of the Treasury shall pay the corresponding indemnification for the expropriated companies, as provided by Article 27 of the Constitution and 10 and 20 of the Law of Expropriation, payment to be made in cash and in a term not to exceed 10 years. The funds for effecting this payment shall be appropriated by the Department of the Treasury from a percentage, to be hereafter fixed, of the petroleum by-products produced by the expropriated properties, the product of which shall be deposited, pending legal prosecution, with the Treasury of the Federal Government.

Article 4—The representatives of the companies expropriated shall be notified personally, and this degree shall be published in the Federal *Diario Oficial* to be in force from the date of its publication.

government tax revenue.⁴⁹ Since PEMEX opened its first plant toward the end of the 1950's⁵⁰, the government has determined how much to produce, when to produce it, where to purchase supplies, taxing and training of labor.⁵¹ The first regulations published in the *Diario Oficial* reserved all primary petrochemicals to the state and formed a commission to recommend who should receive permits to produce secondary petrochemicals.⁵²

B. Oil and Labor

Oil represents more than an symbol of Mexican sovereignty but is important for labor, a constituency now crucial to the controlling PRI's coalition. Expropriation not only defined Mexico as sovereign, it partially indicated who in society would be entitled to scarce resources. The PRI gave unequivocal support to labor, something prior leaders had not always done.⁵³ Union and government interests coalesced, entrenching a relationship that would be mutually supportive for the next four decades.

The PRI is organized according to corporatism, or functional representation, where all segments of society are represented in government by their functions.⁵⁴ The obligatory affiliation of state-sponsored rural, working class, and military organizations sustained PRI dominance for the past four decades.⁵⁵

Mexican labor acquired representation in the revolutionary process⁵⁶

49. See LAURA RANDALL, *THE POLITICAL ECONOMY OF MEXICAN OIL* 162, 166 (1989). Between 1987 and 1991, PEMEX earned \$36 billion and paid \$33 to the government in taxes. *Id.*

50. The first plant produced dodecyl-benzene, a basic material for the manufacture of detergents. Bárnés de Castro & Christianson, *The Petrochemical Industry in Mexico, in INDUSTRIAL STRATEGY AND PLANNING IN MEXICO AND THE UNITED STATES* 88 (Sidney Weintraub ed., 1986).

51. RANDALL, *supra* note 49, at 188.

52. Bárnés de Castro & Christianson, *supra* note 50, at 88.

53. Calles, prior to Cárdenas seemed to support factory workers more than labor interests. MANCKE, *supra* note 20, at 52.

54. SKIDMORE & SMITH, *supra* note 21, at 231. The strategy of corporatism is to mobilize and organize the workers and the peasants, but to keep them apart from each other by creating separate and competing sectors within the party. This way the government can control popular movements and prevent a dangerous coalition to overthrow the government. *Id.*

55. Sidney Weintraub & N. Delal Baer, *The Interplay Between Economic and Political Opening: The Sequence in Mexico*, 15 *THE WASHINGTON QUARTERLY*, Apr. 1992, at 187.

56. Francisco Zapata, *Labor and Politics: The Mexican Paradox, in LABOR AUTONOMY AND THE STATE IN LATIN AMERICA* 173 (Edward Epstein ed., 1989). In 1912, labor achieved identity through a revolutionary organization created called *Casa del Obrero Mundial*. This organization became an active supporter of the Constitutionalist forces against General Huerta. This support was formalized in 1915 with the signing of an agreement where the *Casa* committed its support to the Constitutionlists in exchange for benefits for workers. In 1918, labor leaders formed the Mexican Regional Workers Confederation, or *Confederación Regional Obrera Mexicana* [CROM] which explicitly linked labor objectives with state objectives. *Id.*

and the 1917 Constitution⁵⁷, but it was President Cárdenas that formally incorporated labor into the Mexican party apparatus through organized unions. Cárdenas created the *Confederación de Trabajadores de Mexico* (CTM), or the Mexican Workers Confederation in 1936⁵⁸, successfully uniting labor with state objectives.⁵⁹ Two years later, Cárdenas officially recognized as the official party the *Partido de la Revolución Mexicana* (PRM), formerly known as *Partido Nacional Revolucionario*.⁶⁰ Adhering to corporatism, the PRM (later renamed the PRI) incorporated the CTM as part of its governing apparatus.⁶¹ Under the umbrella of the CTM, the Oil Worker's Union, the STPRM⁶², directly controls the 136,000 employees of PEMEX.⁶³

Through the vertical union structure, the PRI grants enormous political and economic power to union bosses. In return, the union generates political support for the PRI.

In the case of oil, PEMEX has delegated enormous power over employment and contracts to the STPRM. The union contract⁶⁴ gives control of more than 90 percent of PEMEX employment to the union.⁶⁵ PEMEX management can legally appoint only 10 percent of the labor force,

57. The Constitution defines unions as "associations formed for the study, betterment, and defense of the interests of workers and their employers." Article 123 of the 1917 Constitution distinguishes two major types of unions: Section A refers to "industrial workers, agricultural day laborers, domestic employees, artisans, and in general to all labor contracts. Section B discusses public sector workers employed by the national government, states and municipalities. 5 types are recognized: (1) *germiales*—same profession, (2) *de empresa*—single company (3) *industriales*—same industry (4) *nacionales de industria*—one or more companies located in two or more states (5) *oficios varios*—those including less than 20 workers of the same profession but located in the same municipality. The significance of the type is the specified bargaining procedure. See Zapata, *supra* note 56, at 177-78.

58. *Id.* at 174.

59. CTM emerged from the CROM. See note 56. The CROM was very successful in passing labor laws, including the Labor Code in 1931. Membership grew from 10,000 in 1918 to over 500,000 by 1926-27. The PRI gained enormous support through the institutionalization of the CTM, solidifying the Revolution and prolonging the PRI's power. *Id.*

60. SKIDMORE & SMITH, *supra* note 21, at 231.

61. The corporatist structure of the party is built around three functional groups: National Peasant Confederation (agrarian), Workers Confederation of Mexico (labor), and the National Confederation of Popular Organizations (popular) See *id.* at 231 and Zapata, *supra* note 56, at 179.

62. The STPRM resulted from a conglomerate of separate oil unions that united in 1935. Prior to consolidation, each oil company had its own union. In 1935, 35 independent oil unions existed. Sometimes the same facility had different union contracts. Wage and work condition provisions varied significantly. The Cárdenas administration called the first Grand Congress of Petroleum Labor Organizations on August 15, 1935. Out of the Congress came the STPRM. See GRAYSON, THE POLITICS OF MEXICAN OIL, *supra* note 1, at 84.

63. *Pemex Sheds One-Third of Jobs in Past Four Years*, ENERGY NEWS, September 17, 1992, available in LEXIS, NEXIS library, ENERGY file.

64. The basic outlines of the oil worker's benefits are given in the 1959 labor contract between STPRM and PEMEX. See RANDALL, *supra* note 49, at 107.

65. *Id.*

and up to 5 percent of temporary workers⁶⁶ for new jobs.⁶⁷ In many cases, union control over employment has resulted in outright job-selling or *vendeplazas*.⁶⁸ Political elites turned a blind eye to jobs selling since employment ensured more political loyals.⁶⁹

To increase its influence over society, the STPRM relies on a large and growing labor force. As a result, the union control over jobs contributes to PEMEX over-staffing. In 1989, PEMEX listed 212,000 people on the payroll.⁷⁰ The labor force is very large in relation to production, prompting some government officials to claim that PEMEX is 30 to 50 percent over-staffed.⁷¹

The union maintains influence over PEMEX's private contracting. PEMEX can legally contract out oil operations under Article 36 of the labor contract.⁷² But the law requires contractors to use union labor in drilling and give preference to union workers in construction.⁷³ Contracting has benefitted the union bosses both directly and indirectly. Directly, labor leaders became contractors, and PEMEX has been willing to grant contracts to union officials who controlled benefits and promotions of PEMEX employees.⁷⁴ Indirectly, PEMEX awarded contracts for political favors. In 1981, PEMEX awarded 85 percent of its contracts directly to known contractors rather than by public bidding.⁷⁵

The STPRM has been able to use its power over employment and contracts to integrate into nearly every town. In the past, the labor contract required PEMEX to pay two percent of the value of the goods and services

66. According to the labor contract, if a job is not filled within 72 hours of a vacancy, PEMEX can hire temporary workers for the next 75 days. If the union does not supply a worker by the end of 75 days, the temporary worker gets the job. Temporary vacancies are filled by moving a worker up the PEMEX ladder. PEMEX must allow a worker to learn the job of a category immediately above his own job and must train the worker with pay to perform the job to which he will be appointed. See RANDALL, *supra* note 49, at 108.

67. *Id.*

68. GRAYSON, *THE POLITICS OF MEXICAN OIL*, *supra* note 1, at 93.

69. Weintraub & Baer, *supra* note 55, at 7. Union bosses and politicians superficially expressed desires to eradicate job sharing. Joaquin Hernandez Galicia, STPRM boss until his arrest in 1988, called job-selling the "most serious problem bedeviling the union" and even urged support for legislation to increase sentences for the offense. However, the proposals was of little practical value, since few workers would be brave enough to prosecute when their job was a stake. See GRAYSON, *THE POLITICS OF MEXICAN OIL*, *supra* note 1, at 94.

70. Jane Baird, *Mexico's Oil Revolution*, HOUSTON CHRONICLE, Sept. 6, 1992, Bus. 1. Compare with Venezuela which employed 52,000 in 1989 and produced the same volume of oil as Mexico. *Id.*

71. RANDALL, *supra* note 49, at 12. Venezuela produces the same amount of oil as Mexico with only one-fourth the number of workers. George W. Grayson, *Look What Mexico's Doing With Its Oil Monopoly*, HOUSTON CHRONICLE, July 5, 1992, Outlook 1.

72. RANDALL, *supra* note 49, at 109.

73. *Id.* at 110.

74. *Id.* at 109.

75. *Id.* Salinas outlawed direct contracting in 1988. See *infra* note 176 and accompanying text.

contracted for to the STPRM, for "social services" in the countryside.⁷⁶ The STPRM bosses have traditionally used this money to control local unions in the countryside, trading social works for support of the STPRM. In 1984, the Secretariat of Budget and Planning limited the use of contracts, recognizing the abuse.⁷⁷ Ironically, PEMEX simply loaned the money to STPRM to maintain its programs in the wake of reduced contract income.⁷⁸

PEMEX performs a dual role as the fifth largest international oil company in the world and a social service provider. PEMEX provides its employees with gymnasiums, symphonies, roads, health care and schools.⁷⁹ They maintain modern aircraft for politician use.⁸⁰

The end result of corporatism is the nurturing of clientelism within the oil industry and society as a whole. The system forces individuals to support the political and economic welfare of union bosses for employment and benefits to the locale. The STPRM has taken advantage by integrating itself into local areas through its social services to expand its support base. Traditionally, support for the union has translated into support for the PRI who has incorporated the union into its governing framework.

This pattern of mutual support is evident in Poza Rica, Veracruz. In this oil town, the union owns all libraries, funeral homes and even park benches.⁸¹ In return for its ability to buy up the whole town, union bosses ensure crowds at political rallies.⁸² Union contracts require members to attend PRI gatherings or face sanctions.⁸³

C. Oil and Economic Development

Oil is not only important for labor, but large oil reserves provided much of the needed confidence for the PRI to continually pursue a nationalistic economic development strategy: to expand the public sector and reduce dependence on foreign capital.⁸⁴ Large oil discoveries in the early 1970's, coupled with the 1973 Organization of Petroleum Exporting Countries (OPEC) increase in world oil prices,⁸⁵ encouraged reliance on oil for

76. *Id.* Salinas eradicated the 2% union fee in 1992. See *infra* note 176 and accompanying text.

77. *Id.* at 110.

78. *Id.*

79. Grayson, *Look What Mexico's Doing With Its Oil Monopoly*, *supra* note 71, at 1.

80. *Id.*

81. Juanita Darling, *Era of Limits for Mexico's Mighty Unions*, L.A. TIMES, Mar. 4, 1990, at D-1.

82. *Id.*

83. *Id.*

84. Arturo Carrillo, Comment, *The New Mexican Revolution: Economic Reform and the 1989 Regulations of the Law for the Promotion of Mexican Investment and the Regulation of Foreign Investment*. 24 GEO. WASH. J. INT'L L. & ECON. 647, 655 (1991).

85. *Changes in Mexican Tax Structure Reflect Need to Diversify Economy*, NOTIMEX MEXICAN NEWS SERVICE, Oct. 28, 1992, available in LEXIS, NEXIS Library.

government income.⁸⁶ More importantly, oil reserves evidenced to outside investors that Mexico was a prime location for investment.⁸⁷ Mexico financed heavy public sector spending with (1) oil exports⁸⁸ and (2) loans. Mexico encouraged foreign investment as a complement to domestic capital growth as opposed to a control.⁸⁹

Mexico pursued a plan of import substitution industrialization—a plan to decrease reliance on foreign imports by building domestic industry as a substitute.⁹⁰ An “Escheverrián Wall” under the President Luís Escheverría (1970-1976) brought protection in the early 1970’s and hindered foreign enterprise with state monopolies, compulsory joint ventures and weak intellectual property rights.⁹¹ President Escheverría restricted commerce in goods with high tariffs and extended the requirement of prior import permits to all products entering Mexico.⁹² President Portillo (1976-1980) passed exchange controls and expropriated the banks in 1982.⁹³

86. *Id.* Petrochemicals volume production increased 14 times between 1964 and 1983, or at a 15 percent annual rate of growth. Bárnés de Castro & Christianson, *supra* note 50, at 88. See chart at 89. Dynamic growth took place in the public sector, with basic petrochemicals increasing 29 times, going from 245 thousand tons in 1964 to 5.15 million tons in 1983. The number of the basic petrochemicals also increased from 11 to 23 between the years 1964 and 1983.

In the secondary sector, production increased 8.3 times between 1964 and 1983. The average annual growth rate was 11.8 percent, increasing from 745 thousand tons in 1964 to 6.15 million tomes in 1983. The number of secondary products increased from 58 to 309. *Id.* See charts at 89-97.

87. Carrillo, *supra* note 84, at 654.

88. A policy partially depending on oil exports, by definition necessitated a certain reliance on the foreign importing countries. Mexico attempted to reduce that reliance through diversification of its oil markets. In 1980, Mexico adopted a National Energy Plan which ruled, first, that no single country could receive more than 50 percent of the Mexico’s crude oil exports. Second, no country could import Mexican crude more than 20 percent of its total imports. Since the United States accounted for 80 percent of Mexico’s crude oil exports between the years of 1975 and 1980, the legislature intended to reduce dependence on the U.S. Owen Saunders, *The Mexico Factor in North American Free Trade: A Canadian Perspective*, 9 JOURNAL OF ENERGY AND NATURAL RESOURCES LAW 239, 243-44 (1991).

89. *Id.*

90. Osvaldo Sunkel defines import substitution in terms of the classes that are created by substituting domestic industry for imported industry. It is “the formation of a manufacturing sector, complete with its entrepreneurial class, professional and technical groups and industrial proletariat, as well as the necessary and ancillary government and private financial, marketing and educational agencies.”

Dependency theorists argue that these newly created entrepreneurial classes in “the periphery” have the same interests as entrepreneurs in “the center” (countries already industrialized and able to exploit the periphery). The world becomes aligned according to classes more and more rather than nation-states. This perpetuates the dependency status of the Third World, as entrepreneurs have a financial interest in aligning themselves with large Multinational Corporations (MNC’s). See Osvaldo Sunkel, *Big Business and Dependencia: A Latin American View*, in INTERNATIONAL RELATIONS THEORY: REALISM, PLURALISM, GLOBALISM 477 (Paul R. Viotti & Mark V. Kauppi, eds., 1987).

91. Murphy, *supra* note 39, at 264.

92. *Id.*

93. *Id.*

Foreign investment policy has been consistent with administration goals⁹⁴ of keeping foreign involvement as a complement to domestic capital and growth.⁹⁵ The 1973 Law for the Promotion of Mexican Investment and for the Regulation of Foreign Investment (Foreign Investment Law or FIL) codified the myriad of investment laws of previous administrations.⁹⁶ The

94. Mexico's regulations on foreign investment are often the result of administrative policy rather than the legislative process, signifying that the executive has been able to define the extent of foreign involvement in the Mexican economy. Since the executive has always been the head of the ruling PRI, presidents have rarely moved to upset the coalition with labor by favoring increased foreign investment.

The main source of executive power is the initiation of legislation. Congress rarely does more than "rubber stamp" drafts by the executive. However, to be effective, the legislation must be promulgated by the President and published in the *Diario Oficial de la Federación* (*Diario Oficial*).

Constitutionally, the president has the following powers, which reflect the enormous weight the executive is given defining policy:

(1) Article 89 §1 permits the executive to enact general rules in the form of regulations, which explain and supply detailed precepts for the application of specific laws. Though the regulations cannot contradict the statute and are "subordinate," the publication and promulgation is the same as statutes. The regulation is equivalent to a "decree." See note 150 for Supreme Court interpretation of the regulation power.

(2) Congress has delegated to the president the authority to legislate directly in foreign trade, establishing by executive decree tariffs and restrictions on imports and exports.

(3) Congress has delegated the power to issue "official communications," which are instructions and application of laws. Though they are usually issued internally, they may take the form of binding regulation.

(4) The Constitution also grants to the president "extraordinary legislative power," which was amended in 1938 to read that "such authority to legislate could be granted only in connection with a suspension of individual guarantees in times of grave national emergency under Article 29 of the Constitution." This happened only one in 1944, when Mexico entered World War II. Prior to the amendment, Congressional delegations were "so frequent throughout the latter part of the nineteenth century and until the 1930s that there was often hardly even a pretense of an independent legislative branch." See Sandra F. Maviglia, *Mexico's Guidelines for Foreign Investment: The Selective Promotion of Necessary Industries*, 80 AM. J. INT'L L. 282, 283-85 (1986)

95. Some scholars assume the 1970s was the beginning of strict foreign investment restrictions, as if foreign restrictions were the exception and not the rule. See Luis Rubio F., *Changing Economic Structure of Mexico*, 18 CAL. W. INT'L L.J. 13 (1987). However, the dominant theme in Mexico since the Revolution of 1917, or at least since the oil expropriation in 1938, has been to limit reliance on foreign markets.

It is true that sporadic efforts to improve the economy shifted the focus to allow more foreign investment. For example, between 1940 and 1965 direct foreign investment quadrupled. By 1969, it exceeded 2 billion dollars. But these increases were always accompanied with pressure from labor for limits. The government retracted its policies, noting that the expansion of foreign investment resulted in capital leaving the country and a growing trade deficit. See Maviglia, *supra* note 92, at 281.

96. In World War II, considered a "grave national emergency," Congress granted the President "extraordinary legislative power" pursuant to the Constitution. Under the Emergency Decree of 1944, Congress delegated foreign investment control to the executive Ministry of Foreign Relations. All decrees were later repealed except for the decree establishing the basis for direct foreign investment quantitative restrictions, or limitations placed on the equity that a foreign investor may have in a Mexican enterprise.

Concerns over foreign control during the war disrupting Mexican economy dominated the Ministry's regulations. Mexico attracted a lot of foreign capital during the war. The Ministry mostly feared that after the war, the capital would be withdrawn, damaging the economy. Thus, they enacted regulations to prevent foreign monopolies, restrain the creation, modification and liquidation of stock of Mexican companies. Though the Emergency Decree that established the Ministry originally applied to specific activities during wartime, the Ministry expanded its own

stated purpose of FIL was "to stimulate a just and balanced development and consolidate the country's economic independence,"⁹⁷ but the underlying desire was to lessen the foreign influence over the Mexican economy.⁹⁸

FIL limited foreign involvement especially in 2 ways: (1) It limited control, stating that foreigners' participation in the administration of the business enterprise could not exceed its participation in the capital.⁹⁹ The participation in the capital was limited to 49 percent for most industries.¹⁰⁰ (2) FIL established the National Foreign Investment Commission (FIC)¹⁰¹ which exercised enormous powers in determining the amount of foreign investment in certain industries.¹⁰²

The policy of limiting foreign investment was successful in allowing for limited domestic economic growth. Mexican GDP grew by more than 5 percent a year between 1930 and 1980.¹⁰³ Even with the restrictions, foreign investment actually grew. The lack of uniform investment laws

power.

By 1947, an Interministerial Committee coordinated investment, which included representatives from the president and the Ministries of Internal Affairs, Foreign Relations, Commerce and Industrial Promotion and Agriculture. The Committee merely followed policies of the Ministry of Foreign Relations and its significance depended upon the President.

In the years up to 1970, administrations remained flexible toward foreign investment. The government employed tactics to discourage foreign investment such as the promotion of joint ventures, license denial for the acquisition of majority interests in Mexican companies. Certain industries were outright excluded, including timber, telephones and mining. Foreign investment would be allowed to further domestic interests. The government increasingly called for "Mexicanization," where Mexican participation in a company would be increased, before approving foreign investment. See Maviglia, *supra* note 92, at 285 for further discussion.

Gordon argues that little was added by the 1973 FIL. The motive for the law was to prevent subversion of the "maze of rules" by foreign investors. Michael W. Gordon, *The Contemporary Mexican Approach to Growth With Foreign Investment: Controlled But Participatory Independence*, 10 CAL. W. L. REV. 1 (1973).

97. *Id.*

98. *Id.* The Secretary of Industry and Commerce stated that FIL confirms the executive policy of only approving foreign investment that builds the domestic producer and assures that local companies dominate production and distribution. *Id.*

99. *Id.* Article 5 reads in part, "The participation of foreign investment in the administration of the business enterprise may not exceed its participation in capital." 7 February 1973, D.O., 9 March 1973, printed in RALPH H. FOLSOM, ET. AL, INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM-ORIENTED COURSEBOOK 752 (1991).

100. Under Article 5, minerals, secondary petrochemicals and automotive components are limited to levels of 34 percent and 40 percent. *Id.*

"In cases where legal provisions or regulations do not specify a given percentage, foreign investment may hold no more than 49 percent of the capital of business enterprises, provided it is not empowered, by any title, to determine the management of the business enterprise." *Id.*

101. Maviglia, *supra* note 94, at 290.

102. Article 12 grants, among other power, the FIC power (I) "to decide . . . the increase or reduction of the percentage of the foreign investment participation in the country's different geographical areas or economic activities, when there are no legislative provisions, or regulations issued by the federal executive, that establish a given percentage or fix the conditions under which such investment may be received and (II) to decide about percentages and conditions in which foreign investment may be received in specific cases where, because of a particular circumstances, they merit special treatment." FOLSOM, *supra* note 99, at 752.

103. *Id.* at 6. Because of high population growth, this translated into 2 percent a year on a per capita basis. Maviglia, *supra* note 94, at 290.

attracted foreign capital to those areas that remained open to such investment, particularly manufacturing and industry.¹⁰⁴ Even after the 1973 FIL, foreign investment poured into Mexican industry. The unparalleled economic growth, political stability and huge oil reserves made Mexico a prime investment location.¹⁰⁵ However, investment confidence was with the economic factors that Mexico could not ultimately control, such as oil reserves and the global market for oil.

As long as looking inward led to high rates of economic growth, inefficiency of production did not matter to politicians.¹⁰⁶ Exports did not increase, but protectionism kept out imports.¹⁰⁷ Union bosses and producers benefitted from inward-looking policies, taking more rents without having to improve quality of labor or production.

High-priced oil distorted incentives of the PRI, leading to a misallocation of resources away from other areas such as agriculture toward oil.¹⁰⁸ Leaders chose a path of excessive public-sector spending based on an inadequate tax base. They failed to develop a competitive industrial sector to support economic growth.

Mexico embarked on a path of deficit spending, and the growth in oil reserves in the 1970s allowed for excessive borrowing.¹⁰⁹ By the end of the decade, the debt exceeded \$100 billion, half of the country's GNP.¹¹⁰ Even the growing petrochemical industry was deficit prone during the 1970's and 80's.¹¹¹ Domestic supply fell behind demand, so that Mexico imported oil. Though exports increased, imports grew faster, increasing the sector's deficit in 1983 to \$158 million.¹¹² Between 1964 and 1983 petrochemical products represented 1.7 percent of Mexico's exports and 6.7 percent of all imports.¹¹³

104. Carrillo, *supra* note 84, at 652. More than two-thirds of all United States investment in Mexico in 1950 to 1959 was in manufacturing-related activity. the percentage grew from 30% of all industries in 1950 to 50% of all industries in 1959. By 1967, U.S. investment reached \$890 million. *Id.*

105. *Id.* The following chart illustrates foreign investment increases:

Year	Dollars
1970	\$200 million
1975	\$295 million
1979	\$665 million
1980	\$1665 million
1981	\$3 billion

106. *Id.*

107. *Id.*

108. RANDALL, *supra* note 49, at 188.

109. Weintraub & Baer, *supra* note 55, at 8.

110. *Id.*

111. Bárcenas de Castro & Christianson, *supra* note 50, at 98.

112. *Id.*

113. *Id.* at 112. Commonly, a raw material exporting country will become an importer of the derivative products of its own raw materials which it cannot produce due capital requirements. Trade imbalances result. *Id.*

High GDP growth could only be sustained as long as high rates of capital inflow continued.¹¹⁴ In the early eighties, oil prices dropped dramatically¹¹⁵, severely reducing Mexico's petrodollars.¹¹⁶ Mexico entered the worst recession of its modern history¹¹⁷ and faced a foreign debt that it could no longer pay.¹¹⁸ The debt forced the government to devalue its peso fostering capital flight.¹¹⁹ Foreign investment capital fled the country: from \$3 billion in 1981 to \$680 million in 1983.¹²⁰ By 1982, commercial banks suspended new lending¹²¹ that had financed the expanding public sector and demand-led inflation of the 1970s.

III. INTERDEPENDENCE AND MEXICO

The oil shock and its global ramifications illustrates the inescapable interdependent relationship that characterizes international relations.¹²² Increased interactions between actors in the global system become too costly

114. Victor L. Urquidi, *Constraints to Growth in the Developing World: Current Experience in Latin America*, 120 ISSJ 203, 206 (1989).

115. Oil prices decreased from \$40 a barrel in 1981 to \$25 in 1985. In 1986, oil prices again dropped to below \$10 a barrel. Since oil accounted for 60% of Mexico's foreign exchange and over 30% of government revenue, the decline in the eighties has forced Mexico to seek other means of foreign exchange. Rubio, *Changing Economic Structure of Mexico*, *supra* note 95, at 15.

Some scholars believed oil prices dropped in the early eighties as a result of countries like the United States reducing the influence of OPEC. The World Bank, largely controlled by the U.S., financed oil exploration throughout the world at a time when demand was low. In turn, prices dropped dramatically. *Id.*

116. Victor L. Urquidi describes what happened in all of Latin America, which is, in a nutshell, the economic crisis that Mexico faced. "Cost-push and inertial inflation had arisen, food prices had gone up in world markets, real interest rates on short-end and medium-term borrowing from commercial banks had risen to as much as 15%. Domestic financial disorder and mismanagement were rampant. Inflation had got out of hand. Currency overvaluation was indulged in once again." Urquidi, *supra* note 114, at 206.

117. Luis Rubio, *Mexico in Perspective: An Essay on Mexico's Economic Reform and the Political Consequences*, 12 Hous. J. INT'L L. 235, 235 (1991). Minimum wage reduced by more than 50%. Population grew 2.5% per year between 1982 and 1988, contributing to a per capita income decline. Other problems are discussed in Rubio, *Changing Economic Structure of Mexico*, *supra* note 95, at 14.

118. Latin American debt reached \$318 billion in 1981. See Urquidi, *supra* note 114, at 207.

119. Rubio, *Changing Economic Structure of Mexico*, *supra* note 95, at 14.

120. Carrillo, *supra* note 84, at 658.

121. Urquidi, *supra* note 114, at 207.

122. Interdependence means increased sensitivity to behaviors of other countries or their actors. Robert O. Keohane & Joseph S. Nye, *Realism and Complex Interdependence*, in *INTERNATIONAL RELATIONS THEORY: REALISM, PLURALISM, GLOBALISM* 379 (Paul R. Viotti & Mark V. Kauppi eds., 1987). Interdependence is related to a broader change in the world economy. Developed countries changed from an industrial society to an information and service society. The developed world is now dedicated to creating, processing and disseminating information and specialized services rather than only manufacturing goods. Thus, research and development is geared toward technology generation in order for business to remain competitive. International trade accelerated, requiring countries to compete on a global scale, and information and services to be transferred to be globally transferred. See Castro & Christianson, *supra* note 50, at 83.

to sever, including flows of money, goods, people, and messages.¹²³ Thus, the interactions restrict a country's autonomy in its policy choices. The world has become so interdependent that it is now impossible for a country to act in an isolated manner in an autarchic national economy.¹²⁴ Rather, each country is part of a global system¹²⁵ which transcends all frontiers and ideologies.

123. In this sense, interdependence is distinguishable from interconnectedness. As Keohane and Nye note,

Interconnectedness is not the same as interdependence. The effects of transactions on interdependence will depend on the constraints or costs, associated with them . . . Where there is are reciprocal (although not necessarily symmetrical) costly effects of transactions, there is interdependence. Where interactions do not have significant costly effects, there is simply interconnectedness.

Keohane & Nye, *supra* note 122, at 381.

124. Castro & Christianson, *supra* note 50, at 83.

125. For a better understanding of the concept of system see INTERNATIONAL RELATIONS THEORY: REALISM, PLURALISM AND GLOBALISM 211 (Paul R. Viotti & Mark V. Kauppi eds., 1987). See also JAMES E. DOUGHERTY & ROBERT L. PFALTZGRAFF, JR. CONTENDING THEORIES OF INTERNATIONAL RELATIONS ch. 4 (1990).

Kenneth Waltz defines what is meant by a "systems approach" to studying international relations. According to Waltz, each state in the system arrives at policies according to its own internal processes, "but its decisions are shaped by the very presence of other states as well as by interactions with them." The system contains units (states) that interact in an international structure. See Kenneth Waltz, *Reductionist and Systemic Theories*, in NEOREALISM AND ITS CRITICS 47, 54 (Robert O. Keohane, ed., 1986).

Two main interpretations of the international structure have been offered. Kenneth Waltz, a realist, defines the structure as anarchy. The international system, unlike domestic politics, lacks a legitimate sovereign. States function similarly, by acting in their self-interest of preservation. States are differentiated principally according to varied capabilities to carry out this similar function of self-help. The varied capabilities, or balance of power, constrains state behavior. In Waltz's view, national security interests are the paramount issues in international relations, as each state is conscious of the varied capabilities within the system and seeks to preserve or better its power. See Kenneth Waltz, *Political Structures*, in NEOREALISM AND ITS CRITICS 70 (Robert O. Keohane, ed., 1986).

For Robert Keohane and Joseph Nye, interdependence is the defining nature of the international system. The international system is open to both external influences and effective choice by actors within the system. Keohane and Nye see the need for a structural theory, but emphasize factors not included in Waltz's conception of structure. Economic processes (such as interdependence) and political institutions are important for defining the system. See Robert Keohane, *Theory of World Politics: Structural Realism and Beyond*, in NEOREALISM AND ITS CRITICS 158 (Robert Keohane, ed., 1986).

Keohane and Nye argue that the world is best characterized not by anarchy but "complex interdependence," which has three elements. (1) Multiple channels connect societies (informal ties, telecommunications, governmental ties, etc.) (2) The agenda of interstate relationships consists of multiple issues that are not arranged in a clear or consistent hierarchy and (3) military force is not used when complex interdependence prevails. See Keohane & Nye, *supra* note 122, at 379.

For Waltz's response to interdependence theory see Kenneth Waltz, *The Myth of National Interdependence*, in THE INTERNATIONAL CORPORATION 205-23 (Charles P. Kindleberger, ed.). For a broader discussion of the convergence of international relations theory and international law see Kenneth W. Abbott, *Modern International Relations Theory: A Prospectus for International Lawyers*, 14 YALE J. INT'L L. 335 (1989).

A. Interdependent Relationship between United States and Mexico

For at least a decade, the United States and Mexico economies have been interdependent. Mexico is the United States' third largest trading partner.¹²⁶ Mexico exports 65% of their total exports to the U.S., amounting to \$45 billion,¹²⁷ and imports 68% of their total imports from the U.S.¹²⁸ United States exports in energy sectors¹²⁹ to Mexico was \$670 million, 4% of total energy exports.¹³⁰ U.S. imports in energy totaled \$5.3 billion, or 10% of total U.S. imports in energy.¹³¹ The internationalization of manufacturing has literally occurred in the Maquiladoras, or "an off-shore assembly operation involved in export-manufacturing processing or secondary assemblage."¹³²

The United States involvement with Mexico's financial troubles is inevitable as the debt crisis reveals. In 1982, Mexico owed the top 13 banks \$16.5 billion, or 48% of the bank's capital.¹³³ The United States had to save its own banks from collapse with \$2 million.¹³⁴

126. Alejandro Ogarrio & Leonel Pereznieto Castro, *Mexico-United States Relations: Economic Integration and Foreign Investment*, 12 HOUS. J. INT'L L. 223, 224 (1990).

127. *Id.*

128. Lawrence Kootnikoff, *Coming Together*, BUSINESS MEXICO, March, 1991, available in LEXIS, NEXIS Library.

129. "Energy Sectors" refer to petroleum and natural gas products, primary petrochemicals and electrical energy. *NAFTA Effects on Energy Sector Likely to be Limited*, MEXICO TRADE AND LAW REPORTER, May 1, 1993.

130. *Id.*

131. *Id.*

132. A maquiladora exports raw materials and equipment to an assembly plant in Mexico, which assembles or processes these materials. This operation works because of an interdependent relationship between the U.S. and Mexico. The laws of each country mutually support each other. The finished-product is then re-imported into the United States for sale or production. The U.S. Harmonized Tariff Schedule (Section 9802.00.80 allows fabricated American components to be shipped abroad and returned to the U.S. subject to customs duty limited to the amount of the value added by the foreign assembly operations. Under U.S. Generalized System of Tariff Preferences (GSP), products can enter the U.S. duty free if at least 35% of the product is of Mexican origin. In Mexico, The Decree for the Development and Operation of the maquiladora Industry (December, 1989) is now the basic facilitating law. Under the Mexican law, equipment, technology and components are imported into Mexico under bond without a duty.

Labor on both sides is affected by the industry. Mexico benefits with training and employment in economically depressed border areas. They are also major sources of foreign investment earnings. The U.S. relies on cheap labor to remain competitive. Even though jobs are exported to Mexico, many jobs are actually saved since otherwise the whole industry would have to relocate overseas. For a complete description of Maquiladoras see *An Investors' Introduction to Mexico's Maquiladora Program*, 22 TEX. INT'L L.J. 109 (1986), reprinted in Folsom, *supra* note 99, at 344. See also Folsom, *supra* note 99, at 339.

133. Esther Wilson Hannon, *A Review of 150 Years of US-Mexican Relations*, HERITAGE FOUNDATION REPORTS, Oct. 31, 1988, available in LEXIS, NEXIS Library.

134. *Id.* Despite the crisis in 1982, U.S. banks found they could make more money through lending than isolation. In 1992, not only did Mexico bring in the most foreign credits since the debt crisis in 1982, the amount of debt contracted in Mexico is greater than at any other time in its history. Luis Romo, *Mexico Experiencing Biggest Wave of Foreign Credits Since 1982*, NOTIMEX MEXICO NEWS SERVICE, Sept. 29, 1992, available in LEXIS, NEXIS Library.

More than the banks suffered; the U.S. lost more than \$300,000 export jobs.¹³⁵ United States policy toward Mexico in 1980's was partially to keep Mexico from defaulting on its loans to U.S. banks, and to forestall border security problems.¹³⁶

B. Shift in Economic Development Strategy

In response to economic interdependence, the PRI has shifted development strategy from import-substitution growth to export diversification. Correspondingly, the PRI has depended less on oil to finance domestic growth. Altering decades of practice, Mexico has begun to open its economy.¹³⁷

Beginning with Miguel de la Madrid Hurtado, Mexico gradually moved away from import substitution industrialization by reducing import permit requirements¹³⁸ and export promotion measures.¹³⁹ Mexico took steps to eliminate food-stuff subsidies, transport and energy subsidies.¹⁴⁰ The government also sold a large number of public enterprises.¹⁴¹

In 1986, Mexico joined the General Agreement on Tariffs and Trade (GATT), signaling a break with Cardenas isolation and embracing interdependence.¹⁴² The decision to join GATT signified that Mexico was breaking with the 40-year development strategy of state intervention, prioritization of the internal market and import-substitution industrialization.¹⁴³ In acceding to GATT, Mexico significantly liberalized trade by replacing licenses with tariffs for all but 436 of its import items and reducing

Between July and September 29th, Mexico received \$2.7 billion in loans. The transactions included bonds issued by Teléfonos de Mexico and Nacional Financiera. PEMEX issued \$300 million in bonds guaranteed by their accounts receivable and another for \$375 million guaranteed by Banco de Comercio documents. \$5.5 billion from capital markets entered private and public markets. *Id.*

135. M. Delal Baer, *North American Free Trade*, 70 FOREIGN AFFAIRS 132, 138 (Fall, 1991). Further, the recession sent droves across the border illegally. See Ogarrio & Castro, *supra* note 126, at 225.

136. Baer, *supra* note 135, at 138.

137. Weintraub & Baer, *supra* note 55, at 9.

138. By 1987, 80% of imported products had no permit requirement. *Id.*

139. These measures consisted of tax rebates, credit facilities, relaxation of exchange controls, and automatic approval of imports to be used in production for export. James W. Conrow, *Structural Reform and the Debt Strategy: The Mexican Case*, 18 CAL. W. INT'L L.J. 21, 24 (1987).

140. Esperanza Duran, *Mexico's 1986 Financial Rescue: Palliative or Cure*, in THE MEXICAN ECONOMY 96 (George Philip, ed., 1988).

141. *Id.*

142. In keeping with the Cardenas tradition, Mexico had long held that associations with international organizations was a threat to national sovereignty. Thus, Mexico refused to join the Organization for Petroleum Exporting Countries in the 1970s. JAMES M. CYPHER, STATE AND CAPITAL IN MEXICO: DEVELOPMENT POLICY SINCE 1940, 181 (1990).

143. *Id.*

tariffs on over 4,000 import items.¹⁴⁴ The key was export promotion.¹⁴⁵

President Salinas has decided to take advantage of global interdependence, freeing up trade to attract foreign investment for development.¹⁴⁶ Salinas acted immediately to lower import restrictions,¹⁴⁷ and reform foreign investment regulation.¹⁴⁸ The 1989 regulations¹⁴⁹ amended the 1973 FIL to permit 100% foreign ownership in about two thirds of the economy without prior approval from the Ministry of Commerce or the National Commission of Foreign Investment if certain conditions are met.¹⁵⁰ A even more liberal investment law is expected by the end of

144. Much of the incentives for joining GATT was for credibility to receive loans. Mexico received a World bank loan for \$500 million. Conrow, *supra* note 139, at 24.

145. Ironically, export promotion, while embracing the pristine theory of the "free market," required aggressive state intervention. See CYPHER, *supra* note 142, at 182.

146. For a detailed but brief description of Salinas' reforms see Rubio, *Mexico in Perspective: An Essay on Mexico's Economic Reform and the Political Consequences*, *supra* note 117.

147. With his 1988 reforms, tariffs were drastically lowered from levels as high as 200% to a maximum level of 20%. The average tariff was 11%. Salinas also eliminated all permit requirements. See Rubio, *Mexico in Perspective: An Essay on Mexico's Economic Reform and the Political Consequences*, *supra* at 236. Agriculture and the automotive sector were excluded from reforms. Weintraub & Baer, *supra* note 55, at 9.

148. As Sandra F. Maviglia Discusses at length, Salinas was not the first to attempt to change the investment law. The FIC under its power to change percentage levels under the 1973 Regulations (see note 100), instituted Guidelines in 1984, which encouraged foreign investment. Among other things, the Guidelines did not require "Mexicanization" within a specified time and increased the percentage of foreign equity allowable. See Maviglia, *supra* note 94.

149. Reglamento de la Ley para Promover la Inversion Mexicana y Regular la Inversion Extranjera, D.O. May 16, 1989; Unofficial translation published in VI Investment Laws of the World (ICSID), Rel. 89-3 (Dec. 1989). The Federal Executive exercised authority granted in Art 80 §1 of the Constitution and provided measures to assure compliance with the 1973 FIL which had been approved by the legislature. But the Regulations of 1989 contradict the 1973 FIL, particularly in its 100% allowance and could be arguable unconstitutional. Article 89 § 1 of the Constitution only allows for a regulation to explain and supply a detailed description of laws already approved by Congress.

The Supreme Court defined the scope of Presidential power in *Tesis 404, Apendice al Semanario Judicial de la Federación, Tercera Parte 709 (Segunda Sala 1985)*.

Article 89, paragraph I of our Main Law, confers [upon] the President of the Republic three capacities: a) That of promulgating the laws issued by the Congress of the Union; b) That of executing said laws; and c) That of providing in the administrative sphere its exact observance, i.e., the regulatory capacity. This last capacity allows the Executive to issue general and abstract provisions, whose purpose is the execution of the Law, *developing and complementing* [emphasis added] in detail the provisions included in the legislation issued by the Congress of the Union . . . The regulation] is an alternative norm that has its measure and justification in the law . . . [T]he regulation provides the general and abstract media, that must be used to apply the law to concrete cases.

Reprinted from Ignacio Gomez-Palacio, *The New Regulation on Foreign Investment in Mexico: A Difficult Task*, 12 HOUS. J. INT'L L. 253, 259 (1990).

150. *Foreign Investment Regulations: Mexico*, BUSINESS LATIN AMERICA, Mar. 29, 1993. The conditions are summarized in Ogarrio and Castro, *supra* note 126: (1) Investments in fixed assets made during the pre-operational stage should not exceed the amount determined by the Ministry of Commerce. (The Ministry review and adjusts this amount. Initially the amount was 250 billion pesos or 100 million dollars.) (2) Financial resources must come from abroad. This

1993, where Mexico will bring its laws in compliance with its NAFTA commitments.¹⁵¹ The new law is designed to codify Mexico's free-market policies and make investors even more confident in the changed attitude toward foreign investment by ensuring that subsequent administrations will not be as likely to reverse administrative regulations.¹⁵²

Mexico has decreased its reliance on oil to bring in foreign exchange when oil sales could not longer finance the nations' growth.¹⁵³ When oil prices fell, the Mexican government could no longer raise a high proportion of its income from PEMEX.¹⁵⁴ Consequently, oil dropped in proportion

requirement is to ensure that scarce financial resources in Mexico are not depleted. (3) The minimum amount of paid capital stock must equal at least 20% of the total investment in pre-operational fixed assets. (4) Companies must located manufacturing facilities in zones other than those with great industrial concentration. This requirement is to ensure that investment spreads to the various parts of the country and also relieves the congested Mexico City. (5) Companies must keep the accrued balance of foreign currency at least at a break-even point in the first three years of operation. (6) "Appropriate technology" is required to ensure environmental protection.

151. *Foreign Investment Regulation*, BUSINESS LATIN AMERICA, Mar. 29, 1993. The new law is expected to do the following to liberalize the 1989 Regulations:

- (1) Repeal foreign company performance requirements, such as the requirement that foreign companies keep their foreign exchange flows in balance over a period of three years.
- (2) Eliminate most government approval requirements for investments.
- (3) Simplify the classification of activities in which foreign participation is restricted. The categories are as follows:

<u>Classification</u>	<u>Examples</u>
reserved for the state	petroleum
reserved for domestic	retail sales of liquid gas, gasoline; non-cable television, coastal maritime transportation
Foreign investment in 10%-49% without prior approval	national airlines, cable television, newspaper publishing, basic telephone services
100% with official approval	mining, oil and gas drilling, legal services
100% without official approval	everything else

- (4) End requirements or approval of plant expansions and relocations.

See Mexico Alert: New Foreign Investment Law, BUSINESS INTERNATIONAL, Nov. 23, 1992.

152. Though a significant stride toward allowing more investment in Mexico, the 1989 Regulations are only presidential decrees. Subsequent administrations might chose to enforce the 1973 Law in a different manner. A codified law would enhance the credibility of Salinas' intentions to alter the traditional Mexican investment scheme. *See* Juanita Darling, *Mexico to Make it Easier for Foreign Investor; Free Trade: The Proposed Legislation will Codify the Open Policies of the Salinas Government and Give Legal Assurances to Outsiders*, L.A. TIMES, Jan. 11, 1993, at D2.

153. In 1991, 70% of total imports represented non-oil sales; 55% were manufactured goods. Anthony Fama, *The Regulation of Foreign Investment in Mexico: Heading in the Right Direction*, MEXICO TRADE AND LAW REPORTER, May 1, 1992 n.12.

154. *Changes in Mexican Tax Structure Reflect Need to Diversify Economy*, *supra* note 85.

total exports.¹⁵⁵ In order to raise the necessary foreign exchange, Mexico diversified exports¹⁵⁶, reduced the size of its bureaucracy,¹⁵⁷ and increased taxes on the private sector.¹⁵⁸ With respect to oil, economic policy has shifted focus: oil is no longer a commodity to prop up an internally-protected market, but is itself one of many export commodities to compete in the interdependent, global economy for foreign exchange.

C. Interdependence and Oil

In order to survive in an interdependent, global economy, Mexico has been forced to alter the “revolutionary” oil policy that formed the very legitimacy of the controlling PRI. To increase efficiency in a competitive world market, Salinas has begun privatization and restructuring of PEMEX and its union. Mexico is now hinting of allowing private and foreign investment in all downstream activities of the oil sector.

Mexico has experimented with a greater private sector role in energy by allowing domestic companies to purchase segments of the oil industry. PEMEX allowed equity investment by domestic industry for the first time beginning in August 1992, in selling some of its subsidiaries. The first

155. The following table shows the drastic decline of oil as a percentage of total exports since the 1982 oil shocks.

TABLE 1. PETROLEUM EXPORTS 1982-1992

<u>Year</u>	<u>Income as % of total exports</u>
1982	78.1
1983	72.1
1984	68.0
1985	67.4
1986	38.4
1987	40.9
1988	32.4
1989	34.5
1990	37.7
1991	30.1
1992*	29.0

*From January to June
 Adapted from *Id.*

156. Non-oil exports grew from \$5.6 billion in 1982 to around \$12 billion in 1987. Armen Kouyoumdjian, *The Miguel De La Madrid Sexeno: Major Reforms or Foundation for Disaster?*, in *THE MEXICAN ECONOMY* (George Philip ed., 1988).

157. Total financial resources consumed by the public sector fell from 11.7 percent of gross domestic product in 1988 to 5.6 percent in 1989 and 3.5 percent in 1990. *Id.*

158. Increases in tributary income occurred after 1985, however, much of the increase came from inflation. See *Id.* for exact figures. Increasing the tax base requires that Mexico embark on a plan to foster industrial growth. This requires Mexico to allow more foreign investment to develop the sagging industry. *Id.*

divestiture was the highly profitable motor oil and lubricants subsidiary.¹⁵⁹

To lower operating costs, PEMEX has begun to sell assets under its control. The company does not have enough funds to operate all of its petrochemical plants.¹⁶⁰ In 1992, PEMEX planned to sell 2.1 billion in assets.¹⁶¹ To date, these have included "non priority areas" such as painting and maintenance duties.¹⁶² PEMEX plans to sell more of its oil producing branch in 1993.

Joint ventures¹⁶³ with U.S. producers to refine Mexican crude oil are increasingly common. Shell Oil Co. signed one agreement on August 25, 1992.¹⁶⁴ Valero Energy of the U.S. and Dragados y Construcciones of Spain agreed in September to operating a gasoline additive industry, which was the first operation involving both private Mexican and foreign investment.¹⁶⁵

The Mexican government has also "reclassified" basic petrochemical products in order to reduce the number of products reserved for the state and allow for more foreign investment. Article 27 of the Mexican Constitution vests control of all minerals, including "petroleum and all hydrocarbons, solid, liquid and gaseous."¹⁶⁶ But Mexico has distinguished between "primary" petrochemicals, allowing no foreign equity investment and "secondary" petrochemicals, which allow for up to 40% foreign investment.¹⁶⁷ If not on "the list," foreign investment is virtually unrestricted. PEMEX has reduced the number reserved solely to the state since expropriation, gradually allowing more foreign investment. In 1988, 70 petrochemi-

159. Juanita Darling, *PEMEX to Let 51% of its Oil Unit Go Private: It Will Be the State-Owned Petroleum Industry's First Such Divestiture*, L.A. TIMES, Aug. 26, 1992, at D1. The government took bids on the purchase of 51% interest in the subsidiary that sells motor oils and lubricants. *Id.*

160. *Mexico Said Studying Sale of Petrochemical Plants*, REUTERS, Oct. 22, 1992, available in LEXIS, NEXIS Library.

161. *PEMEX to Sell 2.1 Billion in Assets*, NOTIMEX MEXICAN NEWS SERVICE, Jan. 17, 1992, available in LEXIS, NEXIS Library.

162. *Id.*

163. Gordon argues that Mexico has used the joint venture as part of regulatory scheme to control foreign investment. See Michael W. Gordon, *The Joint Venture As an Institution For Mexican Development: A Legislative History*, 1978 ARIZ. ST. L.J. 173, printed in FOLSOM, ET. AL., *supra* note 99.

164. Shell will transport Mexican crude to Texas and refine it into unleaded gasoline to be returned to Mexico. Michael Parrish & Juanita Darling, *Mexico, Shell Form Deal To Run Refinery*, L.A. TIMES, Aug. 27, 1992, at D2.

Under the agreement, PEMEX will acquire 50% of Shell's refinery in Deer Park Texas. The PEMEX holdings will be secured in exchange for supplying Shell with Maya crude. Shell will deliver 45,000 barrels of unleaded gas a day (20% of the refinery's crude processing capacity). *PEMEX-Shell Alliance*, INTERNATIONAL REPORTS, Sept. 9, 1992, available in LEXIS, NEXIS Library.

165. *U.S. Firm Launches First Gas-Additive Joint Venture In Mexico*, AGENCE FRANCE PRESSE, Sept. 4, 1992, available in LEXIS, NEXIS Library.

166. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27., para. 4 (Mexico).

167. See Dale Kimball, *Second and Tertiary Petroleum Operations in Mexico: new Foreign Investment Opportunities*, 25 TEX. INT'L L.J. 411 (1990).

cals were under PEMEX's monopoly.¹⁶⁸ In September 1992, only 8 remained "primary."¹⁶⁹

To restructure, Salinas has divided PEMEX into four "streamlined profit centers,"¹⁷⁰ based on the different functions of the oil industry.¹⁷¹ The decentralization is part of a desire for greater efficiency without causing domestic political problems in abandoning state's role in the industry. The reforms impose accountability by illuminating the profits and losses of each unit¹⁷² and reduces the labor force by another 55,000.¹⁷³ The director of PEMEX, Francisco Rojas, works well with Salinas to encourage competition and decentralization.¹⁷⁴

The drop in jobs has been disconcerting to many in STPRM, the union, but Salinas has extended his reforms to the powerful constituency of labor. Upon taking office in December 1988, he jailed the Union leader, Joaquín Hernández Galicia.¹⁷⁵ The new union leaders have agreed to eliminate non-bid union contracts, an old way to court political support, and relinquish the 2% payment on all union contracts.¹⁷⁶ Salinas has even proposed restructuring the entire corporatist system, combining the peasant and trade

168. *OGJ Newsletter*, OIL & GAS JOURNAL, Mar. 2, 1992, at 4.

169. *PEMEX-Shell Alliance*, *supra* note 164. The eight primary petrochemicals reserved only for the state are: ethane, propane, butane, pentane, hexane, heptane, raw material for carbon black and naphtha. Some of the categories reclassified to permit full foreign participation in September 1992 are: acetylene, ammonia, benzene, butadiene, butylenes, ethylene, methanol, n-paraffins, orthoxylene, paraxylene, toluene and xylene.

A report in the Mexico City financial daily quoted unknown sources saying that the government plans an eventual divestiture of all petrochemical operations and installations. *Id.*

170. H.F. Rice, *NAFTA May Present Major Opportunities in Mexico's Offshore*, OFFSHORE, Sept. 1992, at 30.

171. *Restructuring Proposed for Mexico's PEMEX*, OIL & GAS JOURNAL, June 22, 1992, at 34. The four subsidies are: (1) Exploration and Production, which manages all activities in Mexico. (2) Refining, which will handle supply and marketing, operating PEMEX's 6 refineries, distribution terminals and crude oil pipelines. (3) Gas and Basic Petrochemicals will manage supply and marketing of LPG and natural gas. (4) "Secondary" will operation chemical units not exclusively reserved to the state and market products to the private sector. (5) PEMEX International, which has existed since 1989, will manage foreign holdings, crude exports, natural gas and chemical activities.

Speculation circulates that PEMEX/Secondary might eventually be privatized. See *PEMEX-Shell Alliance*, *supra* note 164.

172. GRAYSON, *supra* note 1, at 1.

173. Golden, *supra* note 11. PEMEX has shed one-third of its work force in the four years between 1988-1992. The payroll dropped to 136,000 in July 1992 from 210,000 in 1987. Temporary jobs were the most to go. See *PEMEX Sheds One-Third of Jobs in Past Four Years*, *supra* note 63. The latest cut is part of Salinas' restructuring plan.

174. George W. Grayson, *Incremental Change in PEMEX*, 58 PETROLEUM ECONOMIST, Oct. 1991, at 10.

175. Galicia was sentenced four years later to 35 years for murder. He was widely criticized for inflating payrolls during his tenure as Union chief. *Pemex Sheds One-Third of Jobs in Past Four Years*, ENERGY NEWS, Sept. 17, 1992.

For a fascinating account of Galicia's rise and fall from power see Jack R. Deino, *Rise and Fall of PEMEX Union Leader Dominates Life in Oil Boomtowns*, NOTIMEX MEXICAN NEWS SERVICE, Jan. 10, 1992, available in LEXIS, NEXIS Library.

176. Grayson, *Incremental Change in PEMEX*, *supra* note 174, at 7. See *supra* note 75 and accompanying text.

union organizations into the territorial People's Movement (MPT).¹⁷⁷ The goal is to reduce the clout of the bureaucrats and labor bosses in the powerful unions, or those that have a vested interest in the status quo.

Proposals are now on the table to allow private and foreign investment in "downstream" activities of oil production.¹⁷⁸ The change proposed is a Constitutional conceptual change: PEMEX would have only exclusive rights to the products extracted from the subsoil.¹⁷⁹ After being sold, the state owned company would give up exclusive rights conferred by the Constitution. This conceptual shift comports with a broader reading of Article 27 of the Constitution: that the state only retains "direct dominion" over "petroleum and solid, liquid or gaseous hydrocarbons" *in the ground*.¹⁸⁰

Under the new law, private companies would be able to operate refineries,¹⁸¹ produce many "primary petrochemicals" which have up until the present been limited to PEMEX,¹⁸² and import petroleum products subject to a permit from the commerce secretary.¹⁸³ Private companies could operate their own pipelines and PEMEX would allow its existing pipeline network for use by other companies.¹⁸⁴

Under the proposal, much of the regulatory, planning and permit power is to be transferred from PEMEX to the Secretary of Energy, Mines and State-Owned Industry (SEMIP).¹⁸⁵ PEMEX would become competitive, which many analysts believe is necessary to revive the Mexican oil industry. "What is missing from [PEMEX] is the concept of economic optimization. PEMEX is an agency driven by volume goals, not profit goals."¹⁸⁶

Private service stations could import and distribute gasoline at the retail level, but the stations would be owned exclusively by Mexican citizens.¹⁸⁷ Thus, the Constitution is read to give exclusive rights to the state over

177. *Ruling Party Shake-Up Undercuts Traditional Labor Bosses*, NOTIMEX MEXICAN NEWS SERVICE, Aug. 22, 1992, available in LEXIS, NEXIS Library.

178. *Draft Oil Legislation Awards Big Opening to Foreign Investment*, LAGNIAPPE LETTER, Aug. 20, 1993.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* The primary petrochemicals considered are ethane, butane, propane and naphthas.
Id.

183. *Id.*

184. *Id.*

185. *Id.* Industry analysts suggest that by transferring the permit power, Mexico is setting up a framework to eventually allow private companies to explore, drill and produce crude. In this sense, the ministry would act much like the U.S. Public Utilities Commission. *Leaked Government Documents Point to Deeper Mexican Petroleum Privatization*, OIL & GAS JOURNAL, Aug. 16, 1993.

186. *Id.*

187. *Id.*

Mexican hydrocarbons, but not over foreign hydrocarbons.¹⁸⁸ The Constitution no longer is seen to bar the importation of foreign oil.

The reform, if passed as hinted, will take the form of "regulations" decreed by the president without Congressional vote.¹⁸⁹ The regulations would take a similar effect as the 1989 Regulations on Foreign Investment.¹⁹⁰ This may worry investors, since the rules could easily be changed by subsequent administrations.

Since the reform is challenging the very industry that is symbolic of nationalism and labor, much of the momentum needed to enact it will depend on subsequent events. First, the Salinas administration is concerned about PRI prospects in the coming election¹⁹¹ and may not want to trample too far away from its traditional constituency. Second, the North American Free Trade Agreement is important to regulate and solidify an interdependent relationship with the United States, and its failure may doom further oil reform.¹⁹²

IV. NAFTA: A REGIME TO MANAGE INTERDEPENDENCE

The proposed North American Free Trade Agreement (NAFTA)¹⁹³ structures the interdependent relationship between the United States, Mexico and Canada.¹⁹⁴ NAFTA encourages private sector growth in Mexico by

188. *Mexico's State-Controlled Oil & Gas Sector May Open Up*, BUSINESS LATIN AMERICA, Aug. 23, 1993.

189. *Id.*

190. *See supra* note 94 and accompanying text for a discussion of presidential power to set forth decrees.

191. *See* Section V.

192. *Draft Oil Legislation Awards Big Opening to Foreign Investment*, LAGNIAPPE LETTER Aug. 20, 1993, available in LEXIS, NEXIS Library.

193. For a summary see Office of the U.S. Trade Representative, DESCRIPTION OF THE PROPOSED NORTH AMERICAN FREE TRADE AGREEMENT.

194. Managing the interdependent relations may involve construction of sets of rules and institutions—so-called regimes—to govern interactions in different issue areas. In the international system, with the absence of central authority, the rules are voluntary, established by states to provide some degree of order in international relations.

According to John Ruggie, an international regime is "a set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states." A regime can be formal or informal. A formal regime results from legislation or negotiation between countries or organizations. Such regimes possess dispute resolution mechanisms.

International regimes create legitimacy for the international social order in much the same way domestic structures legitimize domestic social order. In various regimes at the domestic or international level, political authority is a fusion of power with legitimate social purpose. Regimes fulfill the social purpose by establishing norms, or standards of behavior defined in terms of rights and obligations. To borrow a phrase from John Ruggie, international regimes "internationalize" political authority. Regimes create norms, in the form of rights and obligations, for the international system. *See* John Gerard Ruggie, *International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order*, INTERNATIONAL ORGANIZATION, Spring 1982, at 379. For a survey of regime theory see Dougherty and Pfaltzgraff, *supra* note 125, at 167.

Rousseau described the phenomena of international relations as a "security dilemma"

opening markets¹⁹⁵ and liberalizing investment¹⁹⁶, but, at least rhetorically, leaves oil to state led development.¹⁹⁷ On the one hand, the NAFTA reserves to the Mexican state “the right to perform exclusively, and to refuse to permit establishment of investments in . . . petroleum, other hydrocarbons and basic petrochemicals.”¹⁹⁸ On the other hand, the NAFTA makes any future retraction to isolationism costly by creating vested interests in society in open markets and free flowing investment.¹⁹⁹ Coupled with recent restructuring of the oil industry, the NAFTA increases foreign investment opportunity in oil through its liberal foreign investment and government procurement provisions.

A. General Market Access and Investment Provisions

Generally, the NAFTA encourages private-led development through

inherent in a system of anarchy, where states are independent but connected. He analogizes international relations to a stag hunt, where hunters collaborate for the common good of hunting the stag, but the possibility always exists that a single hunter might defect for a sure meal. The risk of defection creates distrust within the system. States calculate short term gain, what Rousseau deems “apparent interest,” rather than “real interest” or the common good. For Rousseau, the risk of defection renders international organization largely ineffective. Regime theory focuses on when states cooperate the hunt the stag.

A regime is a means for states to cooperate through establishing rules for behavior. Grotius argued that governments often calculate self-interests in terms of long-range interest or what he called the “international community interest.” He argued that international law is a restraint because it coincides with the interests of the state. Though idealistic to some, Grotius argued that certain values and norms are shared across borders. Regimes, in focusing on cooperation of states, is one way that these values diffuse national boundaries. *Id.*

195. NORTH AMERICAN FREE TRADE AGREEMENT [NAFTA], ch. 3 details market access provisions.

196. *Id.*, ch. 2 outlines investment procedures

197. *Id.*, ch. 6, 7 Annex 602.3. See *infra* note 228.

198. *Id.*, M-1 Annex III.

199. The NAFTA works to change norms of behavior. An example of how the NAFTA operates to create norms of behavior that are hard to reverse is in the area of privatization. Privatization in Mexico is a political process as well as economic. As Carla Hills reported at the Capitol, the role of government as an owner and operator of business is being drastically reduced in Mexico. Of the 1155 enterprises owned by the state in 1982, 801 were authorized for divestment in 1990 and 619 were actually privatized. Examples include: the banks, Aeroméxico and Mexicana Airlines, and Telmex. See *Testimony of Ambassador Carla Hills, United States Trade Representative, Before the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representative, June 14, 1990*, 22 ST. MARY'S L.J. 583, 584 (1991).

Privatization threatens Mexico's society, such as formerly protected industry and displaced labor, public managers and politicians who fear losing control. In order to institute a successful privatization effort, the government must “market privatization.” As Carlos E. Martinez states, “Latin Americans have been taught that it is socially beneficial for the State to play a large role in a country's economic activities. Advocates of privatization must challenge this principle.” See Carlos E. Martinez, *Early Lessons of Latin American Privatization*, 15 SUFFOLK TRANSNAT'L L.J. 468, 478 (1992).

NAFTA plays a role in challenging the principle of state ownership. As system that ensures opening of the Mexican economy, the private sector will continually grow. Day-to-day decisions will be made by thousands of actors in the private sector rather than a centralized bureaucracy. This growing public sector creates new vested interests in a liberal economy that expects less from the government. See Weintraub & Baer, *supra* note 55, at 16.

market access and foreign investment. The stated purpose of the agreement is to eliminate trade barriers and increase investment.²⁰⁰

For manufactured goods, NAFTA assures open markets for exports.²⁰¹ NAFTA incorporates the national treatment obligation of the GATT, Article III²⁰², which states in part,

The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.²⁰³

Once goods have been imported into one NAFTA country from another NAFTA country, they cannot be subject to taxes or charges in excess of those applied to domestic goods.²⁰⁴

NAFTA assures market access²⁰⁵ by (1) eliminating tariffs²⁰⁶ on

200. NAFTA, art. 102 states the Objectives of the proposed free trade agreement:

(1) The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency are to:

- (a) eliminate barriers to trade in, and facilitate the cross border movement of, goods and services between the territories of the Parties.
- (b) promote conditions of fair competition in the free trade area
- (c) increase substantially investment opportunities in their territories
- (d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory
- (e) create effective procedures for the implementation and application of this Agreement, and for its joint administration and resolution of disputes and
- (f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

201. Viewing NAFTA from Mexico's perspective, Mexico guards against potential U.S. protectionism. Mexico's manufactured good soared to 55% of all its exports in 1989, up from 14% in 1982. Baer, *supra* note 135, at 133. With 65% traded to the U.S., Mexico desired a secure access to the market.

202. NAFTA, art. 301 says, in part: "GATT and its interpretative notes, or any equivalent agreement to which all Parties are party, are incorporated into and made a part of this Agreement."

203. GATT, art. III, § 2.

204. *Id.* This applies to states and provinces within the NAFTA countries as well. NAFTA, art. 301(2) provides:

The provisions of paragraph one regarding national treatment shall mean, with respect to a province or state, treatment no less favorable than the most favorable treatment accorded by such province or state to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

205. NAFTA, ch. 3 details market access provisions.

206. *Id.*, art. 302 states:

(1) Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any customs duty, on an originating good.

(2) Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods as set out in its schedule . . .

goods qualifying as North American under Rules of Origin²⁰⁷ (2) eliminating prohibitions and quantitative restrictions applied at the border, such as quotas and import licenses²⁰⁸ and (3) eliminating export taxes²⁰⁹ and custom user fees.²¹⁰

NAFTA also removes significant investment barriers.²¹¹ The most significant aspect of the NAFTA is investment, not trade.²¹² The 1980 trade openings made by Mexico make trade between the U.S. and Mexico relatively open.²¹³ What is not open between the two countries is investment.²¹⁴

Each country is to treat NAFTA investors and their investment no less favorably than (1) its own investors national treatment and (2) investors of other countries, most-favored-nation treatment.²¹⁵ The minimum standard of treatment is "in accordance with international law, including fair and equitable treatment and full protection and security."²¹⁶

Under the NAFTA, countries may not impose performance requirements for investment (such as levels of exports and minimum domestic content).²¹⁷ The NAFTA provisions are more detailed than the Canada-U.S. Free Trade Agreement (FTA)²¹⁸ or the GATT accord on trade-related

207. Specified in *Id.*, ch. 4.

208. *Id.*, art. 309 discusses import restrictions.

209. *Id.*, art. 315. Under Article 604 Export taxes are allowable on energy products when they are applied when destined for domestic consumption.

210. *Id.*, art. 311.

211. *Id.*, ch. 2 outlines investment procedures.

212. Ewell E. Murphy, Jr., *The Dilemmas of Hydrocarbon Investment in Mexico's Accession to the North American Free Trade Agreement*, 9 J. ENERGY NAT. RESOURCES L. 261, 266 (1991).

213. *Id.*

214. *Id.*

215. NAFTA, art. 1102: National treatment

(1) Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

(2) Each Party shall accord to investments of investors of another party treatment no less favorable that it accords, in like circumstances, to investment of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

216. *Id.*, art. 1105.

217. *Id.*, art. 1106. "NAFTA allows for some non-trade related performance requirements such as commitments to undertake worker training, construction or expansion facilities, and local research and development." GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, NAFTA: AN ASSESSMENT 80 (1993).

218. HUFBAUER & SCHOTT, *supra* note 217, at 80. The FTA specifically bans all new export performance, import substitution, and domestic-content requirements affecting U.S. or Canadian investments while phasing out existing export and production based requirements. The FTA allows the imposition of non-trade-related performance requirements such as employment targets. NAFTA phases out over ten years export-performance, domestic content, domestic

investment measures (TRIMS).²¹⁹

Nor can a party impose on an investor “a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals. . . .”²²⁰ Under Article 1107, NAFTA forbids governments from dictating the nationality of corporate senior managers.²²¹ However, Article 1107 makes an exception that parties can require a majority on the board of directors be of a particular nationality.²²²

To encourage investment, NAFTA protects investors from uncompensated expropriation and ensures freely transferable currency. A country may not directly or indirectly expropriate investment of NAFTA investors except for a public purpose.²²³ Such purpose must be on a non-discriminatory basis and in accordance with principles of due process of law. The expropriating country must pay compensation to the investor without delay at the fair market value of the expropriated investment, plus applicable interest.²²⁴ Investors can convert currency for earnings into foreign currency at the market rate.²²⁵

B. NAFTA and Petroleum

While the private sector is opened with the liberal foreign investment provisions, the public sector retains control of the oil industry. The first article of Chapter Six on energy in the NAFTA provides: “The parties confirm their full respect for their Constitutions.”²²⁶ Thus, Mexico retains the right to whatever control over its oil dictated by either a broad or narrow interpretation of its Constitution.²²⁷ The NAFTA does not rely solely on Constitutional interpretation, but it states explicitly the reservation.²²⁸

sourcing, trade balancing, product mandating, and technology transfer requirements.

219. *Id.* The Uruguay Round produced a draft on trade related investment measures or TRIMS. The coverage is much more limited than the NAFTA., covering domestic-content and trade balancing requirements. Hufbauer and Schott contend that the NAFTA text provides a useful model for future GATT accords and U.S. bilateral agreements. The NAFTA provisions actually parallel the U.S. proposals at the Uruguay Round. *Id.*

220. NAFTA, art. 1102(4).

221. HUFBAUER & SCHOTT, *supra* note 217, at 81.

222. NAFTA, art. 1107.

223. *Id.*, art. 1110.

224. Summary, *supra* note 193.

225. NAFTA, art. 1109.

226. *Id.*, art. 601(1).

227. See *supra* note 39 and accompanying text for the interpretations of Article 27 of the Mexican Constitution.

228. NAFTA, art. M-1, Annex III

The Mexican State reserves the right to perform exclusively, and to refuse to permit the establishment of investments in, the following activities:

1. Petroleum, other Hydrocarbons and Basic Petrochemicals
 - a. Description of activities

Currently, foreign equity investment is ruled out under NAFTA.²²⁹ Restrictions specifically apply to what Mexico "classifies" as "basic petrochemical goods" reserved to the state.²³⁰ Article 602 locks in the recent classification of certain petrochemicals as nonbasic.²³¹ Annex 602.3.1(b)(i-v), in agreement with the general investment provisions, allows for unlimited foreign investment in nonbasic petrochemicals. The effect of 602 and 602.3.1(b)(iv) if (and when) Mexico "reclassifies" petrochemicals is an unresolved issue.

The NAFTA also flatly excludes risk contracts²³² which give foreign oil companies a percentage stake in oil fields they help develop.²³³ Generally, contracts with national oil companies can take 3 forms²³⁴: (1) pure service, which would contract to perform a specified service and allow for no right to production (2) technical service, or providing technical assistance in the exploration, development, production and refining of oil and (3) risk service, where a company agrees to explore for potential with the obligation to develop crude if discovered. When commercial production commences, the company has a right to be paid, and the payment is often the right to take the extracted oil at a discounted price.²³⁵

The prohibition on risk contracts comports with the narrow view of Article 27 of the Constitution that restricts "concessions or contracts" and grants to the Nation the exploitation of all hydrocarbons.²³⁶

However, the treaty expressly allows for performance contracts.²³⁷ Also known as "turnkey contracts," performance contracts are service contracts under which foreign companies do the drilling for a flat fee and then turn the operation over to PEMEX.²³⁸ All the risk remains with the contractor. The NAFTA requires prior approval if the investor establishes

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- (i) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production or artificial gas, basic petrochemicals and their feedstocks and pipelines; and,
 - (ii) foreign trade; transportation, storage and distribution up to and including first hand sales of the following goods: crude oil, natural and artificial gas; goods obtained from the refining or processing of crude oil and natural gas; and basic petrochemicals.

(The same provision appears again in Chapter 6, 7 Annex 602.3)

229. *Id.*

230. See *supra* note 169 and accompanying text.

231. *NAFTA Effects on Energy Sector Likely to be Limited*, MEXICO TRADE AND LAW REPORTER, May 1, 1993.

232. NAFTA, Annex I.

233. Michael Fitzpatrick, *Mexico Opens Its Oil Industry A Crack To Neighbors*, THE REUTER BUSINESS REPORT, Aug. 14, 1992, available in LEXIS, NEXIS Library.

234. See Smith & Dzienkowski, *supra* note 6.

235. *Id.*

236. Murphy, *supra* note 212, at 270.

237. NAFTA, Annex 602.3 provides, in pertinent part: The Parties shall allow state enterprises to negotiate performance clauses in their service contracts.

238. Rice, *supra* note 170, at 30.

more than 49 percent of the ownership interest of an enterprise involved in "non-risk sharing" contracts.²³⁹

Turnkey contracts are different from risk contracts, which require the driller to assume the risk, but in so doing, the driller can receive an agreed upon share of the supply discovered. Performance contracts are on the rise, and have proven beneficial to PEMEX, allowing for more efficiency and badly needed technology in exchange for a flat service fee.²⁴⁰ In 1991, Triton Marine Drilling Co. drilled a well in Campeche Sound cut costs considerably, by finishing 123 days earlier than estimated PEMEX time.²⁴¹

In keeping with the prohibition on risk contracts, Mexico has not granted shares of oil for performance, but has offered bonuses for the amount of oil foreign companies pump out of a field in performance contracts.²⁴² Bonuses supplement the flat fee during the performance of the obligation. The main basis for bonuses is the speed with which the work is completed, and whether a company strikes oil.²⁴³ If performance contracts offer big enough incentives, they could be indistinguishable from risk contracts.²⁴⁴ Performance contracts may be undercut by the fact that they are entirely within the discretion of PEMEX.²⁴⁵

The general investment provision that assures national treatment and most-favored-nation treatment is subject to two exceptions with regard to energy. NAFTA requires Mexico (and Canada) to have government approval for takeovers of existing businesses above specified monetary thresholds.²⁴⁶ "Strategic activities" are reserved to Mexico, including the following: exploration, exploitation, refining, foreign trade, transportation, storage and distribution of oil and natural gas, basic petrochemicals,

239. NAFTA, Annex I, Reservations for Existing Measures and Liberalization Commitments provides:

Prior approval of the Comision Nacional de Inversiones Extranjeras is required for investors of another Party and their investments to own, directly, or indirectly, more than 49 percent of the ownership interests of an enterprise established or to be established in Mexico involved in "non-risk-sharing" service contracts for the drilling of petroleum and gas wells.

240. *Id.*

241. *Oil's Role in Free Trade Crux of Mexico's Petroleum Sector Dilemma*, OIL & GAS JOURNAL Feb. 3, 1992, at 16. Triton received \$20 million for its work, which is about half what PEMEX usually pays for the same type of work.

242. Fitzpatrick, *supra* note 233. See Smith & Dzienkowski, *supra* note 6, at 30.

243. Keith Bradsher, *In Step Toward Freer Trade, Mexico to Pay Oil Bonuses*, N.Y. TIMES, July 16, 1992, at D1.

244. Bob Davis, *Mexico Wins Demands in Trade Talks To Keep Full Control of Its Oil Industry*, WALL ST. J., July 21, 1992, at A3.

245. *NAFTA Effects on Energy Sector Likely to Be Limited*, *supra* note 231.

246. *Id.* The monetary thresholds are \$25 million for Mexico, increasing to \$150 million over the decade.

pipelines, electricity and nuclear power.²⁴⁷

NAFTA does include some concessions for oil in production of goods and services.²⁴⁸ The treaty requires PEMEX to open 50 percent of its purchases of goods and services to immediate foreign competition and 100 percent in 10 years.²⁴⁹ Because PEMEX is a "government enterprise," NAFTA includes it in Chapter 10, Government Procurement. For Federal government enterprises, the NAFTA applies to procurements of over \$250,000 for goods and services and over \$8 million for construction services.²⁵⁰ A country also cannot discriminate against another country supplier.²⁵¹

V. TENUOUS CORPORATISM

Increased liberalization has its benefits to Mexican society, furthering development and efficiency. But these benefits come with political costs. With a political structure incorporating the different factions of society into the system²⁵², the government is bound to fulfill its bargain and support the factions of society. Increased foreign investment runs contrary to the revolution that was highly about ridding foreigners from the society.

The result of the reforms has been to weaken the labor faction that has been essential to the PRI corporatist structure.²⁵³ Union leaders have become increasingly unable to negotiate contracts that maintain workers' standard of living or even that workers would be able to stay on the job.²⁵⁴ Labor no longer has a strong influence in formulating pacts that include wage controls.²⁵⁵

Workers have defected from the party unions. In March of 1990, 121 Mexican organizations joined to form a new trade union, the Confederación Revolucionaria de Obreros y Campesinos, to challenge the state-controlled CTM.²⁵⁶ An impetus behind the organization is the Partido de la Revolución

247. Other non-energy-related activities are reserved to the state, including satellite communications, telegraph services, postal services, railroads, currency issuance, and port and airport control. See *id.* at n.5.

248. See NAFTA, ch. 10.

249. *Id.*, Annex 1002.6, Mexico outlines a transition schedule. The obligations of the chapter apply only to 50% of the total procurement in the first year (1994), and that reduces by 5% each year. In 2003, all procurements in PEMEX will be governed by the NAFTA.

250. See *Id.*, art. 1002 for scope and coverage. In Annex 1002.4, Mexico excludes risk-sharing contracts from these provisions. See *supra* note 203.

251. *Id.*, art. 1004 outlines the National Treatment and Non-discrimination provisions.

252. See *supra* Section IB.

253. For an explanation of corporatism see *supra* Section IB.

254. Juanita Darling, *Era of Limits for Mexico's Mighty Unions*, L.A. TIMES, Mar. 4, 1990 at D-1.

255. *Id.*

256. *CTM Challenged by New Federation*, LATIN AMERICA REGIONAL REPORTS: MEXICO AND CENTRAL AMERICA, May 10, 1990, at 6.

ción Democrática (PRD)²⁵⁷, the opposition party that almost took the presidency from the PRI in 1988.²⁵⁸

Ironically, the entrenched, authoritarian PRI has in the last decade advocated enormous economic change. It is the challenge to the PRI that fights for the status quo (at least economically).²⁵⁹ Mexico's politics is a scene where "apparent reformers are reactionaries and sitting incumbents are revolutionaries."²⁶⁰

Thus, the PRI walks a fine line between supporting its domestic constituency and acknowledging global interdependence. In opening its economy, the PRI undermines the very foundation of the revolution that it is supposed to uphold. The fall of oil union leader Hernández Galicia foreshadows the larger picture of eroding corporatism in the PRI. One month after taking office, Salinas and the infamous Union boss were pictured in all the newspapers hugging—the traditional picture of politics as usual, where the PRI courts the powerful unions. But less than one week later, Salinas ordered 100 soldiers to Galicia's residence and had him arrested on murder charges. The support seemed over. In Galicia's basement was a huge arsenal. The power was also seized.²⁶¹

VI. CONCLUSION

Oil is symbolically linked to the Mexican Revolution of 1917. Through expropriation, Cardenas defined Mexico's independence from foreign control and co-opted labor into the corporatist structure of the PRI governing organization. These connections have made oil a very difficult industry for the PRI to change.

Traditionally, Mexican political elites chose to protect the labor interest and guard its national sentiment for oil. As expropriation illustrated, the PRI has acted to isolate Mexico from foreign influence, protecting infant industry

257. Interestingly, the PRD is seeking to win support by some of the same corporatist strategies that have been the bulwark of the PRI since Cárdenas in the 1930s.

258. As Sidney Weintraub and Delal Baer note, discontent mounted in the presidential race of 1988. The PRD candidate, Cuauhtemoc Cárdenas and son of former PRI hero President Lázaro Cárdenas, ran on a campaign that the PRI had betrayed the ideals of the revolution. Cárdenas engendered enormous support, particularly from the labor sector. The powerful oil union boss Hernández Galicia swung support for Cárdenas breaking the long tradition of support for the PRI outlined in Section I above. Salinas won officially with slightly more than 50% of the vote, but many question the validity of the result.

The irony of the situation seems almost poetic: The son of the man who expropriated oil, and was thus responsible for the ideals of the revolution, was able to capture the oil union boss and thus much of the labor constituency on a platform of returning to the "revolution." Weintraub & Baer, *supra* note 55, at 11.

259. *Id.*

260. *Id.*

261. Jack R. Deino, *Rise and Fall of PEMEX Union Leader Dominates Life in Oil Boomtowns*, NOTIMEX MEXICAN NEWS SERVICE, Jan. 10, 1992, available in LEXIS, NEXIS Library.

and labor by prioritizing internal markets. The PRI relied on its oil reserves for economic development: oil was the primary export to bring in much needed foreign exchange to finance heavy public sector spending. Oil reserves also boosted the confidence of foreign investors in the Mexican system, and allowed for excessive borrowing to finance public spending.

However, the foreign world that the PRI sought to be free of has instead had a profound effect on the economy. Instead of being isolated from the world, Mexico has become interdependent, sensitive to global economic changes as the oil shock of the early 1980's revealed. As a result of the collapse in the early 1980's, Mexico has embarked on a new economic development strategy, encouraging foreign investment and privatization.

Though Mexico maintains sole ownership of oil, they have begun to restructure PEMEX, privatize domestically, and allow for more foreign involvement in procurements and joint ventures. Leaked proposals suggest that the Salinas administration wants to go further and subject its monopoly to foreign competition. Mexico's purpose is to increase efficiency in a global economy.

Through the North American Free Trade Agreement (NAFTA), Mexico liberalizes foreign investment, and allows some concessions for oil in production of goods and services sections. While "respecting the Mexican Constitution," NAFTA liberalizes investment in oil when read in conjunction with recent and proposed changes in Mexican oil policy.

Since oil symbolizes revolutionary ideals of the nation's sovereignty and the preeminence of labor, structural changes of PEMEX and increased foreign investment challenge the constituency of the revolutionary party. The authoritarian PRI is now challenging the system that it set into motion in an attempt to confront the realities of interdependence.

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