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Joint Ventures and Technology Transfers

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I. INTRODUCTION

IN RECENT MONTHS the potential growth of the Mexican economy has received much attention from the international press, journals and magazines. The foreign investor's interest has been stimulated by opportunities offered in an expanding economy based on an already diversified, technical and industrial base. The government's stated desire to convert the advantages gained from Mexico's dominant nonrenewable resource—petroleum—into a renewable or ongoing resource, i.e., an accelerated industrial and agricultural development, providing further stimulus to foreign investors.

Mexico is somewhat unique in that it is a market economy with substantial oil resources totally owned by the state, and has, unlike most developing countries, a broad technical and industrial base capable of rapid expansion. Although Mexico now ranks fifth as a world petroleum producer and sixth in reserves,¹ it is not a petroleum economy as are most of the other principal petroleum producers. The government's policies are

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¹ The News (Mexico City), Sept. 2, 1980, at 11.
aimed at developing a growing diversified economy and avoiding the pitfall of dependence solely on oil exports. Thus, Mexico offers an expanding economy with opportunities for a wide range of investments, while other areas of the world are troubled by lack of energy sources and recessionary policies.

Of interest to foreign investors is the fact that there are no restrictions on the movement of money. There is neither a limit on the amount of profits, dividends and interest which a company may pay, nor is there any limitation on the repatriation of capital, loan or equity. Further, there is no special tax which could be construed to be a penalty. Most important, Mexico still offers political stability and an economy of sustained and diversified growth with a relatively low labor cost, a high rate of return, an expanding domestic market, and proximity and ease of access to the U.S. market and to the southern regional markets.

The Mexican economy is generally considered a “mixed economy,” with certain activities, such as petroleum exploitation, reserved to the State. The State also participates in various other activities through private companies. Nevertheless, the private sector, operating in a market economy, has been, and continues to be a driving force in industrial development. Traditionally, the mixture of private and public sector has fluctuated, with neither constituting more than 55 percent of the economy, nor less than 45 percent at any given time.

This delicate balance may shift since the oil export income of PEMEX, the state-owned oil company, has more than doubled between 1979 and 1980, from $4.4 billion to $9.6 billion. The 1982 export sales could total $18 billion. This volume (plus a possible $5 billion in domestic sales) could put PEMEX among the top 10 industrial companies outside the United States in terms of sales. PEMEX currently ranks 39th on the Fortune 500 magazine list. In 1979, PEMEX accounted for one-half of all income from companies owned by the Mexican Government. Interestingly, the projected 1982 export sales of $18 billion will equal all Mexican federal spending in 1979 when Mexico nearly achieved an 8 percent growth rate. How petroleum resources are used will have a great influence on the private-public sector mix and could offer great opportunities to investors in the next decade of Mexico’s growth.

It has been Mexico’s long-standing policy that foreign investment

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* Ejecutivos De Finanzas (Mexico), Nov. 1979, at 34.
* Id.
* Fortune, June 16, 1980, at 64.
* Id. at 2.
* Mexican Business & Investment, supra note 5.
and technology are required for its economic development. At present, foreign investment constitutes only approximately five percent of total private and public investments and approximately eleven percent of total private investments. Nevertheless, since it is concentrated in the so-called “modern sectors” of the economy, such as the chemical, food, transportation, agricultural machinery, and metal industries, foreign investment is highly visible. It totaled approximately $6.8 billion by the end of 1979, having increased some 70 percent in the 1970’s. The United States’ portion of the total was about $4.6 billion, or 68 percent, which represents a decrease from 80 percent of the total foreign investment in 1971.

Other principal investments are from Germany, Switzerland, United Kingdom, Japan, Canada, Holland, France, and Italy. These foreign investments vary between one and eight percent.

The annual increments in direct foreign investment during the 1970’s were approximately $2 million in 1972, $4 million in each of the years 1973 and 1974, $3 million in each of the years 1975 and 1976, $2 million in 1977, and $3 million in 1978. Official preliminary figures indicate total direct foreign investment in 1979 might have more than doubled the 1978 figure of $3 million. The government figures further predict that 1980 investment may reach $1 billion, $1.25 billion in 1981 and $1.5 billion in 1982.

The Mexican Government has recently restated its continuing desire to diversify foreign investment and commerce, listing five countries which will be accorded top priority: Japan, Canada, Spain, Sweden, and Brazil. They have been chosen for such diversification because of the similarity of their particular historical and developmental experiences to that of Mexico. This diversification drive does not preclude a continued large growth of investment from, and trade with, the United States.

The flow of foreign investment and technology has been directed to assure support and consistency with Mexico’s development goals. To this end, the Law to Promote Mexican Investment and Regulate Foreign Investment (hereinafter referred to as the Foreign Investment Law) took effect on May 1, 1973. On December 30, 1972, Mexico promulgated the

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9 Ejecutivos De Finanzas, supra note 2.
10 Fortune, supra note 4, at 58.
11 Ejecutivos De Finanzas, supra note 2.
12 Fortune, supra note 4, at 58.
13 Ejecutivos De Finanzas, supra note 2, at 32, 34.
14 Fortune, supra note 4, at 57-58.
15 Ejecutivos De Finanzas, supra note 2, at 32.
16 Fortune, supra note 4, at 58.
17 Fourth State of the Nation Report delivered by President José López Portillo, see The News, supra note 1.
18 Law to Promote Mexican Investment and to Regulate Foreign Investment, [1973]
Law of Transfer of Technology and Use and Exploitation of Patents and Trademarks (hereinafter referred to as the Law of Transfer of Technology). This was followed by the new Law of Inventions and Trademarks in February, 1976. The following is an analysis of these three laws and how they relate to the foreign investors' interest in the expanding Mexican economy.

II. 1973 FOREIGN INVESTMENT LAW

The 1973 Foreign Investment Law defines "foreign investments" as those investments made by foreign companies, persons or economic units, or by Mexican companies with a majority of foreign capital. Therefore, companies organized under Mexican laws, including holding companies, could be considered foreign investors for purposes of this law if a majority of their capital is foreign, despite their Mexican nationality.

This Law also provides for the creation of a Foreign Investment Commission. The Commission is composed of the secretaries of seven ministries: Patrimony and Industrial Development, Gobernación (Interior), Treasury, Foreign Affairs, Commerce, Labor, and Budget and Planning.

The Commission has the power to fix the maximum percentage of foreign investment in the country's geographical regions and regulate economic activities where there are no specific legislative or executive provisions; determine the percentage and specific conditions of foreign investment in cases where special circumstances merit special treatment; allow or disallow participation of existing foreign investment in new fields of economic activity and new product lines; establish criteria and requirements for application of legal provisions and regulations regarding foreign investments; coordinate activities of government agencies and state-controlled companies with foreign investment; and prepare legislative and administrative measures with respect to foreign investment.

Under the Foreign Investment Law, the following areas are reserved exclusively for the State:

a) Petroleum and other hydrocarbons
b) Basic petrochemicals

c) Exploitation of radioactive minerals and generation of nuclear energy

d) Mining in special cases provided by the mining law

e) Electricity

f) Railroads

g) Telegraphic and wireless communication

h) Other activities established in specific laws.\(^5\)

The Law also excludes foreign participation in Mexican enterprises engaged in the following activities:

a) Radio and television

b) Urban, interurban, federal highway and automotive transportation

c) Domestic air and maritime transportation

d) Exploitation of forestry resources

e) Gas distribution

f) Other activities, established in specific laws, or regulations issued by the Federal Executive.\(^6\)

It should be noted that exploitation of mining resources, secondary petrochemicals, and automotive parts manufacturers cannot be undertaken unless 60 percent of the investment is derived from Mexican capital.\(^7\)

The Foreign Investment Law sets forth the general rule that where specific legislation governing specific activities does not require a higher percentage, foreign investment may not exceed 49 percent of the capital of a business enterprise and may not, by any means, determine the management of the enterprise, nor may its participation in the organs of administration be greater than its capital participation.\(^8\) The Foreign Investment Commission may, at its discretion, vary such percentages, applying 17 criteria, many of which consider the importance of the investment and the technology to the Mexican economy, existing Mexican producers, geographic location, exports, and local content.\(^9\)

Permanent residents are treated as Mexican investors under this law, provided, however, that they are not, by their activities, linked to a foreign center of economic activity.\(^10\) Nevertheless, this provision is not applicable to economic activities reserved exclusively to Mexicans or Mexi-

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\(^5\) Id. art 4.

\(^6\) Id. art. 5.

\(^7\) Id.

\(^8\) Id.

\(^9\) Id.

\(^10\) Id. art. 6.
can companies covered by foreign exclusion clauses.\footnote{Id.}

Foreigners may acquire up to 25 percent of the capital stock of an existing Mexican-owned company. Acquisition of a greater portion requires a permit from the Foreign Investment Commission, which uses the aforementioned 17 criteria in granting a permit.\footnote{Id. art. 8.} In new companies the foreign participation may reach 49 percent without a Foreign Investment Commission permit. A permit, however, is necessary if a foreigner desires to acquire over 49 percent of the fixed assets of a business enterprise or to lease the essential assets of such a business.\footnote{Id. art. 9.} Permits are also required for actions in which the corporate administration is acquired by the minority foreign stockholder or when a minority investor is empowered to manage the business enterprise.\footnote{Id.} Even though management in this context relates to everyday operations, a Mexicanized company is not forestalled from hiring a foreign general manager.

By this law, a National Registry of Foreign Investment was also created which requires registration of:

- Any foreign person or company investing in Mexico
- Any Mexican company with any participation of foreign capital
- Trusts in which foreigners participate and have rights regulated by the Foreign Investment Law
- Shares and participation certificates belonging to foreigners.\footnote{Id.}

The Registry is administered by a staff under the supervision of the Executive Secretary who is appointed by the President. The Executive Secretary and his staff assist the Foreign Investment Commission in its investigations and decisions. All applications are presented to the Executive Secretary's office which then processes and makes recommendations after having studied the relevant data.

The Foreign Investment Law is not retroactive and foreign-controlled companies are not required to Mexicanize if they existed prior to the enactment of the law in 1973.\footnote{Id.} The Law though does require registration and compliance by such companies with rules on new establishments, new activities, and new product lines.

Certain stockholder minority protection is permitted. The Foreign Investment Commission has issued 16 general resolutions which facilitate and clarify various situations. Capital can be increased provided the percentage distribution is not varied as between Mexican and foreign inves-
tors, nor between foreigners. Registration is only required of capital increases which do so vary.\(^{37}\)

The transfer of small numbers of shares, as defined in Ruling 6,\(^{38}\) requires approval by the Executive Secretary. Acquisitions of individual lots of up to three percent of the capital stock of a Mexican shareholder and up to five percent of the stock as between foreign stockholders\(^{39}\) are permitted if approved by the Executive Secretary. Approval of the Foreign Investment Commission is not necessary as long as the total foreign ownership does not exceed 33 percent as a result of the former example or 49 percent as a result of the transfer between foreign investors.

The Executive Secretary may also approve, without Foreign Investment Commission action, transfers of shares or fixed assets, between foreign investors belonging to "one same group" of interest as defined in Ruling 13.\(^{40}\) A recent modification of Ruling 13 also facilitates foreign mergers, reorganizations, transfers between foreign physical persons related by consanguinity in a direct or collateral line up to fourth degree, transfers between foreign husband and wife, and transfers by inheritance.\(^{41}\)

Ruling 4\(^{42}\) allows reelection of foreign directors, without prior approval, within certain limitations previously discussed (e.g., the percentage of foreign directors on the board shall not exceed capital percentage). Ruling 5\(^{43}\) requires only Executive Secretary approval, not Foreign Investment Commission approval, for the election of foreigners as directors within the same limit of proportionality. Ruling 3, 9 and 10\(^{44}\) deal with registration of trusts and bearer shares listed and traded on the stock market.

While the above rulings simplify and define procedures, Ruling 8\(^{45}\) confirms the requirement of Foreign Investment Commission permits to open new establishments. Ruling 16\(^{46}\) also confirms the requirement of Foreign Investment Commission permits prior to engaging in new economic activities and product lines. While Rulings 8 and 16 have caused

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\(^{38}\) Id. Resolución General No. 6.


\(^{40}\) Id. Resolución General No. 13.


\(^{42}\) Secretaría De Industria, Resolución General No. 4, [1975] D.O., Nov. 5, 1975 (Mex.).

\(^{43}\) Id. Resolución General No. 5.

\(^{44}\) Id. Resoluciones General Nos. 3,9,10.

\(^{45}\) Id. Resolución General No. 8.

some concern to those with existing foreign investments, Ruling 1547 has removed some of the initial concern. It allows the Executive Secretary to approve relocation, within the same state, of commercial and service establishments, provided the relocation does not involve more than a 20 percent increase in size compared to the previous establishment (measured in terms of number of employees, investment in the fixed assets of the new office, and floor space). This ruling also allows the Executive Secretary to approve, without Foreign Investment Commission action, relocation of industry to areas of relatively low economic development.48 This expansion, however, must not involve more than a 40 percent increase. Ruling 1249 provides for closure of establishments opened without a permit.

Ruling 1650 regulates new economic activities and product lines by creating a detailed list divided into classes. Any new activity or product line in a different class requires a Foreign Investment Commission permit.

"In-bond plants," previously referred to as "border plants," are exempt from the Mexican percentage capital investment and the requirement of permits for new establishments or transfers of shares.51 However, these plants must comply with registration and other provisions of the law.52 These plants are designated in-bond rather than border plants since in-bond plants may be established anywhere in Mexico. Such plants are exempt from import duties on machinery, components, and raw materials. Finally, such plants may be authorized only for export production or, in some cases, to sell in the domestic market.

The law provides that prohibited acts are null and void and that sanctions will be imposed against violators.53 Companies not registered when required to do so may not pay dividends, nor may dividends be paid on shares not registered if registration is required. Violators may be fined up to the amount of the transaction or up to 100,000 pesos. Directors, managers and examiners are declared jointly and severally responsible for their company’s compliance with the law. The law also provides for sanctions against notaries and public registry officials. Lastly, simulation of compliance with the Foreign Investment Law (such as a strawman stockholder), may result in imprisonment for up to nine years and fines of

48 Id.
49 Id. Resolución General No. 12.
50 Resoluciones De La Comisión, Resolución General No. 16, [1977] D.O., Sept. 6, 1977 (Mex.).
53 Id. arts. 27-30.
up to 50,000 pesos.\textsuperscript{54}

On August 23, 1979, a decree was published modifying Article 19 of the Registry regulations to provide for the filing within 90 working days of additional corporate financial and manufacturing data.\textsuperscript{55} Those Mexican companies which must register in the National Registry are required to update such information every year within four months from the close of their fiscal year. The apparent purpose of the decree is to build a better statistical data bank.

It is the general consensus that the attitude of the officials in the Executive Secretary's office has become more flexible and receptive to the problems and proposals of foreign investors. This is especially true where the foreign investment falls within the 17 criteria established by the Foreign Investment Law, and/or within the priorities, both by region and by activity, established by the government to reach its primary goals.\textsuperscript{56} The Foreign Investment Commission now accepts and encourages preliminary memoranda and gives a preliminary informal response. Although substantive changes in the Foreign Investment Law are not expected, the law is drafted in a manner that a pragmatic approach to the solution of changing economic development problems is possible. Government officials have expressed their awareness that Mexico needs to adapt its legislation to that of other countries in order to encourage an adequate inflow of foreign investment and technology.\textsuperscript{57} At the same time, the Mexican Government is aware of the advantages that investment in their country offers to foreign investors.

III. TECHNOLOGY, PATENT AND TRADEMARK LAW

The law regulating the transfer of technology and the use and exploitation of patents and trademarks,\textsuperscript{58} provides for a National Registry and requires that all agreements providing for the use of trademarks and patents, technical and administrative services, basic engineering, and the management of companies be registered.\textsuperscript{59} Even royalty-free contracts and contracts entered into between two Mexican companies must be

\textsuperscript{54} Id. art 31.

\textsuperscript{55} Decree Modifying art. 19 of the Registry Regulations, [1979] D.O., Aug. 23, 1979 (Mex.). Art. 19 was also modified by a decree regarding the type of data and the initial time period was extended until Apr. 30, 1980, see Secretaria De Comercio, [1978] D.O., Feb. 6, 1978 (Mex.).


\textsuperscript{57} FORTUNE, supra note 4, at 68-69. The author strongly recommends that all executives and attorneys having an interest in Mexico read the National Industrial Development Plan, infra note 72 and the Global Development Plan, [1980] D.O., Apr. 17, 1980 (Mex.).


\textsuperscript{59} Id. art. 2.
registered.

By way of exception, foreign technicians who install or repair Mexican factories or machinery or provide advisory services as part of machinery and equipment purchases are exempted from the registration requirement. Technical schools and the operations of in-bond plants are similarly excluded. The Law does not cover copyright or commercial names.

All contracts or contract modifications which are subject to registration must be presented for registration within 60 days of their execution. Registration must be granted or denied within 90 days of presentation or the contract is considered automatically registered.60

Failure to register any contract and its modifications invalidates those contracts. Such invalidated contracts have no legal effect within the Mexican Republic. No deduction for tax purposes can be taken for payments made under unregistered contracts, nor can the contracts be enforced before any Mexican authority or court.

Application for registration may be made by any Mexican person or company or by the interested foreign parties. The Ministry of National Property and Industrial Development is charged with the registration of the contracts. This Registry may refuse to register contracts which fall under any of 14 different circumstances stipulated in the Law. Some of the more important reasons for denying registration of the contracts are the following:

a) The technology involved is readily available in Mexico.

b) The price is excessive.

c) The contract clauses permit the supplier to intervene, directly or indirectly, in the administration of the acquirer of the technology.

d) Limitations are imposed upon the user with references to technological development and research.

e) Exportation of goods or services produced by the user is prohibited or limited in a manner contrary to the interests of the country, except where subsidiaries or licencees already exist or are designated later.

f) The user is required to sell exclusively to the purveyor of the technology.

g) Production is limited or prices for sale, resale, or exportation are imposed. This has been interpreted to allow the user to keep and use all the technology after expiration of the agreement.

h) The contractual term is excessive. In no case may a contract obligate the user for more than 10 years.

i) Controversies under the contract are to be submitted to foreign

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60 Id. arts. 4, 10.
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tribunals.61

The Registry has discretionary powers and may register contracts which violate some of these provisions. Certain provisions, however, such as availability of Mexican technology, restrictions on technical development, export, exclusive sale term and applicable law are not subject to any exception or discretion.62 If registration is denied, the law permits a request for reconsideration.63 During reconsideration the interested parties may enter into negotiations with the authorities. In the case of denial of registration, the parties may request judicial relief through the Mexican proceeding called the "Amparo."64

The sale of Mexican patents and trademarks by their foreign owners to a Mexican purchaser is now subject to the Law on Transfer of Technology. In addition, any contribution of technology, patents, or trademarks to the capital of joint venture Mexican companies must be approved by the Registry which, generally, is reluctant to approve such contributions.

The tax burden or trademark and patent royalties is considerable. A graduated income tax rapidly reaches 42 percent on gross royalties or sales and is imposed on all such payments. Technology fees are subject to a tax of 21 percent on gross sales since January 1, 1980, having been reduced from a previous rate of 42 percent. The technology fee taxpayer has the option of the 21 percent on gross or 42 percent on net.

As in the case of the Foreign Investment Law, in reviewing the contract for registration, the authorities generally take a pragmatic approach. Much will depend on the uniqueness of the technology, the bargaining power of the supplier, and the insistence by the user that he must have the technology and is willing to pay the price.

The current emphasis in approving technology contracts for registration is on the type of technology and its relationship to currently established goals and priorities, rather than simply on the amount of royalties or fees. The Technology Department and Registry have recently been put under the directorship of the Executive Secretary of the Foreign Investment Commission in order to better coordinate these two areas.

IV. THE LAW ON INVENTIONS AND TRADEMARKS

The Law on Inventions and Trademarks65 took effect on February

61 Id. art. 7.
62 Id. art. 8.
63 Id. art. 14.
64 A "Proceeding for Review" which is a proceeding regulated by the Law on Amparo. It implements arts. 103 and 107 of the Political Constitution of the United Mexican States.
10, 1976, replacing the previous industrial property code which had been in effect since 1943. The Law contains some important provisions regarding patents and trademarks. With respect to inventions or patents, a Certificate of Invention, bearing different rights than a traditional patent, was created. The terms of patents and Certificates of Invention are 10 years, counted from the date of grant instead of from the date of filing. The Law reduced the fields of patentable subject matter, eliminating such areas as pharmaceuticals, beverages and foodstuffs, fertilizers, herbicides, and pesticides. These areas may still be the subject matter of a Certificate of Invention. Finally, the Law introduced the requirement that patents, but not Certificates of Invention, must be "worked" within three years or be subject to compulsory licensing and/or forfeiture requirements. Certain excuses, however, are acceptable in case a patent is not worked. These excuses must be filed no later than the fourth year from the date of grant.

In addition, the Law contains some new provisions regarding trademarks. Trademark terms were reduced to five years from the date of filing, but unlimited renewals may be granted provided there is proof of use. The Law includes extensive proof of use criteria regarding trademarks. These criteria were augmented with regulations issued in October, 1976 and 1978. The Law also provides for compulsory licensing of trademarks for public interest reasons.

The most controversial provision affecting trademarks is the requirement which linked foreign trademarks, which were used on products manufactured in Mexico, with an equally prominent, original Mexican trademark. The Law generated so much controversy, however, that in December, 1978 the deadline was extended and the Ministry was granted power to issue additional extensions as it deemed appropriate. The current deadline is December 25, 1981.

V. National Industrial Development Plan

The National Industrial Development Plan was issued on March 1,
1979, in two volumes.\textsuperscript{72} The plan sets forth in some detail Mexico's goals, strategies, priorities and mechanics to develop the nation's industry. Volume I of the Plan is divided into four chapters entitled "Strategy," "Goals and Predictions," "Priorities," and "Instruments." Volume II contains lists of machinery and equipment to be purchased by PEMEX, DFE, Sidermex and Fertimex, all of which are state agencies or companies.\textsuperscript{73} In very general and summarized form, the Plan's "Strategy" is to use oil and gas surpluses to achieve sustained economic growth. Central "Goals and Predictions" include full employment and attainment of minimum welfare conditions for necessities such as food, education, health, and housing.

The Plan established three kinds of "Priorities":

1) Sectorial
2) Regional
3) For small and medium sized companies.\textsuperscript{74}

Within the sectorial category maximum priority is given to agro-industry and capital goods. Agro-industry is promoted in order to encourage rural development. The capital goods sector is promoted to provide a fixed capital and technology base. Sectorial priorities fall under two categories, Category I includes:

a) Agro-industry
b) Capital goods
c) Strategic raw materials.\textsuperscript{75}

Category II includes:

a) Non-durable consumer goods
b) Durable consumer goods
c) Intermediate goods.\textsuperscript{76}

These categories may be supplemented from time to time. In total some 83 individual types of products are listed. (See Appendix A.)

Within the regional grouping, three priority zones are established:

Zone I - grants maximum priority to:
A) the four port areas (Tampico and Salina Cruz on the Gulf, Lázaro Cárdenas and Coatzacoalcos on the Pacific) and twenty-two surrounding municipalities;
B) approximately ninety-nine other municipalities in various


\textsuperscript{73} Id.

\textsuperscript{74} Id.

\textsuperscript{75} Id.

\textsuperscript{76} Id.
parts of Mexico, including border areas.\textsuperscript{77}

Zone II - includes priority areas designated by the states by agreement with the Federal Government.\textsuperscript{78}

Zone III - is subject to regulation and is subdivided into:

A) the Federal District (Mexico City and adjacent municipalities), designated areas of controlled growth;

B) those adjacent municipalities that are designated as areas of consolidation.\textsuperscript{79}

Although Zone IV is not set out in the Plan, we can conclude that there is a fourth zone which would include the rest of the country.

Geographical selection of priorities was based on criteria such as facilitation of exports, ease of access to energy and availability of raw materials. In-bond plants are encouraged to come into the interior, thereby decentralizing and diminishing the attraction of migrant workers to the northern border.

Priorities to small or medium-sized businesses are granted to encourage labor-intensive companies. These incentives also purport to improve the structure of the market by promoting subcontracting to smaller firms, thereby diminishing the monopolistic strength of larger, integrated firms.\textsuperscript{80}

The “Instruments” or methods include direct or indirect government action. The government may act directly by providing and investing in required infrastructure and by investing in state-owned companies. The government may act indirectly by offering financial incentives and protection to the priority private sectors.\textsuperscript{81} Mexico is moving away from import control by permits and shifting to a system of tariff control.

As part of direct action by the government, 32 percent of the oil income during 1980 to 1982 is to be used for continued development of PEMEX. The remaining 68 percent will be distributed as follows: 17 percent for agro-business and rural development, 13.3 percent for transportation and communication, 10.8 percent for industrial development, 16.3 percent to the social sector and 10.3 percent to states and municipalities.\textsuperscript{82}

As part of indirect action, the government offers the following principal incentives to encourage decentralization and development of priority areas and sectors:

\textsuperscript{77} Decree, [1979] D.O., Feb. 2, 1979 (Mex.).

\textsuperscript{78} Such areas were published in [1979] D.O., Jan. 31, 1980 (Mex.).


\textsuperscript{80} FORTUNE, supra note 4, at 71.

\textsuperscript{81} Id.

\textsuperscript{82} EJECUTIVOS DE FINANZAS, supra note 2, at 26,29.
A. Reductions in Energy Costs

1. Differential prices favoring domestic use of energy and petrochemical products were established. Companies having new installations in Zone IA may obtain a reduction or rebate of 30 percent on its energy bills (electricity, gas, and petroleum).\(^{42}\)

2. Such reduction in energy costs is also available to secondary petrochemical industries in Zone IA on purchases of specified basic petrochemicals. Nonetheless, in order to receive such a reduction or rebate, the industry must comply with certain export and pricing requirements of other producers in the same municipality.\(^{44}\)

3. New installations within the Chiapas and Tabasco regions of Zone IB benefit from a reduction of up to 30 percent on selected energy costs. In the other Zone IB areas, the reduction is 15 percent of gas expenses.\(^{46}\) It should be mentioned that an extensive network of gas pipelines is being established which will service most of the Zone IA and IB areas and many other areas. These pipelines will help maximize the domestic use of Mexico’s abundant gas resources and help conserve oil for other domestic uses and export.\(^{66}\)

B. Investment and Employment Incentives

1. The government has made available investment and employment incentives, consisting of tax credits against any federal tax, except special taxes for specific purposes.\(^{67}\) The incentives are represented by certificates known as “Cerprofis” which can be used for a period of five years. Such credits are not accumulated in general taxable income, but any credits or benefits as a result of investments in fixed assets are deductible from the original cost for purposes of calculating tax depreciation. The tax credits are granted for new investments in buildings, machinery, equipment and capital, which initiate or expand “priority activities” which vary from 10 to 20 percent depending on category or activity and priority area. (See Appendix A.) The credits are also obtained as follows:
   a. For new investment in Zones I and II, and for expansion of capacity by small industry in the rest of the country, except Zone IIIA, a 25 percent benefit on the amount of investment, regardless of its industrial activity, is available. A small industry is defined as a company whose fixed assets at acquisition value do not exceed two hundred times the general minimum annual salary for the Federal District (14,600,000 pesos in 1981—currently this amount equals ap-
proximately $621,300 in U.S. currency).

b. A credit of 60 percent of the benefit could be granted for investments in new installations in industrial parks located in Zone IIIB.

c. A five percent credit on investment for acquisition of machinery is available. The new machinery or equipment, however, must be manufactured in Mexico and form part of the company's fixed assets. This incentive may be granted in addition to those mentioned in the above two paragraphs and is available to all industries anywhere in the country.

2. Regarding employment incentives by priority areas, the credit to be granted shall be equivalent to 20 percent of the general minimum annual salary for the corresponding area, multiplied by the number of employment positions generated. The credit is computed on an annual basis and is available for a period of two years. The newly-generated employment positions must, however, be maintained at least during the year following the granting of the incentive. To receive credits for new shifts, the company must have previously operated for a minimum of two years and the additional shift must represent at least a thirty-five percent increase in employment. (See Appendix B for a graphic presentation of above incentives.)

3. Profits derived from the sale of fixed assets or real estate located in Zone IIIA (Mexico City area) may be exempt from income tax when the total of the profits of such a transaction will be used to acquire property in furtherance of the taxpayer's relocation program.

C. Other Incentives

1. Incentives to certain industries locating in border areas and free zones are also available. The basic incentive is to provide duty-free importation for sales in such areas, with a possibility of sale to the interior of Mexico. Such industries may opt for either these duty-free importation incentives or the investment and employment benefits previously mentioned.

2. While there are a number of additional decrees such as export rebates which allow certain limited benefits to specific activities, the

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88 The list of qualified machinery and its manufacturers was published in [1979] D.O., June 28, 1979 (Mex.).
91 Id.
aforementioned incentives, and the manufacturing program for producers of export products, remain the principal incentives of the National Industrial Development Plan.

An intersecretarial National Commission for Industrial Development was created to supervise the Industrial Development Plan and decide on incentives. The Commission is composed principally of the same ministries that form the Foreign Investment Commission.

VI. Conclusion

As Mexico matures and gains confidence in its development and its ability to direct this development, its traditional concern regarding foreign economic and capital dominance may be expected to diminish. The language of interdependence is already evident in the President's and other officials' remarks. Mexico has become aware of the benefits of participation in the international network of trade, lending and borrowing, direct investment, and technology, including managerial expertise.

Hopefully, Mexico's petroleum will not inspire overconfidence and overreaction in the public sector to the private sector's disadvantage. This would ultimately lead to new restrictions on foreign investment and, thus, cloud the current optimistic picture.

There is new warmth in the welcome being extended to foreign investment in Mexico. New foreign investors wishing to enter, or those already in Mexico wishing to expand, should not pass up this opportunity and be reluctant to explore the possibilities. Not all will find an open door. Nevertheless, where there is a perceived benefit to Mexico, there is an increased likelihood of a prompt and perhaps favorable response, including the extension of incentives to companies wishing to participate in the Industrial Development Plan. Only by presenting a sufficient number of attractive and viable projects will we be able to determine the extent to which foreign investment will be encouraged to provide direct risk and equity capital, and the terms and conditions on which it will continue to be received.

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84 See Decree, [1979] D.O., Mar. 19, 1979 (Mex.).
85 See Fortune, supra note 4, at 45-71; The News, supra note 1.
## APPENDIX A

<table>
<thead>
<tr>
<th>Priority industrial activity</th>
<th>Location of investment</th>
<th>Percentage of benefits granted on investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anywhere, except Zone III A.</td>
<td></td>
<td>20%</td>
</tr>
</tbody>
</table>

**Category 1**

- In Zone III B., only as concerns expansion of the company’s existing industrial activity
- Zone I: 20%
- Zone II: 15%

**Category 2**

- In the rest of the country, excepting Zone IIIA, only as concerns expansion of the company’s existing industrial activity and up to expansion percentages authorized by regulations governing enforcement of the corresponding Decree
- Zone II: 10%

### Priority Industrial Activities for the Application of the Federal Decree Which Establishes Fiscal Stimulants for the Promotion of Employment and Investment in Industrial Activities

(As published in the “Diario Oficial” of March 9, 1979 and January 16, 1980)

#### Category 1

**1.1 Agricultural Industry**

**1.1.1. Food Products for Human Consumption**

1.1.1.1. Processing of natural milk and production of cream, butter and cheese.

1.1.1.2. Preparation, preservation and packaging of meat and fish.

1.1.1.3. Manufacture of soy and wheat flours.

1.1.1.4. Manufacture of nutritional crackers and pastas for basic consumption.
1.1.1.5. Manufacture of oils and fats of vegetable origin.
1.1.1.6. Processing of fruits and vegetables.
1.1.1.7. Manufacture of sugar.
1.1.1.8. Manufacture of nutrients for food preparation.

1.1.2. MATERIALS FOR THE AGRICULTURAL SECTOR

1.1.2.1. Manufacture of fishmeal.
1.1.2.2. Manufacture of feeds for animal consumption.
1.1.2.3. Manufacture of chemical products for the agricultural and livestock sectors.

1.1.3. OTHER AGROINDUSTRIAL PRODUCTS

1.1.3.1. Manufacture of chemical products derived from farming, livestock raising, forestry and fishing development.
1.1.3.2. Manufacture of cellulose.

1.2. CAPITAL GOODS
1.2.1. MACHINERY AND EQUIPMENT FOR THE PRODUCTION OF FOODSTUFFS

1.2.1.1. Manufacture of machinery and equipment for the processing of food products.
1.2.1.2. Manufacture of wheeled tractors, harvesters and agricultural tools.
1.2.1.3. Manufacture of crop-dusting airplanes.

1.2.2. MACHINERY AND EQUIPMENT FOR THE PETROLEUM AND PETROCHEMICAL INDUSTRIES

1.2.2.1. Manufacture of machinery and equipment for on-shore and offshore exploration and drilling.
1.2.2.2. Manufacture of valves, valve trees, connections and pumps.
1.2.2.3. Manufacture of motorpumps, motorcompressors, turbocompressors and ventilators.
1.2.2.4. Manufacture of tubing for drilling, shoring and processing.
1.2.2.5. Manufacture of tubular heaters.

1.2.3. MACHINERY AND EQUIPMENT FOR THE ELECTRICAL INDUSTRY

1.2.3.1. Manufacture of machinery and equipment for the generation and transmission of high tension electric energy.
1.2.3.2. Manufacture of hydraulic, steam and gas turbines and their electrical generators.
1.2.3.3. Manufacture of boiler injection pumps and large volume injection pumps.

1.2.4. MACHINERY AND EQUIPMENT FOR THE MINING-METALWORKING INDUSTRY

1.2.4.1. Manufacture of machinery and equipment for the extraction, concentration and transformation of minerals.
1.2.4.2. Manufacture of machinery and equipment for pelletizing, smelting and coking of ferrous minerals.
1.2.4.3. Manufacture of machinery and equipment for smelting, refining, molding and sheet pressing of metals.
1.2.4.4. Manufacture of machinery and equipment for the manufacture of metallic products, beginning with metal sheeting and wire.

1.2.5. MACHINERY AND EQUIPMENT FOR CONSTRUCTION

1.2.5.1. Manufacture of machinery and equipment for the construction industry.
1.2.5.2. Manufacture of machinery and equipment for the movement and conditioning of earth.

1.2.6. TRANSPORT EQUIPMENT

1.2.6.1. Manufacture of diesel, engines, tractor trucks, medium and semi-heavy duty trucks, trolley buses and passenger buses.
1.2.6.2. Construction of non-sport ships and boats.
1.2.6.3. Manufacture of locomotives, railroad cars, and full
scale railway equipment and installations.

1.2.7. Diverse Industrial Machinery and Equipment

1.2.7.1. Manufacture of machine-tools.
1.2.7.2. Manufacture of tubing of carbon steel and alloys.
1.2.7.3. Manufacture of pumps, valves, connections and transporting belts for the processing industry.
1.2.7.4. Manufacture of measuring, control and laboratory equipment for industrial use.
1.2.7.5. Manufacture of electric direct current motors, high power alternating current motors and synchronous motors.
1.2.7.6. Manufacture of machinery and equipment for the cement industry.
1.2.7.7. Manufacture of machinery for the paper and cellulose industries.
1.2.7.8. Smelting, forging and molding pieces for machinery and equipment of iron and steel and their alloys.
1.2.7.9. Heavy duty metal working and soldering equipment.
1.2.7.10. Manufacture of industrial boilers and heat exchangers.
1.2.7.11. Manufacture of machinery and equipment for the textile, garment and shoe industries.
1.2.7.12. Manufacture of machinery and equipment for the plastic and glass industries.
1.2.7.13. Production of machinery and equipment for industrial refrigeration.

1.2.8. Equipment and Components for the Electronics Industry

1.2.8.1. Production of electronic telephone exchanges and switchboards.
1.2.8.2. Production of electronic equipment and components for communication and industry.
1.2.8.3. Production of electronic computer systems and components.
1.2.8.4. Production of electronic integrated circuits and components.
1.3. **Strategic Inputs for the Industrial Sector**

1.3.1. Production of iron and steel in integrated and semi-integrated systems, including special steels.

1.3.2. Manufacture of cement.

**Category 2**

2.1. **Non-Durable Consumer Goods**

2.1.1. **Textiles and Shoes**

2.1.1.1. Manufacture of leather, cloth or plastic shoes for popular consumption.

2.1.1.2. Manufacture of cotton and artificial yarns and fabrics for articles of clothing and domestic use for popular consumption.

2.1.1.3. Manufacture of articles of clothing and domestic use for popular consumption.

2.1.1.4. Whitening, mercerization, dying, stamping and finishing fabrics for the manufacture of articles of clothing and domestic use, for popular consumption.

2.1.2. **Other Non-Durable Consumer Products**

2.1.2.1. Manufacture of laundry and cleansing soaps and detergents for popular consumption.

2.1.2.2. Manufacture of containers or receptacles of cardboard, glass and plastic as well as tin containers for foodstuffs.

2.1.2.3. Manufacture of paper and cardboard.

2.1.2.4. Manufacture of school utensils.

2.2. **Durable Consumer Goods**

2.2.1. **Equipment and Accessories for Domestic Use**

2.2.1.1. Manufacture of electrodomestic appliances for popular use.

2.2.1.2. Manufacture of furniture and domestic accessories for popular use.
2.2.2. **Auxiliary Transport Equipment**

2.2.2.1. Manufacture of automotive parts.
2.2.2.2. Manufacture of parts and components for the naval industry.
2.2.2.3. Manufacture of parts and components for locomotives and railroad cars.

2.2.3. **Equipment and Accessories for the Service Industries**

2.2.3.1. Manufacture of optical equipment and accessories.
2.2.3.2. Manufacture of medical-hospital equipment and instruments.
2.2.3.3. Manufacture of equipment and accessories for telephonic communications.
2.2.3.5. Manufacture of hand tools for various uses.
2.2.3.6. Manufacture of anticontaminant equipment and accessories and industrial security equipment for human use.

2.2.4. **Equipment and Materials for the Electrical Industry**

2.2.4.1. Production of equipment and materials for the distribution of electric energy.
2.2.4.2. Production of electric wiring (conductors and cables).

2.3. **Intermediate Goods**

2.3.1. **Petrochemical Products**

2.3.1.1. Manufacture of fibers derived from petrochemical products and their raw materials.
2.3.1.2. Manufacture of intermediate petrochemical products for general use.
2.3.1.3. Manufacture of synthetic rubber and resins, plasticizers and their raw materials.

2.3.2. **Chemical Products**

2.3.2.1. Manufacture of acids and basic inorganic salts.
2.3.2.2. Manufacture of chemical specialties derived from the
coking and coal and from the distillation of tar.

2.3.2.3. Manufacture of sodium and potassium alkalis.

2.3.2.4. Manufacture of metallic silicon and intermediate monomers from organic silicon products.

2.3.2.5. Manufacture of pharmaceutical products and raw materials for the public sector's Basic List of medicines.

2.3.3. MINING-METALWORKING PRODUCTS

2.3.3.1. Smelting and refining of aluminum.

2.3.3.2. Molding and sheet pressing of iron and steel and their alloys.

2.3.3.3. Smelting, refining, molding and sheet pressing of special steels.

2.3.4. MATERIALS FOR CONSTRUCTION

2.3.4.1. Manufacture of plate glass and plastic products for construction.

2.3.4.2. Manufacture of bricks, partitions, roof tiles and other clay products.

2.3.4.3. Manufacture of construction materials with a cement base designed for popular housing and urban infrastructure.

2.3.4.4. Manufacture of bathroom fixtures and sanitary accessories of clay of porcelain for popular use.

2.3.4.5. Manufacture of agglomerated woods and plywood panels.

2.3.5. OTHER INTERMEDIATE PRODUCTS

2.3.5.1. Manufacture of refractories and industrial abrasives.

2.3.5.2. Industrialization of non-concessionable non-metallic minerals.
### APPENDIX B

#### FISCAL INCENTIVES TO INDUSTRY
*(National Industrial Development Plan)*

<table>
<thead>
<tr>
<th>Geographical Location of Investment</th>
<th>Priority Activities</th>
<th>All Indust. Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Category 1</td>
<td>Category 2</td>
</tr>
<tr>
<td>Zone I Preferential Priorities</td>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td>Zone II-State Priorities</td>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td>Zone III Regulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Controlled Growth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Consolidation</td>
<td>25b</td>
<td>20b</td>
</tr>
<tr>
<td>Rest of Country</td>
<td>25b</td>
<td>20</td>
</tr>
</tbody>
</table>

a) Companies with fixed assets not greater than 200 times the annual minimum wage in the Federal District.

b) Applicable only to increases of production capacity within the same industrial activity.

In Zone III B limited to 100% increase of installed capacity as of February 2, 1979.
