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CORPORATE RESTRICTIONS IN MEXICO AND THE UNITED STATES

by

DENNIS RIOS

(Under the Direction of Charles R.T. O'Kelley)

ABSTRACT

Mexico and the United States have had throughout their history very different experiences in their international relations and thus different approaches towards foreign investment. Both Mexican and American corporations looking to invest in each others countries have to face several restrictions in their attempt to conduct business. These restrictions are constantly changing as the needs and circumstances in each country change. The United States throughout most of its history has had for the most part, a very open policy towards foreign investment. Mexico has been throughout most of its history, on the other side; adopting very restrictive measures towards foreign investment. This however has changed drastically in the last 2 decades. It is therefore important for corporations in these countries who conduct business which each other, or have the intention to do so, to have a good understanding of the restrictions imposed in these countries and how these might change.

INDEX WORDS: Corporations, Corporate Restrictions, Foreign Investment in Mexico, Foreign Investment in the United States, N.A.F.T.A., Dean Rusk Center, LL.M., The University of Georgia.

CORPORATE RESTRICTIONS IN MEXICO AND THE UNITED STATES

by

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August 2007

DEDICATION

To my mom, family and friends

ACKNOWLEDGEMENTS

I would like to thank my family for supporting and believing in me. I specially want to thank my mom and grandmother for their unconditional love and guidance.

I want to thank my friends for their encouragement and for believing in me.

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CHAPTER I

INTRODUCTION

Nationality of a corporation is determined in a variety of ways, depending on the country. Globalization, a common term to us now has opened up the markets for firms which now take a transnational view, rather then a national view in searching for ways to fulfill the firm's objective, shareholder wealth maximization.[1] This thesis will focus on the restrictions corporations face when trying to invest in Mexico and the United States. My study will range from restrictions to incorporate, to restricted activities in each country. In order to understand the restriction imposed in both countries, and how they conduct business, I will provide some background analysis on the evolution of each country's approach to foreign investment to better understand the stand point of both the United States and Mexico, and what factors influence their policy towards foreign corporations and their investment. I will focus on direct investment rather than indirect investment, giving only a brief analysis of indirect investment. I will also provide a description of some of the legal resources firms may use when faced with certain restrictions or conflicts. I will start with Mexico first and will then move to the United States. An analysis of the North American Free Trade Agreement signed by Mexico, the United States and Canada will be included, since its enactment has had a significant impact on how the United States and Mexico do business with each other.

[1] R.H. COASE, THE NATURE OF THE FIRM (1937).

CHAPTER II

RESTRICTIONS IN MEXICO

Mexico's governmental structure is very similar to the United States. It divides governmental power into the legislative[2], executive[3] and judicial branches; both at federal and state level. However, unlike the United States, Mexico's states have less autonomy. The executive branch is by far the most powerful among the 3 branches. Even more so than in the U.S. The legislative process in Mexico resembles the one in the United States. The constitution grants congress the faculty to encourage promotion of Mexican investment and enact laws directed to the regulation of foreign investment.[4] Article 89 compels the president to execute the laws passed by congress and it empowers him to direct foreign policy and make international treaties.[5]

The different types of organizational forms allowed by Mexican law are regulated by the Ley General de Sociedades Mercantiles[6] (General Law of Mercantile Organizations) and the Civil Code.[7] The most common way to invest in Mexico is through a corporation.[8] There are two

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[2] The legislative branch is composed by Senators and Congress Men (called "diputados") just like in the United States.

[3] Presidents in Mexico are in office for 6 years and reelection is prohibited by the Constitution. This measure was adopted in the constitution of 1917 as a result of the Mexican revolution which overthrew President Porfirio Diaz who managed to stay in the presidency approximately 31 years by reelecting himself 5 times.

[4] Constitución Politica de los Estados Unidos Mexicanos [hereinafter MEX. CONST.] art. 73 § XXIX-F "To make laws intended to promote Mexican investment, regulate foreign investment, transfer technology, and generate, disseminate, and apply scientific and technical knowledge that national development requires;"

[5] *See id.* at art. 89-X. "Direct foreign policy and conclude international treaties, and submit them to the approval of the Senate: In the conducting of this policy, the head of the Executive Power will observe the following standard principles: self-determination of peoples, non-intervention, peaceful resolution of disputes, juridical equality of states, international cooperation for development, and the struggle for international peace and security."

[6] Ley General de Sociedades Mercantiles, Diario Oficial, Aug. 4, 1934, as amended June 11, 1992, reprinted and translated in COMMERCIAL LAWS OF THE WORLD: MEXICO 290-342 (Foreign Tax Law Publishers 1996) [hereinafter "LGSM"].

[7] Brandon W. Freeman, *An Overview of Foreign Direct Investment in Mexico*, 3-AUT NAFTA: L. & Bus. Rev. Am. 123, 133 (1997).

[8] *Id.*

corporate forms allowed by Mexican legislation: Sociedad Anónima[9] (S.A.) and Sociedad Anónima de Capital Variable[10] (S.A. de C.V.) The incorporation of a firm in Mexico takes place before a Notary[11] or by subscribing the certificate of incorporation at the public registry of commerce.[12] The certificate of incorporation must include among other things, the following information: name, nationality and address of the people conforming the corporation, type of activity to be conducted, duration, number and nature of shares, amount of social capital, governance structure and faculties granted to corporate officers, dividend payments, causes for early termination of the corporation and the liquidation process.[13] But first, foreign corporations in Mexico must receive authorization from the Ministry of Foreign Affairs[14]. The Ministry of Foreign Affairs must emit its decision to an incorporation request within 5 business days of the petition.[15]

The S.A. resembles U.S. corporations, and is the most common business organization in Mexico.[16] The S.A. de C.V. differs from the S.A. in the fact that it is able to reduce its capital within the limits established in the bylaws, by a mere stockholder resolution, without having to follow other requirements applicable to the S.A. Both forms however have corporations'

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[9] L.G.S.M. art. 87.
[10] *See Id.* art. 87.
[11] Notaries in civilian system are very different from Notaries in common law countries. Unlike the U.S. notaries are required to have a law degree in Mexico and 2 years of experience working for a Notary before they can qualify to take the Notary aptitude test. After which if they pass, they must wait until a notary position opens up and compete against other aspiring notaries for the position. The number of notaries in Mexican cities is proportionate to the population of that city.
[12] L.G.S.M. art. 90.
[13] *See Id.* art. 6.
[14] Ley de Inversion Extranjera (L.I.E.) (Foreign Investment Law) [hereinafter L.I.E.] § 15 "Permission from the Ministry of Foreign Affairs is required in order to incorporate. The exclusion of foreigners clause must be inserted in the incorporating corporation's statutes or the agreement provided for in section I of article 27 of the constitution."
[15] *Id.* § 16-A "Every application for a permit to which articles 15 and 16 of this Law refer must be decided by the Ministry of Foreign Relations within the five working days following the date of its presentation. Once that period expires without a decision being issued, the respective application shall be considered to be approved."
[16] Freeman, supra note 7, at 135.

distinctive feature: limited liability.[17] The S.A. requires at least 2 shareholders and has no limit on the maximum number of shareholders. A minimum capital contribution of 50,000 pesos (approximately 11 pesos per dollar) is required and at least 20% of this amount must be deposited immediately. Corporate governance in Mexico follows shareholder supremacy model, shareholders elect either a sole administrator or a board of directors to direct the firm's activity. Directors may be removed from the board by shareholders at any time; minority appointed directors may only be removed if the entire board is removed.

A) XIX CENTURY'S FOREIGN INTERVENTIONS (1810-1911)

Centuries of oppression under the Spanish rule, exploitation and a number of military aggressions by other foreign countries during the XIX century paved the way for Mexico's restrictive policy towards foreign corporations during most of the XX century.

1. Independence (1810-1821): after more than 500 years under the Spanish rule and an independence war which lasted 11 years, Mexico had finally gained its independence from the Spanish rule. The new independent country began its path towards self-determination and the construction of a sovereign nation[18].

2. Mexico-United States War (1846-1848)[19]: this conflict was initiated not long after Mexico gained its independence and was basically motivated by the United States' desire to expand, and America's Manifest Destiny ideology[20]. This conflict resulted in the lost of more than half of

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[17] *Id*.
[18] ALICIA HERNANDEZ CHAVEZ, MEXICO: A BRIEF HISTORY 98-116 (University of California Press 2006).
[19] *Id*. at 144 (2006).
[20] JOSEPH WHEELAN, INVADING MEXICO: AMERICA'S CONTINENTAL DREAM AND THE MEXICAN WAR, 1846-1848 412 (Carrol and Graph Publishers 2007).

Mexico's territory[21] to the U.S. for the price of 15 million dollars.[22] The U.S. finally realized its dream to expand its borders from the Atlantic Ocean to the Pacific Ocean.[23]

3. Spanish, English and French Invasion (1853-1862): Seventeen years after its independence Mexico was seen by the U.S. and Europe as a weak nation, a colony that could easily be invaded to exploit its riches.[24] Initially this invasion had been orchestrated by England, Spain and France with indirect support by Austria.[25] These three countries invaded Mexico. Shortly thereafter Spain and England withdrew. France remained with the intention of instating an empire.[26] On May 5, 1962 France was defeated[27] in the Battle of Puebla.[28]

4. "Porfiriato" and the Mexican Revolution (1876-1911): The era of Porfirio Díaz's dictatorship is known as the Porfiriato. General Diaz fought against the European invasion in the 1950's and helped defeat the French. President Diaz opened up Mexico's doors to foreign investors[29]. During his government he took an approach towards foreign investment which depended mostly on the exportation of primary goods, while the government took a very passive role and abstained themselves from intervening; thus allowing a free market economy.[30] President Diaz was determined to bring foreign investment to Mexico, thinking this approach would boost the nation's economy. Foreign investment poured into the country, mainly into railroad,

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[21] GASTON GARCIA CANTU, LA INTERVENCION FRANCESA EN MÉXICO 12 (Clío ed. 1998).
[22] WHEELAN, supra note 20, at 4 07.
[23] *Id.* at 29 (2007).
[24] GARCIA, *supra* note 21, at 11.
[25] HERNANDEZ, *supra* note 18, at 149.
[26] *Id.* at 144-145 (2006).
[27] GARCIA, *supra* note 21, at 165-171 (1998).
[28] This triumph is mostly celebrated in the U.S. by both Mexican-Americans and Americans; and is more commonly known as the "Cinco de Mayo" celebration. Ex-president Juarez referred to this battle as Mexico's second independence.
[29] Gloria L. Sandrino, *The NAFTA Investment Chapter and Foreign Direct Investment In Mexico: A Third World Perspective*, 27 VNJTL 259, 280 (1994).
[30] Michael C. McClintock, James J. Tallaksen, and Richard J. Wolkowitz,, *An Introduction to Direct Foreign Investment in Mexico,* 5 Ind. Int'l & Comp. L. Rev. 101, 105 (1994).

construction, mining, real estate, public utilities, banking, commerce, etc.[31] Mexico's industry was not ready to compete in a free market economy and the result at the end of president Diaz' dictatorship was alarming.[32] By 1911 foreign corporations owned 24% of Mexico's land and over 50% of Mexico's total wealth. The main investors where France, Britain and the United States[33]

The Mexican Revolution began with the call to arms made on November 20, 1910 by Alvaro Obregon and lasted until 1921 with the removal of President Porfirio Diaz from power. It is estimated that the war killed 1 million of the 1910 population of 15 million.[34]

B) POST REVOLUTION FOREING INVESTMENT

1. Constitution of 1917[35]: this constitution came as a result of the revolution,[36] after Porfirio Diaz was overthrown and was very restrictive towards foreign investors and corporations. Mexico saw the need for self-determination through isolation and the strengthening of its national corporations and enterprises. It was obvious from the experience during Diaz's dictatorship that Mexico's enterprises were not ready to compete in an open market with foreign investors. Most of Mexico's independent life, up to this point, had been a constant struggle to remain independent and organize its political and socioeconomic structure.

Calvo Clause**:** the constitution of 1917 nationalized Mexico's minerals, waters and land resources adopting the Calvo Clause (named after Nineteenth Century Argentine diplomat and scholar Carlos Calvo[37]) in Article 27, which requires foreign corporations and individuals to

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[31] Sandrino, *supra* note 29, at 259, 280.
[32] RALPH H. FOLSON, NAFTA AND FREE TRADE IN THE AMERICAS IN A NUTSHELL 5-6 (2004).
[33] JAMES E. HERGET & JORGE CAMIL, AN INTRODUCTION TO THE MEXICAN LEGAL SYSTEM 1-19 (1978).
[34] RALPH H. FOLSON, MICHAEL WALLACE GORDON, DAVID A. GANTZ, NAFTA AND FREE TRADE IN THE AMERICAS: A PROBLEM-ORIENTED COURSEBOOK 32 (2004).
[35] This is Mexico's current constitution which went into effect on May 11, 1917.
[36] Replacing the previous constitution of 1857.
[37] Denise Manning-Cabrol, *The Imminent Death of the Calvo Clause and the Rebirth of the Calvo Principle: Equality of Foreign and National Investors*, 26 Law & Pol'y Int'l Bus. 1171 (1995).

adopt this clause before being allowed to acquire real estate and water sources such as lakes, wells, etc.[38] This clause must also be adopted by foreign corporations wanting to obtain concession to exploit mines and other such natural resources. The clause states that in case of a dispute, these foreign corporation or persons will not invoke the protection of their national governments. Failure to do so would result in the forfeiture of their assets to the benefit of the state. This stipulation is still effective and must be adopted by all foreign corporations wishing to acquire or exploit such natural resources. The Calvo clause has been attacked by many foreign countries which argue that its application is done according to domestic law, and that domestic law can never prevail against international law.[39] But to this day the Calvo clause has subsisted and is still enforced as a constitutional requisite.

Restricted Zones: this constitution also established a restricted zone, where foreign individuals and corporations are prohibited from acquiring real estate. The restricted zone is 100 kilometers from the borders and 50 kilometers from the beach.[40] This stipulation is still effective in Mexico.[41]

Article 123 of the constitution transformed labor law into constitutional law, providing strong protection to workers rights.[42]

This constitution also established antitrust provisions, prohibiting monopolies and monopoly practices. In reality though, Mexico's antitrust provisions are not well established yet

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[38] "Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters, and their appurtenances, or to obtain concessions for the exploitation of mines or of waters. The State may grant the same right to foreigners, provided they agree before the Ministry of Foreign Relations to consider themselves as nationals in respect to such property, and bind themselves not to invoke the protection of their governments in matters relating thereto; under penalty, in case of noncompliance with this agreement, of forfeiture of the property acquired to the Nation."

[39] RICARDO MÉNDEZ SILVAEL RÉGIMEN, JURÍDICO DE LAS INVERSIONES EXTRANJERAS EN MÉXICO 90 (U.N.A.M. 1st ed 1969), JORGE BARRERA GRAF, LA REGULACIÓN JURÍDICA DE LAS INVERSIONES EXTRANJERAS EN MÉXICO 12 (UNAM 1st ed. 1981).

[40] MEX. CONST.. art. 27 "Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers along the frontiers and of fifty kilometers along the shores of the country."

[41] McClintock ET AL, supra note 30, at 101, 105.

[42] MEX. CONST. art 123.

and are rarely enforced.[43] The state just like the U.S. has antitrust immunity and the activities reserved for the Mexican government by the constitution of 1917[44], are not considered to be a monopoly; and these included:

a) Telegraphs;

b) Radiotelegraphy;

c) Mail Service;

d) Issue of Bills;

e) Mintage of currency;

Mexico's government in accordance with the revolutionary ideals and the nation's sentiment, took greater control of the nations' economy by nationalizing certain sectors and Mexicanizing other sectors

During the 1920's and the 1930's Mexico tried negotiating with the foreign oil companies operating in Mexico, issues on taxation, drilling permits, etc. These oil companies refused to negotiate and sought diplomatic protection from their local governments, and in 1938 president Lazaro Cardenas nationalized Mexican oil, expropriating the foreign owned oil companies.[45] This event shaped the United States' policy towards nationalization and the adoption of its prompt, adequate and effective compensation standard.[46] This event discouraged foreign investment in other economic sectors, not just the oil industry, since this drastic action taken by Mexico created uncertainty among foreign investors who feared for their investment.[47] At this time Mexico turned towards Import Substitution Industrialization, developing, producing

[43] MEX. CONST., art. 28.
[44] MEX. CONST., art. 28 (1917).
[45] Sandrino, *supra* note 29, at 290.
[46] *Id.* at 291.
[47] *Id*.

and manufacturing certain intermediate and capital goods in order to build the local infrastructure necessary to produce goods.[48]

Foreign investment began increasing again during World War II since the demand for raw materials increased and countries were focusing more on war production. Mexico benefited from this and foreign firms were allowed to participate more actively in several different sectors of Mexico's economy until the post World War II era, when president Avila Camacho (1940-1946) exercising the extraordinary wartime powers conferred to the executive by the constitution executed an emergency decree which created restrictions on the creation, modification, liquidation and transfer of Mexican stock. Mexico did this in order to protect itself from flight capital and to keep Mexican capital from being displaced by foreign investors. Foreign investment quadrupled from 1940-1965.[49]

This massive increase of foreign investment lead to the phenomenon called Mexicanization in the 1960's where a majority of Mexican ownership (at least 51%) was required in certain private businesses and industry in order to ensure local control of the economy.[50] Other areas were restricted from foreign investment (requiring Mexican ownership of 51%) like the automotive industry, chemicals (fertilizers, insecticides, etc.), and office equipment. The Ministry of Foreign Relations excluded foreign corporations from participating in certain sectors such as banking, insurance and credit unions. These restrictions resulted in a drop of foreign investment which forced Mexico to change its policies.

C) MAQUILADORA INDUSTRY

Low labor cost and Mexico's proximity to the U.S. make it attractive for foreign corporations looking to invest. The maquiladora industry flocked into the Mexican borders in

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[48] *Id.*
[49] *Id.*
[50] *Id.*

1965 when Mexico created a duty-free industrialized market for them. Mexico's intent here with the maquiladora industry was to attract foreign corporations to operate along the northern borders of Mexico thereby producing jobs.[51] These factories mainly focus on assembling, manufacturing and exporting finished goods. They import unprocessed material from foreign countries which are free of import duties. Taking advantage of the low labor costs, these unprocessed goods are then assembled or processed by Mexican workers and the finished product is then shipped out to another country.[52] In order to take advantage of these exceptions these corporations must register with the Mexican government. These firms must have a corporate presence in Mexico in order to be allowed to register.

From 1980 to the 1990's many countries such as the U.S., Korea, Japan and Taiwan established maquiladoras in Mexico. The proximity Mexico has with the U.S. makes it attractive for Corporations wanting to take advantage of the U.S. market. Many of these corporations take advantage of "just in time shipping" which enables them to quickly move input from the maquiladora in Mexico to other factories in the Unites States. This system reduces inventory to the minimal level which then reduces distribution and production costs.[53] The companies produce and deliver goods as they are needed without having to incur in storage costs such as warehouse leases and personal to secure these goods.[54] Despite these advantages offered by maquiladoras in Mexico, many have relocated to other countries in recent years. The reasons for this are increased labor costs, fiscal uncertainty and competition from other countries.[55] This has

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[51] Richard Conniff, *Tex-Mex: The Winding Border Along the Rio Grande Both Divides and Unites Two Fast Changing Worlds*, NATIONAL GEOGRAPHIC, Feb. 1996, Vol. 189, No. 2, at 57.
[52] Heidi M. Timmons, *Fox Tracks Across the Mexican Maquiladora Industry*, 17 TRANSNAT'L LAW 323 (2004).
[53] *Id*. at 325.
[54] Sanyo for example produces 5.5 million televisions per year mainly for Wal-Marts in the United States. They use the "just in time" method to divide production between Tijuana in Mexico and Arkansas in the United States. This makes competitors such as those located in Asia for example, unable to compete. *Id.*
[55] *Id*. at 326.

created a severe unemployment problem especially for the northern states in Mexico[56] where the maquiladora industry is more prominent. When these corporations flocked to the Northern Borders of Mexico back in 1965, they immediately employed thousands of workers. Many people Mexico relocated with their families to the northern states in order to work for these maquiladoras. As a result borders cities experienced a significant growth. This gave the population a false sense of security since as soon as lower tariffs or labor wages were offered in another country these corporations immediately relocated, leaving thousands of families without income. Many of which had relocated from other states in Mexico with their entire family in their effort to find a job. This creates huge socioeconomic problems for Mexico which is left with these overpopulated, unemployed border towns. Consequently Mexico is now looking for ways to adapt its policy and avoid such problems.

D) FOREIGN INVESTMENT LAW OF 1973

The Law to Promote Mexican Investment and [57]Regulate Foreign Investment (hereinafter F.I.L.) was published in the Diario Oficial de la Federación (Diario Oficial)[58] on March 9, 1973 and became enforceable 60 days after its publication pursuant to article 1 of the F.I.L. This law defined as foreign investors: corporations, individuals and companies which were not Mexican as well as Mexican Corporations with a majority of foreign capital or where their controlling officers where foreign.[59] The Foreign Investment Commission (FIC) was created to implement and supervise this law. The FIL of 1973 was directed towards the promotion of Mexican investment and the regulation of foreign investment in order to stimulate and balance the

[56] Such as Chihuahua, Baja California, Sonora, etc. All of which share a border with the United States.
[57] JORGE BARRERA GRAF, LA REGULACIÓN JURÍDICA DE LAS INVERSIONES EXTRANJERAS EN MÉXICO 11 (1981).
[58] El Diario Oficial de la Federación [hereinafter D.O.F.] is similar to the United States' Code of Federal Regulations.
[59] L.I.E. art. 2.

country's economic independence.[60] This law also restricted different sectors where only the State had access and others where only Mexican corporations were allowed to participate. The areas restricted to Mexican corporations[61] were as follows:

a) Domestic land transportation of passengers, tourists and cargo, not including the messenger and express package services;
b) Retail trade of gasoline and liquid petroleum gas;
c) Radio broadcasting services and others of radio and television, other than cable television;
d) Credit unions;
e) Developmental banking institutions, in the terms of the law on the matter; and rendering of professional and technical services which are expressly set forth in applicable legal provisions.
f) Radio
g) television;
h) urban and interurban automotive transportation and transportation on federal highways;
i) domestic air and marine transportation;
j) exploitation of forestry resources;
k) gas distribution; [62]

The FIC commission had very broad discretion in determining in which areas to allow foreign investment and to what extent. Its main purpose was to establish rules and guidelines,

[60] *See id.* art. 1.
[61] *See id.* art. 6 (1973).
[62] *See id.* art. 6.

and to handle issues raised in connection to the FIL.[63] Particularly the law had the authority to increase or decrease the percentage of foreign investment in different economic sectors; permit higher levels of foreign ownership in special cases; determine the participation of foreign investment in new or previously existing businesses; consult and coordinate various governmental agencies in foreign investment matters; determine criteria and requirements regarding foreign investment; and exercise other powers conferred by the law.[64] The rest of the industries not reserved for the State or for Mexican corporations with a few exceptions were subject to the 49% ownership cap or a percentage lower. Here are some examples:

a) secondary petrochemicals (40%);
b) manufacture of automotive components (40%);
c) exploitation and use of minerals (49%) (but exploitation of national mining reserves was limited to 34%)

Foreign investors looking for a majority ownership in a Mexican enterprise required approval from the Commission.[65] Before the Commission granted its approval however, the foreign firm had to meet the seventeen characteristics included in article 13. Basically article 13 of the FIL stated that the investment should: complement national investment strategies, provide employment for Mexican workers, assist with the development of lower economic regions, respect Mexico's cultural and social values as well as assist the country with technological research and development.[66]

Nine years after the FIL of 1973, Mexico's economy slumped in 1982 when oil prices went down, this caused Mexico's debt to increase; at the same time inflation was rising rapidly,

[63] McClintock ET AL, *supra* note 30, at 108.
[64] L.I.E. art. 12.
[65] McClintock ET AL, *supra* note 30, at 108.
[66] L.I.E. art. 12.

there was a strong capital flight and the country's GNP dropped considerably. Mexico's economy faced serious difficulties and the country was forced to reduce its restrictions on foreign investment.[67]

During the 1980's in an effort to attract foreign investment back into the country, President Miguel de la Madrid adopted several measures to reduce restrictions towards foreign corporations and their investment.[68] In 1984 Mexico eliminated the 49% cap imposed on certain priority sectors for foreign ownership. In 1985 the government allowed foreign firms owning a majority interest in a Mexican enterprise to raise their ownership up to 100%. In 1986 Mexico eliminated restrictions to small and medium size businesses (businesses with annual sales of less than $60 million and a maximum of 250 employees); at the same time the FIC established a program which began swapping debt for equity, this generated $2.9 billion in a little over a year for Mexico.[69] During this same year Mexico joined the GATT (General Agreement on Tariffs and Trade), in doing Mexico agreed to limits its tariff schedule to a maximum of 50%; limits surtaxes to customs and after 8 years have them completely eliminated; eliminate its official pricing system by December 1989; and the elimination of it's import requirements. In 1989 the country signed a new debt agreement called the Brady Plan which allowed Mexico reductions in principal and interests as well as access to new loans in exchange for limitation of their public sector spending, their encouragement to foreign investment and a reduction to the subsidies granted to their domestic industry.[70]

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[67] McClintock ET AL, *supra* note 30, at 109.
[68] *Id*.
[69] *Id*.
[70] *Id*. at 110.

E) FOREIGN INVESTMENT REGULATIONS OF 1989

In 1989 President Carlos Salinas de Gortary in his effort of modernizing the country and reducing the restrictions imposed upon foreign corporations, exercised his constitutional authority,[71] issuing the new foreign investment regulations which amended the 1973 Foreign Investment Law. These regulations repealed the previous regulations, resolution and decrees; but it did not modify the FIL itself.[72] The object of these regulations was to increase investment capital and accelerate its inflow by simplifying and clarifying the complexity of the procedures to approve foreign investment. It allowed investors to participate in many sectors (up to 100% in some sectors) without the need for prior approval from the Foreign Investment Commission; provided these firms met certain conditions.[73] Investment in fix assets could not exceed $100 million dollars; industrial projects could not be located in Mexico City, Guadalajara or Monterrey (Mexico's most economically developed cities); the investment had to create permanent jobs and provide workers with training and development programs; investment could only be funded by foreign capital; and compliance with environmental laws.[74]

These regulations also provided a way for foreign investors to have full access to the Mexican Stock Exchange, by creating a new type of stock called neutral shares or "Series N", which allowed investors, through a trust, to profit from gains and dividends but had no voting rights.[75] Investment in these shares must be approved by the national securities commission.[76]

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[71] MEX. CONST. art 89.
[72] Sandrino, *supra* note 29, at 306.
[73] *Id*.
[74] McClintock ET AL, *supra* note 30, at 111.
[75] L.I.E. art. 18.
[76] Freeman, *supra* note 7, at 128.

The regulations allowed foreigner's access to Mexico's "restricted zone" through an estate trust (30 years with option to renew). This was established specifically for tourist activities or industrial activities.[77]

These regulations also allowed foreign investors to incorporate or acquire stock in maquiladoras (cheap labor factory that imports materials and equipment on a duty-free and tariff-free basis for assembly or manufacturing and then re-exports the assembled product, usually back to the originating country.) and export-oriented operations without seeking prior FIC approval.[78]

There was a slow response from foreign investors to these regulations the first year due to distrust, but then 1990 had a dramatic increase (61 Billion from 1989-1993 with the U.S. being the largest investor).[79]

F) FOREIGN INVESTMENT LAW OF 1993 TO DATE.

The Foreign Investment Law of 1993 repealed the restrictive 1973 FIL bringing Mexico's domestic law into symmetry with NAFTA requirements.[80] The purpose of this law was to channel foreign investment into Mexico while contributing to the national development.[81] The law regulates all foreign direct investment in Mexico. Foreign investor is defined in this law as an individual or a corporation who is not Mexican.[82] This FIL opened the doors to new areas of investment, including sectors in the oil service industry and automobile industry.[83] It also allowed certain investors to own property allowing foreign investors forming Mexican

[77] McClintock ET AL, *supra* note 30, at 113.
[78] *Id*.
[79] *Id.* at 114.
[80] Freeman, *supra* note 7, at 125.
[81] L.I.E. art. 1.
[82] *See id*. art. 2.
[83] Freeman, *supra* note 7, at 125.

corporations to choose and negotiate their location.[84] Foreign corporations are now allowed to have full ownership and control of their business without having to have Mexican partners. The FIL regulations and requirements to foreign investment are much clearer, and allows for quicker registration processes.[85]

This FIL of 1993 is the one that is currently enforced in Mexico, it establishes some restrictions to the participation of foreign corporations. These restrictions can be divided as follows. Activity reserved for the Mexican Government[86] which are:

a) Petroleum and other hydrocarbons
b) Basic petrochemicals;
c) Electricity;
d) Generation of nuclear energy;
e) Radioactive minerals;
f) Telegraphs;
g) Radiotelegraphy;
h) Mail service;
i) Issuance of bills;
j) Mintage of currency;
k) Control, supervision and inspection of ports, airports and heliports; and
l) Others expressly stipulated in applicable legal provisions.

The Activity Reserved for Mexicans (N Stock being the only exception[87]) was reduced in order to allow more foreign participation and these include:

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[84] *Id*.
[85] *Id*.
[86] L.I.E. art. 5.

a) domestic land transportation of passengers, tourists and cargo (except messenger)

b) retail sale of gasoline and the distribution of liquid petroleum gas;

c) radio and television broadcasting services, excluding cable television;

d) credit unions;

e) developmental banking institutions; and

f) rendering of professional and technical services.

FIL still limits foreign participation in certain industrial areas to set %, and they can be divided into 4 brackets 10%, 20%, 49% and over 49% (with FIC approval):

1. Up to 10% in[88]:

a) Cooperative companies of production;

2. Up to 25% in[89]:

a) Domestic air transportation;

b) Air-taxi transport; and

c) Specialized air transportation;

3. Up to 49% in[90]:

a) Insurance institutions;

b) Bond institutions;

c) Foreign exchange houses;

d) General deposit warehouses;

e) Companies to which article 12 bis of the Securities Market Law refers;

f) Administrators of retirement funds;

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[87] *See id*. art. 18.
[88] *See id*. art. 7(I)
[89] *See id*. art. 7(II).
[90] *See id*. art. 7(III).

g) Manufacture and marketing of explosives, firearms, cartridges, munitions and artificial fire, without including the acquisition and utilization of explosives for industrial and extractive activities, nor the manufacture of mixed explosives for consumption of said activities;

h) Printing and publication of periodicals for exclusive circulation in national territory;

i) Series "T" stocks of companies that hold agricultural, stock-raising and forestry lands in their assets;

j) Freshwater and coastal fishing and fishing in the exclusive economic zone, without including aquaculture;

k) Full port administration;

l) Port services of pilotage to ships in order to carry out domestic navigation operations, in the terms of the Law on the matter;

m) Shipping companies engaged in the commercial operation of ships for interior and coastal navigation, with the exception of tourist cruises and the operation of dredges and naval devices for the construction, conservation and operation of a port;

n) The supply of fuel and lubricants for ships and airplanes and railway equipment, and

o) Companies holding concessions in the terms of articles 11 and 12 of the Federal Telecommunications Law.

4. Over 49% with approval from the FIC[91]:

a) Port services to ships to carry out domestic navigation operations, such as the pilotage, towing, mooring of ropes and launching;

b) Shipping companies engaged in the operation of ships exclusively on the high seas;

c) Companies holding concessions or permits for public service aerodromes;

d) Private preschool, primary, secondary, junior college, college and combined education services;

e) Legal services;

f) Credit information companies;

g) Appraisal institutions; and

[91] *See id.* art 8, 9.

h) insurance agents.

i) Cellular telephony.

j) Construction of ducts for the transportation of petroleum and its derivatives;

k) Drilling of petroleum and gas wells, and

l) Construction, operation and exploitation of railroads as a general means of communication, and furnishing railroad transportation as a public service.

However, limitations on foreign investment set forth in the fourth bracket require approval by the FIC only when the total value of a company's assets exceeds a threshold amount determined annually by the FIC.[92]

The restrictions on ownership of real property in the "restricted zone"[93] were eased by the FIL. The FIL allowed foreigners to acquire and hold real estate in these zones if these are used for non-residential purposes and the purchase is registered with FIC.[94] In order to do so, a real estate trust must be established. A Mexican credit institution is named as trustee once approval has been obtained from the FIC, and the trustee acquires rights on the real estate property located in the restricted zone.[95] Once the trust is created, the beneficiaries have full rights to the land.[96] The trust established in order to operate in the restricted zones by the boarder and by the beach where extended by the FIL to 50 years, and renewal is automatic; these trust have an indefinite duration, subject of course to the FIC's approval.[97]

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[92] *See id.* art. 9.
93 MEX. CONST. art. 27.
[94] LIE art. 10.
[95] *See id.* art. 11.
[96] Freeman, *supra* note 7, at 128.
[97] *Id*. at 125.

G) N.A.F.T.A.

The North American Free Trade Agreement signed in 1993 by the countries of Canada, the United States and Mexico (enforced on January 1994) is a Regional Trade Agreement directed to the elimination of trade barriers[98] in goods and services between these countries.[99] This Trade agreement comprises the economic interest of more than 440 million people living in North America (Canada 32 million, United States 300 million and Mexico 108 million)[100] and is the world's largest single market for goods and capital[101]

N.A.F.T.A. was originally drafted to eliminate tariff and non-tariff barriers in all three member countries over a 15 year period. If successful N.A.F.T.A. was expected to create a combined economic output of $8 trillion in which goods and services would be traded freely. Its objectives are established in Art. 102 (1).[102]

The United States and Canada began negotiations for a Free Trade Agreement back in 1911, when the U.S. proposed the free trade agreement which was ratified by U.S. Congress, but due to fear that this might lead to annexation, the Canadian parliament rejected it.[103] Mexico

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[98] North American Free Trade Agreement, U.S.-Can.-Mex., art. 102 (1), Dec. 17, 1992, 32 I.L.M. 289 (1993) [hereinafter N.A.F.T.A.].

[99] FOLSON, supra note 32, at 9-11.

[100] *See* 2006 World Population Data Sheet 2006, Population Reference Bureau, *available at http://www.prb.org/pdf06/06WorldDataSheet.pdf* (last visited on Dec. 11, 2006).

[101] Timmons, supra note 52, at 325.

[102] N.A.F.T.A. art. 102 (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 the territories of the Parties;
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, for its joint administration and for the resolution of disputes; and
f. establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

[103] FOLSON, *supra* note 32, at 1-2.

joined the equation in 1989, when Mexico's President Salinas expressed interest in negotiating a free trade agreement. [104]

All three countries have benefited from this Agreement, as a result Mexico has become the second largest trading partner of the United States (Canada being the first); figures from the International Monetary Fund, trade between all 3 NAFTA countries has more than doubled, going from US$306 billion tin 1993 to almost US$621 billion in 2002.[105] If we combine trade conducted by the United States with Canada and Mexico the U.S. conducts about 1.2 million in trade every minute.[106] U.S. exports to Canada and Mexico increased from US$147.7 billion (US$51.1 billion to Mexico and US$96.5 to Canada) to US$260.2 billion (US$107.2 and US$152.9 billion, respectively).[107]

N.A.F.T.A. chapter 11 contains a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties to the Agreement in accordance with the principle of international reciprocity and due process before an impartial tribunal.[108] A N.A.F.T.A. investor who alleges that a host government has breached its investment obligations under Chapter 11 may, at its option, have recourse to one of the following arbitral mechanisms:[109]

a) The World Bank's International Centre for the Settlement of Investment Disputes (ICSID);

b) ICSID's Additional Facility Rules; and

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[104] *Id*. at 8-9 (2004).
[105] FOLSON ET AL, *supra* note 34, at 1-2.
[106] *Id*. at 48-49.
[107] *Id*.
[108] N.A.F.T.A. art. 1116 (1).
[109] N.A.F.T.A. art. 1120.

c) The rules of the United Nations Commission for International Trade Law (UNCITRAL Rules).

Alternatively, the investor may choose the remedies available in the host country's domestic courts. An important feature of the Chapter 11 arbitral provisions is the enforceability in domestic courts of final awards by arbitration tribunals.[110] In Chapter 11 N.A.F.T.A. seeks to shorten the gap between investors and governments in solving cross border commercial disputes.[111]

The way it does this is by allowing the private investor to resolve an investment disputes without having to litigate it in foreign courts or having to go through foreign governments in order for them to pressure their national into complying with an agreement. Chapter 11 is seen as an evolution between international law, economics and politics.[112] In recent years Chapter 11 has suffered some criticism from some N.A.F.T.A. parties who argue that Chapter 11 is a threat to sovereignty and an abrogation of democracy.[113] Most of the criticism against it states that Chapter 11 promotes frivolous litigation and permits disproportionate compensation, lacks an adequate award review process, uses secret tribunals to reduce transparency, prevents legitimate governmental regulations, and derogates from notions of equality and sustainable development.[114]

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[110] N.A.F.T.A. art. 1136.
[111] Scott R. Jablonski, *NAFTA Chapter 11 Dispute Resolution and Mexico: A Healthy Mix of International Law, Economics and Politics*, 32 Denv. J. Int'l L. & Pol'y 477 (2004).
[112] *Id*.
[113] *Id*.
[114] *Id*. at 475.

Despite the criticism brought against Chapter 11 many people believe the whole frame work laid out in Chapter 11 is representative of a historic positive step brought forth by N.A.F.T.A. parties to grow and develop together in this international legal context.[115]

[115] *Id.* at 537.

CHAPTER III

RESTRICTIONS IN THE UNITED STATES

The Corporation is defined by R.H. Coase as the antithesis of the market, where resources are allocated by conscious orders given by the employer to her employees; this system of relationships comes into existence when the director of resources is dependent on an entrepreneur.[116] "The firm is what we call the set of relations that arise when resources are allocated by the entrepreneur via commands to her employees rather than a set of relations that arise when an entrepreneur allocates resources via contract with outsiders."[117] Foreign Corporations are defined by the Model Business Corporation Act as corporations which are incorporated under a law different from the laws of the United States. [118] Business associations may take the form of Partnerships, Corporations and Limited Liability Partnerships.[119] Incorporation in the U.S. may be done by one or more persons (incorporator or incorporators), through the creation of a certificate of incorporations containing the articles of incorporation which are then deposited with the Secretary of State for filing.[120] Most publicly held corporations incorporate in Delaware. This state is considered to be by far the corporate expert in the United States, which is why almost every publicly held corporation in the Ü.S. chooses to incorporate here. The exception being closely held corporations; whose interests are not favored by Delaware legislation, which favors publicly held corporations. The certificate of incorporation must include the corporation's name[121], number of shares, address, name of its agent, as well as the

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[116] COERCE, *supra* note 1, at 6.
[117] CHARLES R. T. O'KELLEY AND ROBERT B. THOMPSON, CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS 1 (Aspen Publishers 4th ed. 2003) [Hereinafter O'KELLEY and THOMPSON].
[118] Model Business Corporation Act [hereinafter M.B.C.A.] § 1.40.
[119] O'KELLEY and THOMPSON, *supra* note 117, at 2.
[120] M.B.C.A. § 2.01.
[121] *See id*. § 4.01.

name and address of the incorporators.[122] Foreign Corporations are required to obtain a certificate of authority from the secretary of state, failure to do so precludes them from conducting proceedings in state courts.

The U.S. constitution confers Congress the right to regulate commerce with foreign nations and among the states.[123] But Congress has allowed the federal government to use discretion when allowing foreign ownership and investment. The U.S. has had a very different approach to foreign corporations and investment. The U.S. has long supported a policy of direct and open foreign investment among nations.[124] Every president since Herbert Hoover has adopted a free trade policy.[125] In fact president Reagan in 1983 while talking about foreign direct investment in the U.S. stated: "[T]he United States seeks to ... foster a domestic economic climate in the United States which is conducive to investment, ensure that foreign investors receive fair and equitable treatment under our statutes and regulations, and maintain only those safeguards on foreign investment which are necessary to protect our security and related interests."[126]

Administrative regulations play a minimal role, particularly with the free movement of capital.[127] Of course foreign investment and corporations in the U.S. have a number of restrictions at state and federal level but these are much more relaxed compared to Mexico. Since 1970's however, as recycled petrodollars began making an impact upon the ownership of U.S. assets, concern began to grow in Congress and the Executive regarding the United States

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[122] *See id*. § 2.02.
[123] U.S. CONST. § 1 Sec. 8 Clause 3.
[124] Patrick J. DeSouza, *Executive Discretion to Regulate Foreign Investment in the United States*, 7 J.L. & Pol. 290 (1991).
[125] Jacqueline J. Ferber, *The U.S. Foreign Direct Investment Policy: The Quest for Uniformity*, 76 Marq. L. Rev. 808 (1993).
[126] Statement of the President Transmitting International Investment Policy, 19 WEEKLY COMP. PRES. DOC. 1214, 1216-17 (Sept. 9, 1983).
[127] DeSouza, *supra* note 124, at 295.

traditional passive and unrestrictive approach towards foreign capital.[128] Typically restrains in the United States, flow around National Security issues, reciprocity and keeping a healthy and competitive open market for corporations. Most of the restrain for foreign investors are on:

a) Real Estate

b) Natural Resources

c) Restricted areas such as Aviation, Broadcasting and Maritime Shipping

A) FEDERAL REGULATIONS

The federal government obtains its constitutional power to regulate Foreign Direct Investment from the commerce clause, which grants Congress the power to regulate commerce with foreign nations.[129] The Supreme Court stated that this constitutional power granted to Congress is not just an authorization for Congress to enact laws, but that it created an area of trade which is free from interference from the [130]states. The commerce clause is a limitation upon the power of the states. [131] As we can see the constitution anticipated foreign direct investment be directed by the federal government. Unfortunately congress has not established laws which are capable of being enforced by the executive and has therefore left a rather vague policy in effect which causes uncertainty.[132]

These restrictions imposed by federal regulations consist primarily of sectoral restrictions; disclosure requirements and national security are most evident in government contracting, shipping, aviation, communications, land use, control of energy resources, and

[128] *Id*.
[129] U.S. CONST. art. I, § 8, cl. 3.
[130] Ferber, *supra* note 125, at 808.
[131] Freeman v. Hewit, 329 U.S. 249, 252 (1946).
[132] Ferber, *supra* note 125, at 808.

banking. It's important for investors in these areas to carefully investigate the scope of these restrictions before making investment plans in these areas.[133] Here are some examples:

a) Government Contracting: Contracting with a foreign corporation controlled by its government. The Department of Defense (DOD) and the Department of Energy (DOE) will not contract with these corporations in a national security program where they could have access to classified information (Specially Countries Supporting Terrorism). Also in military research and development contracts nationals are favored against foreign corporations.

b) National and International Aviation:[134] U.S. corporations are only allowed in this area, with a maximum of 25% of the voting stock owned by foreigners. The President, CEO, as well as 2/3s of the directors must be U.S. citizens.[135]

c) Banks:[136] there are no federal restrictions on foreign ownership, but some states prohibit or restrict foreign bank ownership.[137]

d) Communications: radio, broadcasting, wireless communication, mobile radio, etc. may only participate in ownership of up to a 20%.[138]

e) Energy Resources: mining, minerals, atomic energy, hydroelectric power, geothermal steam, electric and natural gas,[139]

f) Fishing Ships: very restricted, management must be U.S. citizens, with a foreign investment maximum of 25%.[140]

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[133] Ferber, *supra* note 125, at 814.
[134] 10 U.S.C.A. § 351, 16 U.S.C.A. §§7a to 7e, 18 U.S.C.A. § 32, 49 U.S.C.A. §§ 106, 40101, 40105, 41705.
[135] J. EUGENE MARANS, JOHN H. SHANEFIELD, JOSEPH E. PATTISON, JOHN T. BYAM, MANUAL OF FOREIGN INVESTMENT IN THE UNITED STATES 1-26 (2004).
[136] 7 U.S.C.A. §§ 1-20, 12 U.S.C.A. §§ 2901 et seq.
[137] MARANS ET AL, *supra* note 135, at 27-159.
[138] *Id*. at 161-254.
[139] *Id*. at 255-317.
[140] *Id*. at 319-356.

g) Maritime Industries: in this area shipping, cargo, etc. is very restricted, just like fishing. But shipbuilding is allowed.[141]

h) Real Estate: more than half the states have limitation on ownership and land inheritance. Legislation is here is very vague and uncertain, varying from state to state. Georgia allows for purchase, holding and conveying real estate; foreign corporations are given the same rights as U.S. corporations as long as there is peace.[142]

B) STATE REGULATIONS:

State Regulation: the restrictions here have generally been directed at investment in:

1) Real Estate
2) Natural Resources
3) Employment of Aliens in various professions.
4) Creating and Acquisitions of Corporation.

If a state law is enacted restricting foreign investment and it conflicts with a federal law it will be preempted.[143]

C) ANTITRUST LAWS

Antitrust Regulations: It is very important for corporations wanting to do business with the United States to be aware of its long standing and well established antitrust policy. There are 3 legislative acts which are the basis of U.S. antitrust laws The Sherman Act, The Clayton Act and the Robinson-Patman Act.

The United States has been a pioneer in antitrust regulations since the XIX century when congress enacted the Sherman Act[144] in 1980, which prohibited anticompetitive agreements,

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[141] *Id*. at 319-356.
[142] *Id*. at 357-413.
[143] *Id*. at 403-460.

monopolization and attempts to monopolize.[145] This act was enacted in order to regulate monopolistic practices employed by trust during the XIX century. In 1889 Senator John Sherman introduced the Sherman Act which was then redrafted.[146] For half a century the United States was the only country to have a serious antitrust policy.[147] Now a day, over 100 countries around the world have adopted antitrust legislatures, even though many of them are not well established yet.[148] Most antitrust cases deal with price fixing, cartels, monopoly and dominance, mergers, competitor collaboration beside cartels, and vertical restrains.[149] The state has immunity and its

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[144] Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.
Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.
Section 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.
Section 7. Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless such conduct has a direct, substantial, and reasonably foreseeable effect on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section. If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1) (B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.
Section 8. The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

[145] ELEANOR M. FOX, LAWRENCE A. SULLIVAN, RUDOLPH J.R. PERITZ, CASES AND MATERIALS ON U.S. ANTITRUST IN GLOBAL CONTEXT 1 (Thompson West 2nd ed. 2004).

[146] *Id*. at 9.

[147] *Id*.

[148] *Id*.

[149] *Id*. at 2.

actions are not subject to antitrust regulations.[150] The U.S. district courts have jurisdiction in private cases under federal antitrust law. Plaintiffs seeking relief for antitrust violations cannot pursue an action in a state court.[151] Interstate commerce or foreign commerce must be affected in order to invoke a federal antitrust violation.[152] This effect upon interstate commerce is also a jurisdictional prerequisite in a Sherman Act violation.[153] It is not necessary for a plaintiff to prove that interstate commerce has been affected, but simply that it could potentially harm interstate commerce in the future.[154]

Antitrust venue in federal civil cases may be established in 2 ways: through the general federal venue statute[155], or through the special venue provided by the Clayton Act.[156]

In 1914 United States Congress enacted the Clayton Act, the first antitrust legislation directed towards acquisitions.[157] Section 7 of the Clayton Act prohibited stock acquisition between companies if this would significantly lessen competition.[158] The Clayton Act was subsequently amended in 1950 to provide greater protection to U.S. commerce by merging companies.[159] Section 7 claims may be brought by the Federal Trade Commission (FTC) and the Department of Justice (DOJ).[160] Alternatively private parties may bring suit to:

a) prevent a hostile takeover

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[150] *See* Parker v. Brown, 317 U.S. 341 (U.S. 1943), Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (U.S. 1961), United Mine Workers of America v. Pennington, 381 U.S. 657 (1965).
[151] Kurek v. Pleasure Driveway & Park Dist., 583 F.2d 378 (7th Cir. 1978).
[152] Joseph Angland, Stephen V. Bomse, August Horvath, Heller Ehrman LLP, *Procedural Aspects of Private Antitrust Litigation*, 1583 PLI/Corp 717 (2007).
[153] Hosp. Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 743 (1976).
[154] Angland ET AL, *supra* note 152 at 728.
[155] 28 U.S.C. §1391
[156] Angland ET AL, *supra* note 152 at 728.
[157] FOX ET AL, *supra* note 145, at 282.
[158] Clayton Act § 7: "no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."
[159] FOX ET AL, *supra* note 145, at 283.
[160] 15 U.S.C. § 11(b), § 15.

b) challenge an acquisition involving competitors

c) enjoin future acquisitions for a period of years or

d) recover treble damages for antitrust injury sustained as a result of unlawful acquisitions.[161]

In doing so a private party must satisfy 5 elements: the plaintiff must be a person as defined by the Act, an antitrust violation must have occurred, plaintiff must have suffered a direct injury, which must have been caused by the violation charged, and the injury suffered must be measurable dollars.[162]

In order to determine if an antitrust violation has occurred it is necessary to determine the relevant market which is being affected, this issue is generally not easy to determine and becomes more complex when multinational corporations are involved.[163]

In friendly acquisitions were parties of a possible transaction are concerned or unsure if their operation may be a violation of antitrust regulations and might therefore be challenged. Private parties may request an advisory opinion from both the Antitrust Division of the Department of Justice and the FTC who have procedures for advance approval. This advice however may be revoked later on.

It is important for corporations looking to invest in the United States to realize the consequences of an antitrust violation and prepare accordingly. It is especially important for foreign corporations who are not accustomed to these restrictions in their countries, like Mexican corporations for example, since the Mexican government rarely enforces its antimonopoly regulations.[164]

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[161] Ferber, *supra* note 125, at 812.
[162] *Id*.
[163] *Id*.
[164] *Id*. at 813.

D) SAFEGUARD MECHANISMS

1. Section 301 of the Trade Act of 1974[165]: this section of the 1974 Trade Act gives the United States Representative the authority to impose trade sanctions against foreign countries which impose acts, policies or practices which violate, are inconsistent or deny U.S. rights under any trade agreement; or is unjustifiable and burdens or restricts U.S. commerce. This provides recourse for United States corporations which consider that a foreign country is adopting certain acts, policies or practices which restrict their activity and constitute a violation of their rights.

There are 2 ways of commencing a section 301 investigation; first an investigation may be requested by an interested party.[166] So a corporation which feels that its rights are being violated or denied by a foreign country may request an investigation be conducted by the U.S. Trade Representative. The U.S. Trade Representative will have 45 days to decide whether an investigation is appropriate or not.[167] The U.S. Trade Representative also has he authority to initiate on his own an investigation, if he so deems it appropriate.[168] Whichever decision is made by the U.S. Trade Representative. Whether it be to initiate an investigation or to decline from doing so.[169] This decision must be published in Federal Register.[170]

If the U.S. Trade Representative takes the decision to initiate an investigation based upon a request from an interested party, then it must hold a public hearing in order to get the public opinion on the manner at hand.[171]

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[165] 19 U.S.C. § 2411 (2007).
[166] *See id*. § 2412 (a)(1).
[167] *See id.* § 2412 (a)(2).
[168] *See id.* § 2412 (b)(1)(A).
[169] *See id*. § 2412 (a)(3).
[170] *See id.* § 2412 (a)(4).
[171] *See id.* § 2411 (a)(4) (A).

Once the decision has been taken to conduct an investigation, the U.S. Trade Representative must conduct consultations with the alleged country committing such violations.[172]

If there is a violation of a trade agreement (NAFTA for example) involved in the investigation, then the procedure for dispute settlement established in that trade agreement must be followed in order to resolve the controversy. The U.S. Trade Representative has 18 months after the investigation is initiated to determine whether Section 301 is applicable, or 30 days from the conclusion of the dispute settlement mechanism.[173] If a trade agreement is not involved then the U.S. Trade representative must emit its decision within 12 months of the initiation of the investigation.[174]

If the Trade Representative finds that there is in fact a violation requiring the application of Section 301 of the 1973 Trade Act, then he is required to take action,[175] unless one of the following exceptions applies:

a) When the World Trade Organization dispute settlement body determines that the rights of the United States under a trade agreement are not being violated, or the acts, policy, or practice are not violating U.S. rights.[176]
b) The Trade Representative finds that the violating country is taking satisfactory measures in order to eliminate the infringement on U.S. rights.[177]

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[172] *See id.* § 2413.
[173] *See id.* § 2414 (a)(2)(A)(i)(ii).
[174] *See id.* § 2414 (a)(2)(B).
[175] *See id.* § 2411 (a).
[176] *See id.* § 2411 (a)(2)(A).
[177] *See id.* § 2411 (a)(2)(B).

c) The foreign country has agreed to provide the United States with compensatory trade benefits.[178]

d) When the Trade Representative finds that taking action against the country would cause more harm than benefit for the United States.[179]

e) When taking action against such country would seriously harm U.S. national security.[180]

Any Section 301 action taken against a certain country must be devised so as to produce a trade benefit which will counter the harm done by the foreign country's practices. In other words, the counter measures should be enough to compensate the U.S. but it should not go beyond that point.[181]

The Trade Representative has discretionary power to act or not in case where he determines that a particular act, policy or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce.[182] An act, policy or practice is considered to be unreasonable if it is unfair and inequitable, even if it does not violate the international legal rights of the United States. Practices considered unreasonable include:

a) Denial of fair and equitable opportunities for the establishment of enterprises;[183]

b) denial of adequate and effective protection of intellectual property rights, even if the foreign country is in compliance with the WTO agreement on Trade-Related Aspects of Intellectual Property (TRIPS);[184]

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[178] *See id.* § 2411 (a)(2)(B)(iii).
[179] *See id.* § 2411 (a)(2)(B)(iv).
[180] *See id.* § 2411 (a)(2)(B)(v).
[181] *See id.* 2411 (a)(3).
[182] *See id.* § 2411 (b).
[183] *See id.* § 2411 (d)(2)(B)(i)(I).

c) denial of fair and equitable market opportunities, including a foreign government's toleration of systematic anticompetitive activities by or among enterprises in the foreign country;[185]

d) export targeting;[186] and

e) denial of worker rights.[187]

The Trade Representative in determining whether a foreign practice is unreasonable, must consider reciprocal opportunities in the United States for foreign nationals and firms.

Practices of a foreign country will not be treated as unreasonable if the Trade Representative determines that the practices are not inconsistent with the level of the country's economic development.

Discriminatory practices include acts, policies or practices that deny national or MFN treatment to U.S. goods, services or investment.[188]

Once the USTR has decided to take action, he is empowered to suspend, withdraw, or prevent benefits from the General System of Preferences, the Caribbean Basin Economic Recovery Act, or the Andean Trade Preference Act, and negotiate agreements to eliminate or phase out the act, policy or practice or provide compensation for trade distortion.[189]

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[184] *See id.* § 2411 (d)(2)(B)(i)(II).
[185] *See id.* § 2411 (d)(2)(B)(i)(III).
[186] *See id.* § 2411 (d)(2)(B)(ii).
[187] *See id.*. § 2411 (d)(2)(B)(iii).
[188] *See id.* § 2411 (d)(4)(B)(5).
[189] *See id.* § 2411 (c).

The USTR shall monitor the application of the measures being taken or the agreement that has been adopted by a foreign country in order to provide a satisfactory resolution.[190] [191]Pursuant to the amendments made to Section 301 in May 2000, the USTR must review the list or action taken and revise, in whole or in part, 120 days after the effective date and every 180 days after that.[192]

Any action taken pursuant to Section 301 terminates automatically after 4 years unless the petitioner or other representative of the domestic industry requests continuation.

2. Foreign Investment Disclosure Acts: These Disclosure Acts require foreign corporations and investors to provide information to the U.S. concerning the amount and extent of their foreign investment in the U.S.

The Securities Exchange Act requires all corporations (not just foreign ones) to disclose investment information in certain publicly held securities.[193] This was done as an effort to monitor the nature and frequency of large purchases of equity securities which are contained in the 1934 Act and requires anyone owning more than 5% of the corporation to file a 13D form with the Securities and Exchange Commission (SEC).[194]

Absence of reliable information on foreign investment in the U.S. led to the enactment of the Foreign Investment Act of 1974 which directed the Secretary of Commerce and the Secretary of Treasury to investigate and report upon this issue.[195] The report showed that the informal procedures established to compile information on foreign investment in the U.S. was deficient

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[190] *See id.* § 2416 (a).
[191] *See id.* § 2416 (a).
[192] *See id.* § 2416 (b)(2)(C).
[193] Peter T. Butterfield, *Who Owns America? The Adequacy of Federal Foreign Investment Disclosure Requirements*, 24 Colum. J.L. & Soc. Probs. 82 (1990).
[194] *Id.*
[195] *Id.* at 83.

and did not provide the federal government with sufficient information to formulate a national policy on foreign investment.[196] This led to a number of regulatory acts directed towards the collection and coordination of information on the level and impact of foreign ownership of U.S. enterprises.[197] As a result the Committee on Foreign Investment in the United States was created by president Ford and endowed with the responsibility of monitoring the impact of foreign investment in the U.S. and coordinating the implementation of U.S. policy on such investment.[198]

The International Investment Survey Act of 1976 also gave the president authority to collect data, the president delegated the Secretary of Commerce who in turn delegated the Bureau of Economic Analysis (BEA) to carry out this task.[199] The 1976 Act, requires any foreign investor establishing or acquiring a10% ownership of a U.S. Corporation, to report this information to the BEA.[200] An exemption applies however for those who purchase real estate exclusively for personal use.[201] After this BEA continues to monitor these foreign owned corporations, and the enterprise is required to file a quarterly and an annual report to the BEA as

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[196] *Id*. at 82.
[197] 15 U.S.C. § 78b.
[198] *See id*. § 1(b). Specifically, the CFIUS was directed to: (1) arrange for trend and development analysis of foreign investments; (2) arrange for advance consultation with foreign governments on prospective foreign governmental investments in the United States; (3) review investments which might have major implications for national interests; and (4) consider proposals for new legislation relating to foreign investment. Id. §§ 1(b)(1)-(4).
[199] Butterfield, *supra* note 193, at 24.
[200] 15 C.F.R. § 806.15(j)(3) (1990). These investors must file Form BE-13, which requires disclosure of: the type of transaction (acquisition, establishment, merger, etc.); ownership structure of the new U.S. affiliate (U.S. affiliate and foreign parent ownership of voting shares and total equity interest); if an acquisition, from whom acquired and selected financial and operating data (total assets, gross revenues, net income, number of employees, acres of land owned); investment incentives provided by state and local governments; foreign parent and ultimate beneficial owner; and cost of the investment. The report is due no later than 45 days after the investment transaction occurs. U.S. Department of Commerce, Bureau of Economic Analysis, Form BE-13: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment or Purchase of the Operating Assets of a U.S. Business Enterprise, Including Real Estate (1987).
[201] *See id.* §§ 806.15(j)(3)(b)-(c). To calculate the level of real estate investments held by a foreign person in the United States, all such holdings must be aggregated when applying any exemption test. Id. § 806.15(d). A partial exemption from this reporting requirement is available where an existing U.S. affiliate acquires a U.S. business and merges it into its own operations, and the total cost of the acquisition is one million dollars or less and does not involve the purchase of 200 acres or more of U.S. land, id. § 806.15(j)(3)(ii)(b), or the newly acquired or established U.S. business enterprise has total assets of one million dollars or less and less than 200 acres of U.S. land. Id. § 806.15(j)(3)(ii)(c). A total exemption relieves the foreign investor from his or her reporting burden with respect to the transaction or ownership in question; a partial exemption requires the investor to report less information than may be otherwise required on the survey form. Id.

long as it holds a 10% ownership or more, unless the annual revenues of the corporation do not exceed 20 million dollars per year; in this case a report is not required.[202] The 1976 Act also requires the president to conduct a report on foreign investment in U.S. corporations at least every 5 years.[203]

The Agricultural Foreign Investment Act of 1978[204] requires that foreign corporations acquiring an interest on U.S. agricultural land must disclose such information to the Secretary of Agriculture.[205] Disclosure must be made for all lands exceeding 10 acres or those which produce more than $1,000 per year from farming, ranching, forestry or timber production.[206]

The Internal Revenue Disclosure Requirements establish 2 provisions which enable it to identify foreign investors in the U.S. who have significant ownership in U.S. enterprises.[207] First of all, any corporation which is 25% owned by foreign investors have the obligation to report to the IRS: name, nationality and line of business the foreign owner is involved in.[208] Second, in accordance with the Foreign Investment in Real Property Tax Act of 1980,[209] any foreign person[210] that has real property interest valued at over $50,000 and did not engage in business or trade in the U.S. must file a return, providing their name, address and a description of the property.[211]

3. The Exon-Florio Amendment of 1988 enables the executive to challenge mergers, acquisitions or takeovers of U.S. corporations engaged in interstate commerce by foreign corporations when

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[202] *See id.* § 806.15(h)(1) (1990).
[203] Butterfield, *supra* note 193, at 90.
[204] C.F.R. § 781.2(b) (1990).
[205] *See id.* § 781.1 (1990).
[206] *See id.* § 781.2(b) (1990).
[207] Butterfield, *supra* note 193, at 94.
[208] I.R.C. § 6038A (1990).
[209] *See id.* § 6039C (1990).
[210] For purposes of I.R.C. § 6039C(c)(2), a "foreign person" is defined as "any person who is not a United States person."
[211] I.R.C. § 6039C(a).

national security is at stake.[212] In 1975 president Ford established an inter-agency working group, the Committee on Foreign Investment in the U.S. (CFIUS) to analyze and report the consequences and effects of foreign investment upon the U.S.[213]

During the 1980's concerns regarding foreign investment in the U.S. began to grow due to the increasing number of mergers and acquisitions made by foreign entities that saw good investment opportunities in the U.S. market, which at the time had a growing budget, trade deficits, and a weakened dollar.[214] These concerns were expressed during the 1988 presidential elections when these political pressures urged Congress to pass the Exon- Florio[215] amendments, giving the executive an increased power to regulate foreign investment and restrictions imposed on foreign corporations.[216] President Reagan's administration signed the Omnibus Trade and Competitive Act of 1988, which amended the Defense Production Act of 1950.[217] This amendment became section 721 (Exon-Florio Amendment).

The president or its designee may initiate an investigation to determine the impact foreign investment activities might have on national security.[218] Parties in any transaction which might give rise to a section 721 action may notify the CFIUS of such transaction.[219] Upon notice of a

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[212] DeSouza, *supra* note 124, at 290.
[213] 15 U.S.C. § 78 (b).
[214] DeSouza, *supra* note 124, at 295.
[215] Senator Exon stated: The legislation was, in part, the result of my efforts to encourage the administration to protect the national interest. . . . These efforts revealed that our investment policy regarding national security needed to be improved. With the reduced value of the dollar and the reduced value of stock prices, American firms are increasingly vulnerable to foreign takeover. 134 Cong. Rec. S4832 at 4833 (statement of Sen. Exon). Senator Byrd referred to the Amendments as "the first concrete legislative response to rising concern about foreign takeovers." 134 Cong. Rec. S4532 at 4533 (statement of Sen. Byrd). See also Reich, Who is Us?, 68 Harv. Bus. Rev. 53, Jan.-Feb. 1990, at 62-63.
[216] DeSouza, *supra* note 124, at 296.
[217] *Id.* at 289.
[218] In an Executive Order, the President ordered that CFIUS shall coordinate the views of the executive branch and discharge the responsibilities with respect to § 721 (a)-(e) of the Defense Production Act of 1950, as amended in 50 U.S.C. app. §§ 2061 to 2071. Exec. Order No. 12,661, 3 C.F.R. 620 (1988), reprinted in 19 U.S.C. § 2901 at 1365-66.
[219] 31 C.F.R. § 800.401 (a), (a) A party or parties to an acquisition subject to section 721 may submit a voluntary notice to the Committee of the proposed or completed acquisition.

possible section 721 action by the government or a private party which may endanger national security, the CFIUS has 30 days to determine whether it will pursue an investigation on the transaction or not.[220] If it decides to do so, it must emit a full report on the results of the investigation as well as a recommended course of action to the president within 45 days.[221] The president then has 15 days to determine whether to suspend, prohibit or limit the transaction.[222] The president's decision to intervene in such transactions must be based on the belief that the foreign corporation taking control of the U.S. corporation might take actions that would threaten national security and that legal provision do not provide adequate protection to national security.[223] A determination that a transaction may threaten national security is not reviewable.[224] There are however broad guidelines established by the Department of Treasury, which the president must follow in making its decision. These guidelines[225] include:

a) domestic production needed for projected national defense requirements;[226]

b) capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services;[227] and

c) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.[228]

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[220] 50 App. U.S.C.A. § 2170 (a).
[221] *See id.* § 2170 (a).
[222] *See id.* § 2170(c).
[223] *See id.*. § 2170 (d).
[224] *See id.* § 2170 (d).
[225] Memorandum of Department of the Treasury, Office of International Investment, Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons at 4 (1989).
[226] *Id*.
[227] *Id*.
[228] *Id*.

This Exon-Florio authority was first exercised back in 1990 by president Bush when he blocked the sale of NAMCO Manufacturing of Seattle to the China National Aero-Technology Import and Export Corporation (CATIC) based on the recommendation of the CFIUS. The administration believed that this purchase would pose a threat and gave CATIC 3 months to sell NAMCO. CATIC sold NAMCO to DeCrane Aircraft Holdings, Inc. a U.S. corporation.[229]

In another case back in 1988, the CFIUS investigated a proposed transaction between Monsanto Company (silicone chip manufacturer) and Huels A.G. (German Company) and recommended the transaction be blocked. [230] The CFIUS agreed to allow the transaction under certain conditions which inter alia, required the company to maintain its research and manufacturing division in the United States.[231]

[229] DeSouza, *supra* note 124, at 298.
[230] *Id.* at 302.
[231] *Id*.

CHAPTER IV

CONCLUSION

The United States and Mexico, are major trading partners. I believe corporations in both countries have benefited and will continue to benefit significantly from their mutual investments. Mexico's policy towards foreign corporations has suffered a dramatic change in the last decade and its doors continue to open as Mexico makes its way into the international trade world. The United States continues to enforce its long standing free trade policy, with minimal restriction to commerce. Corporations in both the United States and Mexico continue to expand significantly throughout the world taking advantage of the benefits conferred by foreign countries in their effort to fulfill the corporation's objective, which is shareholder wealth maximization. It is imperative for foreign corporations looking to take advantage of the benefits conferred by both of these countries to analyze and be aware of the restrictions they will have to face in expanding their business to these nations; It is equally important to study the history of how this policy has evolved. This will give investing corporations and entrepreneurs, knowledge on how these countries' foreign policy operates and evolves; allowing them the possibility to anticipate future changes and prepare for them.

BIBLIOGRAPHY

A. STATUTES

Constitucion Politica de los Estados Unidos Mexicanos (2007)

Constitution of the United States of America (2007)

Internal Revenue Code (2007)

Ley de Inversion Extranjera (2007)

Ley General de Sociedades Mercantiles (2006)

Model Business Corporation Act (2007)

United States Code Annotated (2007)

B. BOOKS

Alicia Hernandez Chavez, Mexico: A Brief History (University of California Press 2006)

Charles R.T. O'Kelley Jr. & Robert B. Thompson, Corporations and Other Business Associations (Aspen Publishers 5th ed. 2006)

Charles R.T. O'Kelley Jr. & Robert B. Thompson, Corporations and Other Business Associations, Selected Statutes, Rules and Forms (Aspen Publishers 2006)

Eleanor M. Fox, Lawrence A. Sullivan, Rudolph J.R. Peritz, Cases and Materials on U.S. Antitrust in Global Context (Thompson West 2nd ed. 2004)

Gaston Garcia Cantu, La Intervencion Francesa en México (Clío ed. 1998)

Joseph Wheelan, Invading Mexico: America's Continental Dream and the Mexican War, 1846-1848 (Carrol and Graph Publishers 2007)

J. Eugene Marans, John H. Shanefield, Joseph E. Pattison, John T. Byam, Manual of Foreign Investment in the United States (2004)

Ralph H. Folson, Michael Wallace Gordon, David A. Gantz, NAFTA and Free Trade in the Americas: A Problem-Oriented Coursebook (2005)

Ralph H. Folson, NAFTA and Free Trade in the Americas in a Nutshell (2004)

R.H. COERCE, The Nature of the Firm (1937)

C. LAW REVIEWS

Brandon W. Freeman, *An Overview of Foreign Direct Investment in Mexico*, 3-AUT NAFTA: L. & Bus. Rev. Am. 123, 133 (1997)

Denise Manning-Cabrol, *The Imminent Death of the Calvo Clause and the Rebirth of the Calvo Principle: Equality of Foreign and National Investors*, 26 Law & Pol'y Int'l Bus. 1171 (1995)

Gloria L. Sandrino, The NAFTA Investment Chapter and Foreign Direct Investment In Mexico: A Third World Perspective, 27 VNJTL 259 (1994)

Heidi M. Timmons, Fox Tracks Across the Mexican Maquiladora Industry, 17 Transnat'l Law 323 (2004)

Jacqueline J. Ferber, The U.S. Foreign Direct Investment Policy: The Quest for Uniformity, 76 Marq. L. Rev. 812 (1993)

Joseph Angland, Stephen V. Bomse, August Horvath, Heller Ehrman LLP, Procedural Aspects of Private Antitrust Litigation, 1583 PLI/Corp at 728 (2007)

Michael C. McClintock, James J. Tallaksen, and Richard J. Wolkowitz, An Introduction to Direct Foreign Investment in Mexico, 5 Ind. Int'l & Comp. L. Rev. 101 (1994)

Patrick J. DeSouza, Executive Discretion to Regulate Foreign Investment in the United States, 7 J.L. & Pol. 290 (1991)

Peter T. Butterfield, Who Owns America? The Adequacy of Federal Foreign Investment Disclosure Requirements, 24 Colum. J.L. & Soc. Probs. 82 (1990).

Scott R. Jablonski, NAFTA Chapter 11 Dispute Resolution and Mexico: A Healthy Mix of International Law, Economics and Politics, 32 Denv. J. Int'l L. & Pol'y 475 (2004)

D. CASE LAW

Eastern R. R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (U.S. 1961)

Freeman v. Hewit, 329 U.S. 249, 252 (1946)

Hosp. Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 743 (1976)

Kurek v. Pleasure Driveway & Park Dist., 583 F.2d 378 (7th Cir. 1978)

Parker v. Brown, 317 U.S. 341 (U.S. 1943)

United Mine Workers of America v. Pennington, 381 U.S. 657 (1965).

E. OTHER SOURCES

Richard Conniff, Tex-Mex: The Winding Border Along the Rio Grande Both Divides and Unites Two Fast Changing Worlds, 57, National Geographic Feb. 1996 Vol. 189, No. 2.