Loyola of Los Angeles International and Comparative Law Review

Volume 15
Number 4 *Symposium: Business and Investment Law in the United States and Mexico*

Article 9

6-1-1993

Foreign Investment in Mexico: Rules, Regulations, and Implementation by Regulatory Agencies

Foreign Investment in Mexico: Rules, Regulations, and Implementation by Regulatory Agencies

I. UNITED STATES-MEXICO INBOUND AND OUTBOUND INVESTMENT: IDENTIFYING THE ISSUES

ROBERT E. LUTZ:*

Historically, borders serve important purposes. They provide security, create a sense of national identity, and regulate the influx of goods and persons. Today, despite the continued utility of national borders, trading blocks, which make such borders a great deal more porous, have developed around the world and others are being proposed, lured by the many benefits trade and investment offer. These trading blocks are sanctioned by GATT.

The current proposal for a free trade agreement with Mexico, and tri-laterally with Canada, provides the United States with a unique opportunity to extend commercial activity to Central and South America. Central America, a strife-filled area through the 1980s, and South America, plagued by governmental instability and corruption, have been forgotten continents for commercial activity over the past few decades. While free trade blocks provide new chances, they also pose potential problems. Countries included in these groups trade with each other; those who are excluded, do not.

With NAFTA, Mexico must also confront its historically strained relationship with the United States. For that matter, the United States-Canada relationship has been equally problematic. This was illustrated by a statement made some years ago by Canadian Prime Minister Pierre Trudeau, "The situation of the U.S. and its northern neighbor is like a mouse sleeping next to an elephant. The mouse is never quite sure what part of the elephant's anatomy will move next."

The United States has also experienced serious problems with Mexico in recent years. These problems include immigration, drug

---

* B.A., University of Southern California, 1968; J.D., University of California, Berkeley (Boalt Hall), 1971. Professor Lutz is currently a faculty member at Southwestern University School of Law and has taught International Business Law, Comparative Law, Public International Law, International Environmental Law, Transnational Litigation and Arbitration, Property Law, Administrative Law, and Environmental Law.

trafficking, a debt imbalance, human rights conflicts, and environmental disputes. Many experts' views of Mexico in the world economy is summed up by the old cliché, "Poor Mexico, so far from God and so close to the United States."

Notwithstanding these many problems, the North American Free Trade Agreement suggests a new, positive, and bold development. This agreement, called *Tratado de Libre Comercio* ("TLC"), calls for some harsh measures. However, NAFTA seeks to improve the economic and environmental well-being of both countries.

The following panel attempts to explore the legal aspects of investment opportunities related to developments of the "new" Mexico. In addition, this panel will consider the future impact of NAFTA and explore future investment with Mexico.

II. EFFECT OF PRIVATIZATION ON THE MEXICAN ECONOMY

JORGE SANTISTEVAN:*

Following the period of Mexico's economic decline in the 1980s, the Salinas government undertook to privatize Mexican companies and thus assist in internationalizing the Mexican economy. The foreign exchange reserves have effected this effort. In the mid-1980s, foreign exchange reserves reached $13.5 billion and have since increased to $16 billion. This increase results from the privatization plan. For example, the privatization of the Mexican telephone company netted the government some $1.7 billion. Furthermore, it is expected that the aging commercial banks will be sold at 1.5 times their book value. Great competition now exists amongst Mexican investors to actively participate in the internationalization of the Mexican economy. Because of this competition, these companies will be willing to pay premiums far in excess of the expected 1.5 times book value. For example, to acquire Banco Nacional de México ("Banamex") in the most recent privatization, investors paid 2.62 times book value. Thus, the government receives additional capital which it uses to solve social problems while maintaining a solid balance sheet.

The process of bank privatization also impacts the magnitude and sophistication of transactions that the California offices and sub-

* L.L.B., Escuela Libre de Derecho, Mexico; Master of Comparative Law, University of Illinois; J.D., Illinois Institute of Technology Chicago-Kent College of Law. Mr. Santistevan is an attorney and counselor at law on corporate and international business transactions and is Of Counsel to the law firm of Laffan, Mues y Kaye, in Mexico City. He has more than a decade of experience as a counselor to international companies that do business in Mexico and to Mexican companies.

sidiaries of Mexican banks in New York and elsewhere will undertake. Before the nationalization in 1982, Mexican banks, through their New York or Nassau offices, provided dollar financing to major United States corporations with Mexican subsidiaries. Due to the scarcity of capital, Mexican banks stopped providing these services throughout the 1980s.

Even with the current process of privatization, however, a gap period will occur between the privatization and the time when the Mexican banks will again play a significant role in aiding foreign investors or entrepreneurs who desire to actively participate in the Mexican economy. This delay results in part from the privatization process itself. Currently, no shareholder may maintain more than a five percent interest in any company. Thus, a broad board of directors will exist in order to obtain a consensus. Due to the high premiums paid to acquire the banks, and the need to catch up as the market evolves, a delay of between one and two years is expected.

III. Foundation for Internationalization

A considerable foundation for the expansion of the Mexican economy has already been laid. At least two Mexican banks, Banamex and Banca Serfin, grant credit to venture capital funds in the United States so that those funds will be able to provide reciprocal investment in Mexico. In the case of Banamex, the venture capital fund supports the development of new technologies that are considered valuable to Mexico. In return for the venture capital, the start-up companies will license the new technology to Mexican companies at a reduced fee. As the major Mexican banks establish operations in the United States, they will probably follow this pattern of reciprocal investment.

In addition, the expansion of Mexican banks outside Mexico should be accelerated by the laws that have been passed to encourage bank privatization. Under existing law, foreigners can own up to thirty percent of a Mexican bank's stock. However, Mexican banks currently sell at two to three times the value of their net worth, or book value. A United States bank's decision to invest in a particular Mexican operation will probably depend on whether the bank has a long term relationship with its Mexican counterpart, one that predated the nationalization of banks. Thus, while some United States banks, like Mellon Bank in Mexico City and Bank of America Representative Office in Monterrey, have been closing offices, others, like

First Interstate Bank in Monterrey, have been establishing new operations.

The adoption of NAFTA would provide general deregulation of financial services and would probably encourage investment in Mexican financial institutions. Currently, only Citicorp operates a branch in Mexico. The NAFTA negotiations should result in the opening and liberalization of the financial markets. This could even lead to the establishment of United States brokerage houses in Mexico. Although some Mexican brokerage houses operate offices in New York, United States firms are not yet active in Mexico. This may be because current Mexican transactions are small by United States standards. This situation should change, however, when the Mexico City Stock Exchange expands. Moreover, Mexico's current regulatory environment also inhibits foreign investment.

IV. Current Rules and Regulations Governing Foreign Investment

The rules and regulations governing foreign investment in Mexico are substantial. Under the present system, the regulatory outcome depends on whether a company's activities fall within the classification scheme of the foreign investment regulations. Some activities are completely reserved for Mexican citizens, while other activities, such as certain types of mining, are limited to no more than forty-nine percent foreign ownership. Other regulations, nonetheless, allow for total foreign ownership of activities. Nevertheless, it is better to start a Mexican subsidiary than to open a branch office.

In general, obtaining the required authorization to open branch offices in Mexico is difficult, even when the foreign investment rules are satisfied. This may represent a political preference for companies that are actually located in Mexico and who are substantially Mexican. However, companies such as financial service and insurance brokerages, whose activities fall within the lenient portions of the classification scheme, encounter little trouble in obtaining authorizations from the National Commission of Foreign Investments. The Commission strongly favors foreign investment and approves most investments within the lenient classifications.

Even if a company's activities do not implicate the regulatory classifications, the company must follow a number of basic rules in obtaining 100% foreign ownership of a Mexican operation. In addition, a $100 million limit on pre-operation capitalization applies.

Most important is a control on the balance of the investment's foreign currency account. This requirement lasts for the first three years of the company's existence and ensures that there is no net outflow of currency from Mexico. The foreign corporation can keep its currency account in balance by retaining sufficient funds in a Mexican bank. However, most companies care little about the currency limitation. Instead, they reinvest their profits inside Mexico until the three year limitation expires.

Nonetheless, foreign currency account rules may cause problems for companies wishing to import goods for distribution in Mexico. This problem can be solved by creating a joint venture with a majority of Mexican shareholders. The foreign investment regulations apply only when foreign ownership exceeds forty-nine percent. However, if equity participation by foreigners occurs, the participation must be recorded at the Foreign Investment Registry. Therefore, these regulations provide a framework in which foreign investors must work in order to invest in the Mexican Market.

The overall tenor of Mexican government activity strongly supports pro-foreign investment, although the Mexican Constitution demands the regulation of foreign investment. Fernando Hefty, Technical Secretary of the National Commission of Foreign Investments, publicly stated that the President set the 1981 goal for Mexican foreign investment at $26 billion. This attitude favoring foreign investment appears permanent. The government has also established several incentive programs to promote export activity.

V. Mexican Government's Export Programs

The Mexican government has initiated various programs to encourage exports. For example, a foreign company establishing an entity in Mexico who participates in these programs is not limited by the Foreign Investment Regulations, unless the activities are limited to the Government, Mexican citizens, or a specified percentage of foreign investment. Thus, beneficiaries of such programs are not required to comply with Article 5 of the Foreign Investment Regulations.

One such export program is the Temporary Imports to Produce Exports Program ("PITEX"). Under PITEX, participants must demonstrate at least $500 thousand or ten percent of production in exports to receive certain benefits, such as duty-free importation of raw materials and lubricants. If exports total thirty percent of production or more, then participants receive duty-free importation of production assets. The Foreign Trade Companies Act provides the same benefits, but requires more capital and exports. The benefit under the Foreign Trade Companies Act is a waiver of the value added tax on imports and high exporting companies program. Financial incentives also result from, for example, Banco Nacional de Comerciale. Further, information and contacts with foreign markets are also provided.

VI. MEXICAN BUSINESS ENVIRONMENT TODAY

ANDREW DEMETRIOU:*

In order to better understand the current business conditions in Mexico, one must look back at the negative business conditions of the 1980s. At that time, the Mexican inflation rate rose above 150%, and the interest rates were also very high. The economy and its markets were closed, relative to today, due to high levels of involvement by the government in practically all sectors of the economy. Capital flight resulted from these negative conditions, such that even Mexican investors removed badly needed financial resources from the Mexican Banks.

In contrast, many experts widely recognize the Salinas administration's efforts to change these prevailing conditions after the 1980s. The administration sought to control inflation and to depart from a centralized economy, creating perhaps the most open market in Latin America. Indeed, Salinas attempted to make the Mexican economy more market and export oriented.

In order to evaluate foreign investments, a comparison of investment figures from the 1980s and 1990s is useful. As of 1982, the total accumulative foreign investment was quite low, barely $7 billion. Yet, even with the negative conditions of the 1980s, total cumulative foreign investment at the end of 1989 reached over $26 billion. Thus, total cumulative foreign investment tripled during the decade. Despite this fact, many concede that the 1980s was a lost decade in terms of real economic gains.

The 1980s also witnessed a scarcity of capital. Little available

* B.A., University of California, Los Angeles, 1976; J.D., University of California, Berkeley (Boalt Hall), 1979. Mr. Demetriou is a partner in the firm of Jones, Day, Reavis & Pogue. He has been involved in the past two years in representing Mexican interests seeking to enter the United States market. He sits on his firm's Latin American Task Force and has been responsible for developing a practice plan for Mexico.

money existed for the Mexican borrower or industrialist. This scarcity of capital resulted from the nationalization of Mexican banks. Following the 1980s, the efforts of the Salinas Administration brought about the privatization and liberalization of the Mexican banks. This development will hopefully lead to a future abundance of capital.

Unable to obtain capital in the financial markets, Mexican companies attempted to emulate their United States counterparts by tapping the equity markets. Unfortunately, while the Mexico City Stock Exchange, the Bolsa, is very active, it is very small compared to United States exchanges. The Bolsa's total market capitalization would rank it ninth in market value against individual United States companies. If Japanese companies were added to the list, the Bolsa would rank outside the top twenty. The further addition of European companies would place over fifty companies above the market value of the entire Mexico City Stock Exchange. Thus, this market must expand to provide a viable source of capital.

Due to its history of hyper-inflation, Mexico's credit markets are perhaps worse for Mexican companies. Even at the more moderate levels of inflation currently seen, capital is loaned at rates of 30 to 50% per year. Due to persistent fears of inflation, banks offer short term horizons, nine months or less, for maturity on any debt. This constant refund of very expensive money retards expansion. To support their United States operations, Mexican companies borrow from United States banks at lower interest rates. However, they cannot similarly fund their Mexican operations due to problems in perfecting security interests with Mexican collateral and the United States banks' uncertainty over the Mexican companies' long term prospects. As a result, Mexican corporations seek capital through United States expansion. Mexican companies seek to improve their businesses and access to technology through joint ventures with United States companies. Thus, NAFTA will create United States investment and allow Mexican investment to come north.

These developments during the 1980s engendered the negotiations for NAFTA. Because Mexico will open its borders, enormous amounts of capital are required to modernize the economy, generate more jobs, and internationalize products. Investors, or services providers for financial industry, now possess a unique opportunity in the emerging Mexican economy.

As for small investors in Mexico, the manufacturing industry in Mexico experienced exceptional growth during the 1980s, increasing ten fold from 1980 to 1989. In addition, the presence of large United States manufacturing entities in Mexico created numerous small and mid-size companies. As the economy expands, opportunity for new businesses will increase as well. Over two thousand companies in Mexico were established in anticipation of NAFTA. Moreover, motivated by global competitiveness, some investors sought lower production costs and transferred to Mexico, despite the scarcity of capital and financing.

The scarcity of capital strongly influences the pattern of development. Because few dollars were available through the Mexican bank, many development plans were self-financed. Newly constructed factories were self-financed by Mexican developers who either sold shares to permit the construction or used their own money. The United States manufacturers brought their own equipment, which was not financed by United States banks due to their concern with the Mexican economy's stability.

VII. Current Legal Impediments to the Mexican Economy's Further Development

The current legal environment for Mexican investment is comparatively good. However, important differences exist between laws in the United States and Mexico. For example, differences in the preferred means of asset ownership between the United States and Mexico create embarrassing situations. A foreign investor in the United States can unexpectedly confront a lawsuit on behalf of unknown persons or be prosecuted by unknown government agencies. A number of Mexican investors have been wiped out by such unexpected problems.

A. Anti-trust and Trade Competition

A primary area of significant difference between the two countries is the laws on anti-trust and trade competition. In Mexico, it is very common to hear talk of the "grupo," or the family-controlled pockets of concentrated wealth. Mexico bears a history of control of seventy to eighty percent of its non-state owned markets by a single or small group of companies. When Mexican interests attempt to extend this practice into the United States, they discover that United States law prohibits such arrangements. Both the Federal Trade Commission and the Justice Department prosecute excessive concentrations of ownership, and competitors may sue to prevent concentrated market shares in an industry. This different perspective surprises Mexican companies accustomed to the security and practices of their home markets.

For example, Cemex acquired its major competitor in Mexico, Empresas Tolteca de Mexico. The Mexican government approved the acquisition even though Cemex gained approximately seventy percent of the bulk cement market in Mexico. Cemex then obtained assets in the United States, which overlapped with its existing trading assets and conferred on Cemex substantial dominance in the markets of Phoenix, the Southwest, and Southern California. The acquisition, although approved by Mexico, was rejected in the United States. Thus, Cemex was forced to consolidate, divest and retreat from the markets because of the differences in the legal structures.

B. Dumping

Similar problems arise regarding product dumping. Mexican companies have historically been brought before the International Trade Commission and its predecessors when Mexican businesses obtain advantages through means which are impermissible in the United States. Mexican companies often own market-shares of seventy to eighty percent and dictate domestic prices. However, if Mexican producers transfer their prices to the United States, United States competitors sue. The Americans claim that the product is being dumped in the United States market at a price below the selling price in Mexico. When a producer controls the home market selling price, it can dictate whether that price is above or below the transfer price.

C. Disclosure

Another problem area emerges in disclosure of ownership. Mexican companies do not customarily disclose their ownership. Rather, a web of interlocking family trusts and off-shore holding corporations exists in Mexico. The Mexicans are extremely private and decline to disclose the sources of their wealth to outsiders. However, when these Mexican companies enter the United States and apply for a license to operate a business, they must fully disclose ownership. For example, Cemex leased a cement terminal from the port of San Diego. The port employed detailed questions regarding ownership of this subsidiary. Twenty pages of explanation were required to describe the interlocking ownerships leading to members of the Zambrano family in Monterrey. Such information would never have been disclosed in

Mexico. At times, it becomes necessary to negotiate the extent of ownership disclosure to satisfy United States government agencies.

D. Securities Market

Currently, it is uncertain how the United States restrictions on cross-ownerships between banks and securities firms will affect Mexican entities. The Glass-Steagall Act has been relaxed by federal reserve regulations, and there is a significant movement to repeal it altogether. An example originated in the Banamex privatization, in which the largest Mexican broker dealer, Acciones y Valores, bought Banamex. For some time prior, Banamex operated a substantial subsidiary in California. The United States government supports forcing divestiture of the United States subsidiary simply because the acquisition took place off-shore. Nonetheless, this could constitute an unwarranted extra-territorial expansion of the Glass-Steagall Act and the United States government's position may prove untenable.

E. Immigration

Immigration problems have plagued the United States and Mexico for many years. The United States possesses agreements with many countries, such as Japan, which grant their citizens a "treaty trader" or "E" visa. This visa is easily acquired and requires no showing of an established business in the United States. It allows unlimited entry and exit for five years. However, Mexico possesses no such agreement with the United States, although NAFTA may establish that privilege.

Currently, Mexicans must pursue the alternative of the class "B" or business visitor visa. This visa, however, disallows an executive's local compensation. Since executives cannot be paid out of United States accounts, they are compensated through Mexican accounts in pesos, and then processed through intra-company charges. This practice becomes very complicated from a financing standpoint. Moreover, the "B" visa must be renewed periodically or extended, which may result in unpleasant encounters with uncooperative INS agents. Thus, the availability of the "E" visa would enormously benefit the Mexican companies eligible to use it.

F. Government Contracts

Problems with government contracts remain. The prior violation of laws regulating product content created, in this climate of intense competition to supply services and goods to the government, law suits and criminal investigations. Thus, Mexican companies, if acquiring a United States enterprise that owns government contracts, must be fully briefed on these issues. Otherwise, a Mexican company may unexpectedly face a subpoena.

An additional legal impediment in this area deals with the Rules of Origin. These Rules create havoc with goods which are slated for use under a government contract. It is unlikely, especially in the current political climate, that the United States will repeal the so-called "Buy American Act." This legislation governs the contents of products sold to the United States government. Thus, if a Mexican company exceeds the specified percentages of value added in an export, the Act is violated and a potential problem exists.

VIII. CURRENT MEXICAN INVESTMENT POSSIBILITIES

GREGORIO ESTRELLA:*

A. In the United States

Various reasons exist for Mexican companies' desire to invest in the United States. First and foremost, the United States provides the driving force behind every business, a market. The United States represents a huge potential market, especially for Mexican companies manufacturing consumer retail products. The current gross domestic product of the United States on a per capita basis is over six times that of Mexico. Thus, Americans have a much greater disposable income to spend on these products.

In addition, California, Arizona, New Mexico, Texas, Illinois, and Colorado contain a huge Hispanic population. Many of these states' inhabitants originated in Mexico, recognize Mexican products, and would consume them. Mexican companies want to serve this market more effectively, but limitations on their ability to do so exist. Nonetheless, Mexican investors desire to invest in and acquire manufacturing and distribution facilities in serving the United States market. Current examples of this trend include the establishment of Agroupalpha, Avitro, and Cemex in the United States.

---

* U.N.A.M., Mexico City; M.B.A., New York University. Mr. Estrella has over 20 years of commercial banking experience with Banamex and Banca Serfin, Mexico's largest and third largest commercial banks, respectively. He is currently the Founding Associate of a San Diego-based merchant banking, investment banking firm specializing in cross-border and inter-Pacific financing and foreign trade.

A second major goal in entering the United States market is gaining access to capital. Scarcity of capital and lending resources for the Mexican borrower resulted directly from the 1982 nationalization of Mexican banks and the prior history of the Mexican banking industry. Most of the loans made were Mexican loans. Funding for these loans originated in short term money that commercial banks provided in the United States. The commercial banks hesitated, however, to provide new funding to the Mexican banks for subsequent loans to Mexican borrowers. The end result was a scarcity of capital in Mexico.

The recent privatization of the Mexican banks opened new doors and allowed fresh money to enter the Mexican banking system. As of June 1991, the foreign offices of Mexican banks in London and New York reportedly had accumulated $1.5 billion in short term money. However, no money is available for two to three years, mostly for a period up to sixty days.

In order to further internationalize the Mexican banking industry, Mexican banks must form new partnerships and alliances with financial institutions outside of Mexico. This practice bypasses the Mexican credit risk for foreign banks by virtually becoming partners with Mexican banks. Additionally, Mexican law now provides for foreign banks' participation in acquiring Mexican banks. Although the available financing remains at high peso rates of thirty to fifty percent, the lending rate experienced tremendous improvement since the late 1980s. At that time, the rates ranged from 120 to 150%. This net result also results from the drop in inflation from 160% in 1987 to the current rate of about sixteen percent. Moreover, the Mexican government hopes to decrease these rates even more.

B. Intra-Mexican and Foreign Investment Opportunities in Mexico

The possibility of huge returns on Mexican C.D.'s has existed for some time. Most of the $1 billion represented by C.D.'s came from Mexican investors themselves. Much of this money came from the tremendous return of capital that took place in the early 1980s. This movement marked a positive sign for the Mexican economy because the repatriation of capital represented growing support for the economy. However, the high rates paid by the banks, up to fourteen percent for six month money, were a well kept secret until late last year. Originally, mostly European merchant banks were investing in these C.D.'s. Recently, however, institutional investors from New York discovered the market, resulting in the Mexican banks lowering their rates to about nine to ten percent. Maturities are also beginning to expand from six to nine months.

A great block to foreign and intra-Mexican investment for many years, however, was the chance of the devaluing of the peso. The problem that existed in 1982 was that C.D.'s purchased in dollars were convertible to pesos at the direction of the Mexican government following the banks' nationalization. A number of years ago the government devalued the peso which eliminated most of the profit made from investment in Mexican C.D.'s. Thus, an investment which originated at a rate of 24 pesos to the dollar faced an inflated payout ratio of 167 pesos to the dollar. As a result, the thirty percent returns promised were not only wiped out, but investors wound up losing money on a net basis. It is unlikely that the Salinas Government or its successor, now that the banks have been re-privatized, would impose that kind of exchange control, where dollar denominated C.D.'s would only be honored in pesos. An agreement between the Government, the workers, and the private sector hopes to maintain prices in the sliding of the peso at forty pesos to the dollar on a daily basis. The policy has been in effect for eighteen months since June 1991, and at one point devaluation was limited to one peso per day.

IX. NAFTA AND THE FUTURE

A. *NAFTA's Passage*

Currently NAFTA's effect on Mexico remains unclear. The current thinking in Mexico, as previously mentioned, favors an open economy and deregulation. This represents the Mexican government's position for the past five or six years. Mexico desires to push forward economically, and some observers suggest that the Mexican government pushed the White House for NAFTA's passage. A global economic situation will develop in which perceptions about Mexico's economy will be important.

The world business community's general perception is that companies in Mexico often bribe officials and cut corners. This, of course, troubles companies that have completed business in Mexico. Whenever one does business in a new country, it is very important to become acquainted with that country's business practices. For example, many Mexican investors travelled to California, but found themselves ill-prepared and uninformed about United States business practices. Due to this inexperience, these investors lost millions of dollars and returned to Mexico within a year or two. In addition, the converse remains true as well; United States or European companies waste money in Mexico due to unfamiliarity with the environment. However, many companies have overcome these barriers and enjoyed great success. Seemingly, the companies uninterested in the opening of Mexico's economy represented precisely those already located in Mexico with a captive market.

Undoubtedly, NAFTA will force the reform of United States laws, but this will benefit Mexican companies. Some trade liberalization will also alleviate problems of anti-dumping and immigration. The flow of people from Mexico northward will be eased as far as business enterprises are concerned. If the trade agreement fails to merit approval, the remaining United States legal structure will not possess similar momentum and will impair the Mexican companies' ability to do business in the United States.

B. Scarcity of Capital

In all probability, the scarcity of capital will continue for several reasons. First, commercial banks desire to exit Mexico and Latin America, due to the estimated $16.4 billion interest arrearage existing on commercial loans. Second, because of changes in the communist block, money previously invested by Western Europe in the region will now be directed to Eastern Europe instead. Third, both the United States and Japan are currently in cash-flow crises themselves. Although the International Monetary Fund and World Bank provide hope for new money for the region, these multilateral agencies face troubled times as well. These groups' leaders express pessimism because of the recent net outflow of approximately $3 billion. Thus, whether this limited influx of capital will support current plans for the development of Mexico's economy remains unclear.

The internationalization of Mexico's economy and the Salinas administration's economic development plan projects growth in GDP between four and five percent annually. This would create growth between $10 and $12 billion per year, but the capital has yet to flow into the country. Mexico needs NAFTA in order to liberalize its markets. If such a course is followed, Mexico will become an international financial center, a gateway for the movement of capital into Latin America. For instance, the J.P. Morgan Bank, among others, possesses substantial Mexican and Latin American deposits and should become a bridge for moving capital between developing and industrialized nations.

C. *Future for Attorneys*

Concurrent with these other changes, Mexico's legal environment is developing as well. The Mexican legal field is moving away from restricted distribution agreements towards real openness in dealing with internal trade by Mexican companies. These companies take advantage of GATT and the elimination of tariffs and permits. New joint ventures with United States and European companies positioning themselves in the Mexican market will force attorneys to deal with the Rules of Origin and classification. Pacific Basin countries are also attempting to enter the common market of Canada, Mexico, and the United States through such joint enterprises. Since the Mexican government eliminated the transfer of technology legislation and reformed current foreign investment law, investment has become unrestricted. Thus, lawyers must adopt a more traditional legal role. As deals continue to develop, this metamorphosis will continue as well.

D. *The Underground Economy*

In addition, a significant world underground economy exists in Mexico. This type of economy arises in many places for diverse reasons. Red tape, tax complications, and the lack of financing contribute to the development of such an economy. In a recent study by a group of New York economists which resulted in the book *Mexico 2000*, it was estimated that between two to five percent of the GDP came from Mexico's underground economy. The current gross national product of Mexico is approximately $220 billion, so this figure is quite substantial. However, regardless of its size, the underground economy represents a sociological situation which can be controlled through proper measures.

E. *Listing of Mexican Companies on United States Stock Exchanges*

A final area of concern is the listing of Mexican companies on the United States stock exchanges and potential effects on the Mexico City exchange. Currently, nothing prevents a Mexican company from listing on the New York Stock Exchange. Typically, a United States Depository Receipt, a certificate, is matched to another certificate in the home country. Both certificates are handled by the Bank of New

York and some other New York institutions. Such listing requires the filing of an SEC disclosure in the "F" series. As Mexican companies further develop, such registration will occur more frequently.

F. Conclusion

Free trade involves the facilitated exchange of goods and services, and also involves an exchange of investment opportunities. A healthy trade environment always requires a bountiful amount of investment. This panel has presented the issues confronting those investors both inside and out of Mexico who will attempt to enter the growing international Mexican economy. Although much of the preceding represents only expert prediction, this remains the only source of information in this rapidly changing field.