opción

Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía, Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 34, 2018, Especial N° 14

Revista de Ciencias Humanas y Sociales

ISSN 1012-1587/ ISSNe: 2477-9385

Depósito Legal pp 198402ZU45

Universidad del Zulia

Facultad Experimental de Ciencias

Departamento de Ciencias Humanas

Maracaibo - Venezuela

Opción, Año 34, Especial No.14 (2018):1655-1683
ISSN 1012-1587/ISSNe: 2477-9385

The impact of NAFTA Chapter XI on Mexico

Melgar Manzanilla, P. [1]
[1]Faculty of Superior Studies, Nacional Autonomous University of Mexico
pasmelgar@hotmail.com

Quintero Sánchez, A.[2]
[2]Faculty of Superior Studies, Nacional Autonomous University of Mexico
adeqs@hotmail.com

Abstract

The purpose of this paper is to review the impact of NAFTA Chapter XIin Mexico, and determine if the expectations of national development have been reached.The analysis is made via two methods: legal-economic and theoretical-practical. Therefore, the influence of the treaty is determined both in Mexico´s regulatory framework and in its economy.Direct foreign investment does not necessarily lead to the national development and that NAFTA Chapter XI, despite all the changes in Mexico's legal structure, has not contributed substantially to its development. This should be taken into consideration as a precedent for the Latin America countries.

Key words:NAFTA, Mexico, investment, national, neoliberalism

Recibido: 19-11-2017 •Aceptado: 13-02-2018

El impacto del Capítulo XI del TLCAN en México

Resumen

El propósito de este documento es revisar el impacto del Capítulo XI del TLCAN en México y determinar si se han alcanzado las expectativas de desarrollo nacional. El análisis se realiza a través de dos métodos: legal-económico y teórico-práctico. Por lo tanto, la influencia del tratado está determinada tanto en el marco regulatorio de México como en su economía. La inversión extranjera directa no conduce necesariamente al desarrollo nacional y el Capítulo XI del TLCAN, a pesar de todos los cambios en la estructura legal de México, no ha contribuido sustancialmente a su desarrollo. Esto debe tomarse en consideración como un precedente para los países de América Latina.

Palabras clave: NAFTA, México, inversión, nacional, neoliberalismo

1. INTRODUCTION

The North American Free Trade Agreement (NAFTA) signed by the United States, Canada and Mexico came into effect in 1994. At 2018, it is a 23-year-old treaty which, according to experts, makes it a mature treaty that fully reflects the successes and shortcomings of its implementation and thus, it is possible to assess if the expectations it generated have been reached (Pastor, 2014; CalderónVillarreal&HernándezBielma, 2011). Besides, we are now at the dawn of the renegotiation of NAFTA. Regardless of the changes that might result from the renegotiation, the basic structure of the legal text will remain yet for a while, but not necessarily so, government's policies for its application, which are adjustable and should be adapted to improve its performance.Thus, it is the right moment to stop and evaluate its results. Besides, it is a diaphanous source of experience for Latin American countries that have or are negotiating similar treaties. Some FTAs that took NAFTA as a model are those between: the United States and Chile in 1999; Panama and Chile in 2008; the United States and Colombia in 2011; Panama and Peru in 2012; the United States and Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) in 2012; the United States and Peru in 2012; Panama and the United States in 2012; and Panama and Canada in 2013.

The unique character of NAFTA must be recognized as a watershed in Free Trade Agreements (FTAs). It does not only bring together members with such heterogeneous levels of development, such as Mexico, the United Statesand Canada, but also it is a treaty that goes beyond purely commercial matters to bring together a plethora of disciplines related to trade, such as services, intellectual property and, of course, investments. The latter is one of the most relevant aspects of the agreement which has had wide repercussions in México´s legal and economic configuration.

The purpose of this paper is to review the impact of NAFTA in Mexico, specifically of Chapter XI of the treaty that refers to foreign investments. Though chapter XI does not distinguish between foreign direct investment (DFI) and foreign indirect investment (FII), our study will be limited to FDI since it is expected that it contributes to the national and social development(OECD, 2002),whereas the same is not expected of FII.

The study will be carried out from a double perspective: legal-economic and theoretical-practical. Therefore, the influence of the treaty will be determined both in Mexico´s regulatory framework and in its economy. With regards to the economy, the analysis will focus on the relationship of DFI (ArellanoGarcía, 2011) with productive investment and government policy. Finally, we make some reflectionson the performance of NAFTAand onpossible adjustments regarding government policies that can contribute to better the treaty´s performance and exploitation. We must not lose sight of the fact that NAFTA has transcended and become the precedent par excellence for the subsequent FTAs that have been and are being signed not only in the Western Hemisphere, but in the world, mainly in those that the United States participates.

2. NAFTA AS THE CULMINATION OF NEOLIBERALISM AND ECONOMIC OPENING IN MEXICO

To understand the nature and relevance of NAFTA for Mexico, we must go back to the history of neoliberalism in Mexico. NAFTA was the source and culmination of a process of restructuring of Mexican economic model that initiated a decade earlier with its entry into the General Agreement on Tariffs and Trade (GATT). Mexico went from a highly interventionist welfare state system to a neoliberal scheme aimed at the outside. This transit was motivated by the confluence of internal and international factors, which consequently led Mexico to a profound and drastic change in its economic ideology.

In the 1970s, Mexico, like the other Latin American countries, had an economic model of import substitution inspired by the theory of dependencedeveloped within the United Nations Economic Commission for Latin America (ECLAC). The essential characteristics of this economic approach were: I) the protection of the national industry against the disruption of external competition, this was thought of as a temporary measure while the necessary level of competitiveness and diversification was reached to open up to international trade; II) government support through subsidies to emerging or vital industrial sectors to favor their technological innovation; and, III) the restriction of external capital to boost national savings(Prebisch, 1961).In a few words, Mexico was a welfare state centered on a strong nationalist ideology, which in turn was based on the historical development that characterizes a country with a colonial past that must be protected from the hegemonic practices of external powers.

Foreign investment was recognized as a relevant source of technology transfer and a financial mechanism complementary to domestic savings. However, investments through loans and co-investments with nationals were preferred as there was a complete subordination to national industrialization priorities and structural transformation. Like foreign trade, foreign investment was very restricted and controlled by the State. Despite appreciating the value of foreign resources, it was treated with great caution in accordance with the spirit of the Calvo Doctrineand it was granted less prerogatives than national investment.

Subsequently, this vision towards FI changed drastically in conjunction with the Mexican economic model. This change was driven by internal and external factors.In the external sphere, by the international context of global capitalism, the formation of a new international division of labor, the growing trans nationalization and the return of the ideology of economic liberalism promoted by the United States with Ronald Reagan and Britain with Margaret Thatcher (Dos Santos, 1999). In the internal sphere, Mexico suffered the consequences of the exhaustion of the import substitution model plagued by corruption and neglected practices in the national industry, which manifested in recurring economic crises that were not resolved either by the petrodollars boom or by the high external debt. The situation became worse when oil prices fell and international interest rates rose. This also led to unpayable external debt in 1982.

In such circumstances, a large-scale economic crisis in Mexico and the other Latin American countries was inevitable, and thus led to the beginning of the so-called lost decade for Latin American. As a result, when Mexico´s new government Miguel de la Madrid entered in 1982, the public treasury was exhausted, devaluations were inevitable and pressures from international financial organizations were increasing.This led the government to implement a new economic model consistent with the principlesof neoliberalism(Alzugaray, 2004).

For this reform,a rescue package of the International Monetary Fund (IMF) that imposed a series of policies of austerity and economic restructuring, was accepted. This rescue package later became the Baker Plan, a directpredecessor of the Washington Consensus. The objective was a plan to amortize debt while promoting economic growth by: generating surpluses in the current account, stopping inflation, stimulating processes of market flexibilization with less State intervention, implementing more strictly fiscal policy to reduce the public deficit, reorienting budget towards profitable productive processes and removing obstacles to the entry of international competitors.

Mexico assumed that, given the circumstances, the only alternative was to insert itself in the globalized economy. With that, it meant to benefit from the increasing transfer of investments from developed countries to the developing countries by integrating such transfers into new productive processes. But all that involved a huge economic cost that fell on the population, with a deterioration in wages, a fall in the Gross Domestic Product (GDP) of up to -4.7percent, a loss of many jobs, in a few words, the dismantling of the welfare state(CalderónSalazar, 2001).To carry out the economic opening, imports and exports were liberated, subsidies were withdrawn, and public companies were privatized. México´s economic opening was deepened with its entry into GATT in 1986, this accelerated the reduction and removal of tariffs. In fact, by 1988 the manufactures market was almost completely liberated(Moreno-Brid et al., 2005).All this was justified by the government, arguing that the excess protectionism had given rise to a culture of corporate complacency and a largely inefficient industrial plant cloistered in the domestic market, without real export capacity and with a helpless consumer(ÁlvarezSoberanis, 1995).

From that moment on, there was a very marked change in Mexico´s approach and political discourse towards FI, from being selective, restrictive and protectionist, to being considered the perfect vehicle for development in line with the international construction of the new international regime for the protection of investment(GutiérrezHaces & QuinteroSánchez, 2016).Mexican government discourse towards the FI went from classifying FI as an instrument of the powerful countries to imposetheir prerogatives on the weak, damaging their sovereign status, to visualizing FI as the ideal mechanism to encourage development through technology transfer, increase competitiveness and complement domestic savings. Hence, restrictions on FIwere withdrawn, mainly in capital or technology-intensive industries.

The Mexican transition from a highly protectionist and populist model to an open economic model was not restricted to the flow of goods and services, it also extended to the flow of capital. This transition was based on the privatization and the promotion of the export sector. It was abrupt and exacerbated and was reinforced in the nineties under the auspices of the principles of the Washington Consensus of John Williamson(Williamson, 1990).Thus, NAFTA signed in 1994 was the final tool of the entire opening process, not only because it extended the previous changes undertaken, but also because it includeda Mexican leading commercial partner and source of FI, the United States.

3. IMPACTS OF NAFTA ON THE MEXICAN LEGAL FRAMEWORK FOR FI

Chapter XI of NAFTA is one of the most transcendental chapters, inherent to the very nature of the agreement. Far from being strictly commercial, Chapter XI is an integral instrument for the liberalization of foreign investment. As was stated by EVK Fitz Gerald, the most important implication of NAFTA for Mexico and Latin America is that related to the foreign investment regime(Bulmer-Thomas & Dunkerley, 1999).He argues that substantial emphasis wasgiven to this aspectthat NAFTA became the FTA with the most extensive and comprehensive regulation in FI,surpassing the content of many agreements for the promotion and reciprocal protection of investments (APRPIs).

Before NAFTA, trade among its participants were already liberalized in many sectors, but FI issues had never formally been dealt with even though there were previous proposals. All this makes the investment chapter a focal point of the agreement, with extensive repercussions for Mexico, as the only developing member; without undermining that it became a source of inspiration and model not only for the APRPIs signed by Mexico but also for the negotiations of the subsequent FTAs in the Western Hemisphere.

NAFTA implied a transformation of Mexican legal framework,including its regulation on FI, as well as of public policies on FI. It should be clear, though, that the legal restructuring began long before the agreement was formally signed. This is so because the ground had to be prepared for the reception of NAFTAs Chapter XI content in Mexican internal law.

The history of Mexican legal regulation on FIstem from the Constitution of 1917, specifically article 27, sections I and IV.But it was not embodied in a legal instrument until the year 1944 in the so called “law of 51percent”, which referred to the percentage of property that nationals should keep in Mexican companies with foreignpartners.

This rule was maintained until 1993 when the current law on FI was promulgated.

The first normative effort of 1944 left a huge gap in terms of legal regulation since many aspects of FI were not considered. The law regulating foreign investment and promote Mexican investment (Ley para Regular la Inversión Extranjera y Promover la Inversión Mexicana) of 1973tried to cover the deficiencies, though itmaintained the restriction mentioned for FI in harmony with the preponderant closed economic model that had no interest in encouraging foreign investment. The explanatory statement of the FI law of 1973 stated that Mexico should depart from the system of foreign relations in which the powerful countries imposed rules and the weaker ones were subordinated and forced to adopt the economic models recommended to them.

As of 1982, with the new perspective towards FI, the rules contained in the Law of 1973 were relaxed with administrative regulations such as the guidelines on FI and purposes of its promotion (Lineamientos sobre Inversión extranjera y Propósitos de su Promoción) of 1984, that opened some areas considered until then strategic, for example: heavy machinery, high technology products and tourism.This tendency continued with the national program for industrial promotion of foreign trade (Programa Nacional de Fomento Industrial al Comercio Exterior - PRONAFICE) of 1988, the decree for the promotion and operation of the maquiladora industry (Decreto para el Fomento y Operación de la Industria Maquiladora) of 1989 and the regulation to promote Mexican investment and foreign investment (Reglamento para Promover la Inversión Mexicana y Regular la Inversión Extranjera) of 1989. These administrative regulations removed prevailing restrictions for FIto increase its reception through greater legal certainty and administrative simplification(Moreno-Brid et al., 2005).In addition to the administrative legislation, the government offered a package of credits and fiscal incentives such as: credit support and preferential prices in public services.

As can be seen, legal regulation was relaxed to encourage the entry of foreign capital and sectors previously exclusive to nationals were opened. The above-mentionedregulations reveal that even though the 1973 law was still in force, de facto it was surpassed. NAFTA served as a tool to codify the new regulations regarding FI. This becomes evident when we recall that in 1993 the government announced that Mexico would incorporate into itsdomestic law,what until then had been negotiated as part of the future agreement, including what concerned FI(Graham & Wilkie, 1999).

The new FI law(Ley de Inversión Extranjera, 1993)still in force, reproduces the basic guidelines of NAFTA´s Chapter XI, thus consolidating the transition from a reluctant position toward FI to a totally receptive one which largely favors foreign investors.An essential point of this law is that, in accordance to the spirit of NAFTA, apart from broadening the definition of investment, it allows, according to its article 4, the participation of foreign investors up to 100percent, repealing the principle of 51percent maintained for many years. The said principle reapealedwas meant to protect national resources and sovereignty, since it guaranteed that management, administration and operation of resources were in the hands of nationals and responded tonational interests.

In the new FI law of 1993, as in the NAFTA text, certain highly strategic sectors were reserved as exclusive to the state domainand a set of activities was reserved for Mexicans.In many othersectors, foreigners were allowed a limited participation.However, this protection is poor; for example,in the case of petrochemicals, primary petrochemicals are exclusive of PEMEX (Petróleos Mexicanos), but when it comes to secondary and tertiary petrochemicals, they are fully open to FI(Ibid).Besides, Mexican energy reform that started in 2013 has dismantled the protection to that sector. Some authors even suggest that this reform is a reform that permits the privatization of the sector (CárdenasGarcía, 2015).

Another example is the access to the restricted zone, which accepts the participation of FI in the purchase of real estate, provided that its possession is not for residential purposes, that diplomatic protection by its governments is waived and registered before the Ministry of Foreign Affairs. It also accepts foreign participation in the restricted zone for residential purposes in some cases through trusts (Ley de Inversión Extranjera, 1993).This contrasts article 27 of the

Mexican Constitution, which states that in a range of 100 km along the border and 50 km on the beaches, for no reason foreigners may acquire direct dominion over land and water (Ibid).

Although several authors consider that the sectoral opening permitted the protection of key sectors, according to the economic and political interests of Mexico(CancinoGómez, 2011; VegaCánovas, 2013; Zabludovsky, 2004),this is not entirely so. The opening covered 91percent of economic sectors in supposed conditions of reciprocity, butthe economic asymmetry of the members was treacherously ignored within the treaty. Such asymmetry merited more protectionism on the part of Mexico. Also, we must mention that the United States and Canada retained their total closure in the maritime and cultural areas respectively(Graham & Wilkie, 1999).

Many agreements that took NAFTA as a model entered by developing countries show thatthese countries did not protect any area and all sectors were open to FI, a clear example is the Free Trade Agreement between the United States and Central America plus theDominican Republic (CAFTA-DR).

Another point that is worth mentioning is expropriation. The Mexican expropriation lawwas reformed in 1993 with the purpose of responding to the provisions of the NAFTA, in the search of greater protection to FI. According to Chapter XI of NAFTA, expropriation is practically inadmissible, the same is the case with nationalization or any equivalent measure, save for the cause of public utility, and conditioned to the principle of legality and payment of an immediate compensation (within one year) according to the fair market value and in a currency of the G-7(LópezVelarde, 1994).

Finally, the Mexican legislationfully reflects the content of chapter XI of NAFTA since thedecree of 22 December 1993 that reforms, adds and repeals provisions of various laws to make them compatible with NAFTA. With regards to FIlaw, the decree states that it will be applied without prejudice to the provisions of international treaties or arbitration agreements to which Mexico is a party.This makes national protection more flexible and sets the way for possible demands by a foreign investor, in line with the unprecedented investor-state dispute resolution mechanism contained in NAFTA. This mechanism, according to NAFTA articles 1115 to 1138, allows an investor to sue the host State if the latter contravenes any of the provisions of the agreement and provides for a settlement in an ad hoc court, on equal terms, without having to exhaust the national instances or be represented by its country, thus damaging the sovereign and governing capacity of the accused country. This situation has resulted in many demands with high costs for Mexico, regardless of whether the caseswere lost or won.

Besides, NAFTA forbids performance requirements(Ley de Inversión Extranjera, 1993).The lack of performance requirements implies a prohibition for Mexico to request any condition from foreign investors, such as the generation of jobs, purchase of national inputs, transfer oftechnology;restricting the ability of the recipient country to link investments with national development.

As can be noted,Mexican legal framework is in full correspondence with the provisions of NAFTA'sChapter XI that sets out guiding principles for the protection, guarantee of freedom and promotion of investments, among which are the clauses of national treatment and most favored nation.This correspondence led to the renunciation of expropriation and performance requirements, in addition to the adherence to investor-state dispute settlement mechanism.

4. NAFTA, DFI AND MEXICAN NATIONAL DEVELOPMENT

Since the structural economic changes initiated in the 1980s, there was an overall increase in the reception of DFI flows, a trend that was even more dynamic, immediately after NAFTA. With this, Mexico was amongst the developing countries that received the most FI, the first in Latin America, although it currently ranks second after Brazil. This upward curve remaineddespite being reduced by the financial crisis of 1994.

Table 1. DFI in millions of US dollars (md)

DFI	md	DFI	Md
1993	4.900.10	2005	21.829.50
1994	15.064.80	2006	18.938
1995	9.660	2007	23.230.20
1996	9.987.10	2008	29.078.40
1997	14.230.90	2009	17.899.60
1998	12.346.20	2010	26.431.30
1999	13.169.70	2011	23.649.20

2000	16.597.70	2012	20.436.9
2001	26.843.20	2013	45.854.6
2002	14.774.60	2014	25.675.4
2003	10.783.40	2015	34.842.6
2004	22.943.30	2016	29.404.7

Source:Data from the Mexican National Foreign Investmet Commissión, Ministry of Economy (Comisión Nacional de Inversiones Estranjeras, Secretaría de Ecoomía)

While the figures may seem to leave no room for doubt, the absolute numbers can be misleading. If measured as a percentage of Gross Domestic Product (GDP), it is observed that, after the momentum of the implementation of NAFTA in 1994, the trend was not maintained.In addition, we must pay attention to the fact that only a half of the reported investments belongs to new investments, the other 50percent corresponds to accounts between subsidiaries, reinvestment of profits and importation of machinery by the maquiladoras. So, for example, during the period ofJanuary to September 2017, total DFI amounted to 21, 754.7 md, of which 8,760.4 were new investments, while 8,342.2 belonged to reinvestments and 4,652.2 belonged to accounts between subsidiaries. That is, only 40.3 per cent of the total investments were new investments(Informe estadístico sobre el comportamiento de la inversión extranjera directa en México, 2017).

Table 2. DFI as a per cent of GDP

DFI	**Per cent of GDP**	**DFI**	**Per cent of GDP**
1993	0.871	2005	3.003
1994	2.081	2006	2.145
1995	2.771	2007	2.162
1996	2.311	2008	2.921

1997	2.67	2009	2.177
1998	2.541	2010	2.004
1999	2.395	2011	2.062
2000	2.689	2012	1.464
2001	4.148	2013	3.735
2002	3.244	2014	2.317
2003	2.555	2015	3.143
2004	3.235	2016	3.241

Source: World Bank data

On the other hand, macroeconomic indicators only support growth and not real development.A more in-depthanalysis shows that the microeconomic and social indicators do not denote the same success. For example, small and medium enterprises (SMEs) that generate the most jobs and production in Mexico have not only been oblivious of technology transfer and productive chains predicted, but have also suffered the ravages of external competition.In the neoliberal scheme for FI, only large national and foreign corporations have benefited.This situation is a result of the lack of government policies that link large foreign investments with national SMEs, which responds to the desire not to impose any performance requirement of DFIs.

The imperceptible reduction in poverty or unemployment should also be noted. From 1980 to 2016 there has been a loss of purchasing power of around 75percent(GuerrerodeLizardi & Vanegas, 2017)and almost half of the population remains in poverty. In 2016, 41.1percent of the population was in a situation of poverty, while 27.3percent were vulnerable due to social deficiencies and 7.9 percentwere vulnerable due to income. Only 23.7percent of the population were not in poverty or vulnerable(Medición de la pobreza en México, 2016).

Likewise, we must note the sectors and activities to which DFI is directed. In principle, the engine that has driven the massive entry of DFI in some periods have been privatizations, with emphasison the financial-banking sector. This explains why in 2001, with the acquisition of Banamex by the US group Citigroup, FI reached the spectacular figure of 26,843.20 md.

We also note that after the signing of NAFTA, most of FI concentrated in the manufacturing sector, but since 2000, the services sector occupied a privileged position. Thus, although manufactures continue to be the main receptor of FI, FI participation in that sector went from 61 per cent in the period of 1994-1999, to 49percentbetween 2000 and 2006; while the services sector went from 19percent to 35percent. Within the services sector, the largest flows of DFI have been oriented to the financial sector, around 70percent, derived from the mergers and bank acquisitions. In the case of manufactures, the divisions of machinery and equipment, food, beverages and tobacco, and chemicals, rubber and plastic accounted for more than 80 percent of DFI of the sector. Another peak in the inflow of direct DFI flows is seen in 2013, due the purchase of Grupo Modelo by the Dutch company Anheuser-Busch InBev SA.

A trait present in the destination of foreign investments since the implementation of NAFTA, is the concentration in a few sectors, manufacturing, financial services, trade and communications and transport accumulate around 90percent of total FI. Within these sectors, if we take as a sample for analysis the manufacturing sector, the maquiladora in particular, we discover several revealing data. Apart from the fact that Mexico has lost competitiveness in segments of low technological content (among them that of clothing which tend to be more labor-intensive) considering that many companies have moved to Central America or Asia, particularly China,the maquiladoras are an industry that has brought biased socio-economic benefits to Mexico (CEPAL, 2007).

Although the maquiladora industry generates more than one million jobs, according tothe Mexican National Institute of Statistics and Geography(INEGI), that represents 3 per cent of the GDP and is responsible for around 45 per cent of exports, it is also true that most jobs are poorly paid, as low wages is one of the attractions sought by companies of this industry.Also, this industry represents more than 30percent of imports, since 80percent of its inputs are imported, and it does not represent productive linkages with national companies. Besides, its economic spillover is reduced to the border strip with the United States. In sum, the maquiladora industry is the industry that is most integrated to the global economy and more disconnected from the national economy, and such situation does not even obey to NAFTA, since it is an independent regulatory regime(Margáin, 1999).

Finally, DFI reception is relative if we see it in the framework of world foreign investments. Although Mexico is one of the main recipients of FI in Latin America, direct FI in the region decreased in 2016. It amounted to only 142 billion dollars, while Southeast Asia was consolidated as the developing region with the highest reception of DFI with 443 billion dollars and as a strong foreign investor. Latin America and the Caribbean only invested 31 billion dollars in 2015, while Southeast Asia invested 56 billion dollars(UNCTAD, 2017).

As a group,NAFTA has a very strong presence in DFI flows, concentrating 30percent of the world's largest transnational corporations and 25percent of global investment flows in 2016. However, intra-group investments represent 15percent of the total investments reported by the group, a situation that has remained unchanged in the last five years. The United States is the country that generates most of this investment(Ibid).

DFI is a fundamental part of any open and interdependent economic system and can be an important catalyst for development in the areas where it is located. However, the evidence has shown that its benefits are not generated automatically or distributed proportionally and that the increase in the amounts of FI received is not directly related to a strengthening of the national economy, much less to a higher standard of living of the population. Such evidence must be considered by Latin American countries that have signed agreements with the United States, which, beyond reproducing the contents of

NAFTA, including its investment chapter, have made them more flexible and comprehensive, such as CAFTA-DR or the FTAs United States-Peru and United States-Colombia. Although it is impossible to generalize since FI plays a different role for each country given their economic, political and social circumstances, certain parallels can be made, even more so with countries that, like Mexico, have a high economic dependence with the United States, such as Central American Colombia, Peru and Panama.

5. DISCUSSION

Mexico is currently at a crossroads in DFI since both international and domestic circumstances are unfavorable. In the international arena, the economic stagnation of the United States, its primary source of investment, and the increase in competitiveness to attractflows of DFI, where China stands out, are added nationally with the government's inability to resolve internal problems, such as the scarce internal savings and increasing insecurity. Besides, there are no longer many sectors to privatize and if strategic areas are privatized as suggested by the case of PEMEX, Mexico will reach the top of that strategy. In summary, a difficult future is predicted for the capture of greater flows of DFI.

However, the attraction of flows is only the first step, it is necessary to link DFI with the development of the country, since it is evident how little it has contributed. DFI is just one piece of the complex machinery that supports the development of a country, not a panacea per se. But, from a legal point of view, in line with the neoliberal principles of the doctrine of investment promotion and protection, Mexico had to change its laws on DFI, leaving behind its nationalist and protectionist customary practices that had been the ideological foundation of its regulation to incorporate both obligations, criteria and standards of foreign investment treatment, as well as an arbitration mechanism for Investor-State dispute resolution. Also, in changing its legal structure to make it correspond with NAFTA, it opened in full to direct investments leaving out all types of performance requirements. Foreign investors have no obligation to generate jobs for Mexicans, to purchase national inputs, or to transfer technology. This legal structure makes it difficult to link investments with national development.

On the factual side of the national economy, from a macroeconomic evaluation, there is evidence of an exponential increase and then sustained capture of DFI flows. Although, an in-depth analysis that puts in perspective the amount of such flows, its destiny and its role within the economic processes to estimate the relation with the national development, might confirm that such relation is very weak.DFI has not contributed substantially to Mexico´s national development.

It is unavoidable to recognize that the legal flexibility and opening for investments is not enough to attract FI and much less to connect it with national development. There is no automatic relationship between openness, the attraction of DFI and development, this depends on public policies. It is necessary to include DFI as part of a long-term national development strategy based on the application of active and integrated policies to all sectors of the economy. Said policies must not only remain in registry, extension of taxes, homogenization and flexibility of norms and legal transparency, but encompass quality control tools, initiatives of participation and linkage with national companies, disclosure and exchange of information, evaluation methods, and schemes to minimize ecological and social damage. At the same time, investments must be made in human capital, infrastructure, technological development and bureaucratic facilitation. State intervention is essential, companies by nature always seek surplus value and government as the guarantor of society is the only one that can lead them to key sectors and encourage their integration with national companies, as well as the transfer of technology, although this may compromise the provisions of the NAFTA on performance requirements but is in fill accord with Mexican Constitution.Besides, this method has been proven by countries such as China.

Likewise, Mexico should seek to play on both sides of capital flows, with exporters and importers, since it is undeniable that the receiving parties are the weakest, with little capacity to direct flows.

For this, it is necessary to first invest more internally, to strengthen the economy and level of competitiveness. Mexico must diversify its trade as well as its investment, it should diversify as an importer and as an exporter. This isfeasible because it has the institutional infrastructure to achieve it. Apart from NAFTA, it counts with FTAs with chapters likechapter XI of NAFTA and APRIs with countries in all regions of the world.

In addition, it has a privileged geographical position, not only because it is the frontier of the world's leading power, but because it has a bi-oceanic character with connections to all areas of the world, relative political-economic stability, abundant workforceand international prestige. A fact that would strengthen its presence in the international context and encourage national development.

6. CONCLUSIONS

Mexico's performance after the signing of NAFTA is the most pertinent experiment from which other countries in the region can derive lessons, both about the desirable content of the treaties and the economic effects that a commercial treaty could have. with the US, with an investment chapter similar to chapter XI.

NAFTA represents the culmination of a process of restructuring of the Mexican economic model. Mexico went from a highly interventionist welfare state system to a neoliberal state. There was also a very marked change in Mexico´s approach and political discourse towards FI, from classifying it as an instrument of the powerful to impose on the weak to considering it the perfect vehicle for development.

NAFTA implied a transformation of Mexican legal framework, including its regulation on FI, as well as of public policies on FI. Legal regulation was relaxed to encourage the entry of foreign capital and sectors previously exclusive to nationals were opened. Legal framework adapted to the provisions of NAFTA’s Chapter XI and to its guiding principles.

NAFTA and DFI have not contributed substantially to the strengthening of the national economy or to a higher standard of living of the population. Direct FI has not been linked to local industry. There is no automatic relationship between openness, the attraction of FI and development.

References

Informe estadístico sobre el comportamiento de la inversión extranjera directa en México. 2017. Comisión Nacional de Inversiones extranjeras. Report presented to Mexican Congress of the Union by the Secretariat of Government on 27 November 2017. http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-11-30-1/assets/documentos/Informe_SE_inversion_extranjera.pdf. Mexico.

Ley de Inversión Extranjera. 1993. Published in the Official Gazette of the Federation (Mexico) on December 27, 1993.Mexico.

Medición de la pobreza en México. 2016. Consejo Nacional de Evaluación de la política de Desarrollo Social en México (CONEVAL). https://www.coneval.org.mx/Medicion/MP/Paginas/AE_pobreza_2016.aspx. Mexico.

OECD. 2002. Foreign direct investment for development. Maximising benefits, minimizing costs. https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf. France.

Secretaria de Economía, Inversión extrajera directa en México y en el mundo.2015. Secretaria de Economía DGIE. Vol 16. Mexico.

UNCTAD. 2017. World Investment Report. Vol. 42. pp. 4-11.Switzerland.

ÁLVAREZ SOBERANIS, J. 1995. **Los servicios financieros en el TLC y la nueva ley de inversión extranjera.**http://www.ajuridica.com.br/. Portugal.

ALZUGARAY, C. 2004. **De Bush a Bush: balance y perspectivas de la política externa de los Estados Unidos hacia Cuba y el Gran Caribe.** JM Gómez (eds.). América Latina y el desorden global neoliberal. pp. 211-218. Spain.

ARELLANO GARCÍA, C. 2011. **Derecho Internacional Privado.** pp. 592-94. Mexico.

BULMER-THOMAS, V., & DUNKERLEY, J. 1999. **The United States and Latin America: The new agenda.** Harvard University Press, Institute of Latin American Studies. p. 115. USA.

CALDERÓN SALAZAR, J. 2001**. México en un mundo global.** pp. 49-51. Mexico.

CALDERÓN VILLARREAL, C., & HERNÁNDEZBIELMA, L. 2011. **El TLCAN una forma de integración económica**

dualista: comercio externo e inversión extranjera directa. Estudios Sociales. Vol. 17 Nº 37: 93-118. Spain.

CANCINO GÓMEZ, R. 2011. **Régimen jurídico de la inversión extranjera en México.**Revista de la Facultad de Derecho de México. Vol. 61 Nº 255: 217-236. Mexico.

CÁRDENAS GARCÍA, J. 2015. Reforma energética: Análisis y consecuencias.pp. 23-46. D.F.Mexico.

DOS SANTOS, T. 1999.**Neoliberalismo: doctrina y política.** Comercio Exterior. Vol. 99 Nº 6: 510-15.Mexico.

GRAHAM, E.& WILKIE, C. 1999. **Acuerdos económicos regionales y firmas multinacionales, las disposiciones en materia de inversión en el TLCAN (NAFTA).** ARS IURIS**.** Vol. 21. pp. 40-41.Spain.

GUERRERO DELIZARDI, C., & VANEGAS, L. 2017. **Reflexiones teóricas en torno a la propuesta de recuperación del poder de compra del salario mínimo en México.** Contaduría y Administración. Netherlands.

GUTIÉRREZ HACES, M., & QUINTERO SÁNCHEZ, A. 2016. Hacia la construcción de un régimen internacional de protección a la inversión extranjera. 12 Norteamérica. pp. 109-137. http://www.scielo.org.mx/pdf/namerica/v11n2/1870-3550-namerica-11-02-00109.pdf. Mexico.

LÓPEZ VELARDE, E.1994. **Breves apuntamientos en torno al capítulo de inversión del TLC.** PEMEX Lex. Vol. 28. 75-76. Mexico.

MARGÁIN, E. 1999. **Globalización y desarrollo sustentable en la frontera de México y Estados Unidos.** Comercio Exterior. Vol. 49 Nº 10: 871-877. Spain.

MORENO-BRID, J., RIVAS VALDIVIA, J., & YOUNG, R. 2005.**Mexico-Economic growth exports and industrial performance after NAFTA.** Nº 42. Estudios y Perspectivas 12. https://repositorio.cepal.org/bitstream/handle/11362/4963/S0600023_en.pdf. Mexico.

PASTOR, R. 2014. **El futuro de México en Ameríca del Norte: su tercer desafío.** A. Oropeza García (ed). TLCAN 20 años. pp. 357-373. Mexico.

PREBISCH, R. 1961. **La periferia latinoamericana en el sistema global del capitalismo.** pp. 2-21. Mexico.

VEGA CÁNOVAS, G. 2013. **México y Estados Unidos.** La economía política del libre comercio.Mexico.

WILLIAMSON, J. 1990. **What Washington Means by Policy Reform.**Institute for International Economics.https://piie.com/commentary/speeches-papers/what-washington-means-policy-reform. USA.

ZABLUDOVSKY, J. 2004. **El TLCAN y la política de comercio exterior en México: una agenda inconclusa.** N° 821: 59-70. Mexico.

UNIVERSIDAD DEL ZULIA

opción

Revista de Ciencias Humanas y Sociales

Año 34, Especial N° 14, 2018

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.
Maracaibo - Venezuela

www.luz.edu.ve

www.serbi.luz.edu.ve

produccioncientifica.luz.edu.ve