This paper focuses on the Mexican deregulation/regulatory improvement unit from 1989 to the present, the UDE/COFEMER. It explains how this commission came about, operated and has created an institutional space for deregulation/regulatory improvement at the level of federal executive. It also describes how an opportunistic strategy to transform the UDE, into the Cofemer, a decentralised Commission supported by an Act, was pursued and came into fruition by 2000 and, how by 2003, it has cooperated with fourteen federal/subfederal compounds in creating fast-track start-up programmes to ease business entry. Some empirical results of the latter are presented in the Annex.


Key words: regulation, deregulation, formalities, legal measures, regulation, regulatory impact assessment, reforms, red tape, start-ups, business entry.

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I. WHAT IS THE STORY ABOUT?\(^1\)

In 1989 Mexico created a “deregulation unit”, UDE, with a broad optional authority to propose repeals, amendments and new regulation so as to “enhance wealth and job creation”, at the federal level. This broad mandate in its initial condition was essential for the institutional development of regulatory reform in Mexico, i.e. it did not start as a red tape reduction unit only. It was able to opportunistically tap reform opportunities, at legislative and administrative levels, so as to move the Mexican economy away from one where business activity was highly distorted and politically dependent. The advances were substantial, but not surprisingly, incomplete. By 1996, big obvious distortions remained, but the rate of sweeping reforms slowed down.

In 1996 a presidential decree granted the UDE and its advisory council (the Council), which included private sector participation, horizontal oversight and coordination authority over the red tape reduction programmes of twelve federal agencies, and over any of their new regulation proposals. Furthermore, it maintained and made use of its original 1989 optional capacity to review or propose regulation as long as it was business related.

The claim I make in this paper is that, though clearly bounded and publicly unobjectionable, the UDE’s/Council coordination authority was contrary to Mexican public administration culture and was granted because of the exceptional circumstances and of the saliency of red tape reduction.

This horizontally broad but bounded oversight authority supported a four year (1996-1999) process of sequential work, including legislative and administrative reforms, learning by doing, and an ambitious programme for trimming and simplifying federal formalities. In particular with Mexico City, a two-year programme was ready but actually never applied. However, it became the basis for the “fast-track start-up programmes” which have been successfully adopted since 2002 by an increasing number of sub federal compounds (states and municipalities) and whose first public results are presented in the Annex.

As the federal review of regulation, centered on formalities advanced along, the

\(^1\) I have attempted to make as objective an account as possible, considering I am not a detached observer and that the events are only three to thirteen years old. I have made my claims, priors or prejudices as explicit as I could. I am the only one responsible for the mistakes my memory may have played.
UDE/Council sought and found support, inside and outside the administration, to transform itself into a commission, the Cofemer (Comisión Federal de Mejora Regulatoria), sustained in a legislative act, which was relevant for institution building and for persistence across changes of administration.

The transformation allowed the Cofemer/Council to maintain broad and bounded optional review powers for the analysis of federal regulation, and acquire a new optional authority to review the application of the existing regulations while creating a system that requires continuous maintenance. The Cofermer/Council continuous non-optional “maintenance” tasks are to: (i) undertake public review and ensure prepublication of drafts proposals and their respective Regulatory Impact Assessment (RIAs) sponsored by most federal agencies and (ii) oversee that agencies continuously update and simplify the content of their public registry of business and non-business formalities (see Box 11).

This paper sets itself two tasks: (1) to describe how the transformation from UDE to the Cofemer took place with some “luck and toil” and council and senior political support and (2) how it was that the bounded procedural authority of the UDE/Cofemer, could be exerted in a gradual manner so that its usefulness and effectiveness grew with the joint experience and learning-by-doing of agencies sponsoring draft regulation.

Even though the description of the events may be of special interest to those reflecting on Mexican public-governance and accountability, the analysis on how an actual decentralised procedural oversight was set up is of relevance to a broader audience. This is because the change in costs and incentives of introducing regulatory procedural oversight by an agency, distinct from those sponsoring a piece of regulation, is a feature common to all deregulation/regulatory improvement agencies.

To end this introduction, it is useful to make a distinction between deregulation and regulatory improvement. Deregulation is repealing, diluting or at least simplifying a regulatory measure or its application while “regulatory improvement proper” means that either new needed regulation is issued or is made more efficient.

From a “normative” point of view whether “deregulation” or “regulatory improvement” is called for, would be guided by social cost-benefit analysis. In practice, there are obviously

---

2 As long as the measure has direct impact on private activity (it would include intragovernmental measures which impinge on the effectiveness of private sector regulations, otherwise intragovernmental regulation is excluded).

3 Deregulation obviously includes formality or red-tape trimming or simplification.
opportunistic political decisions as to when one or the other is going to be successful⁴.

At the end of the day, the role of the UDE/Cofemer type of institution is nothing but procedural but the objective is to improve or repeal regulation. When these institutions are effective they instil a process through which regulatory decisions are overseen on the basis of analysis, transparency and public consultation and, ideally some sunshine is cast on its social costs and benefits. This objective can hardly be objected overtly by politicians in a democracy, yet it is within the procedural details where the political and bureaucratic capacity to disrupt smart tape on red tape lies.

II. HISTORICAL BACKGROUND: Plus Ça change...

An economic historian writing about the XVIII century in Mexico claimed that an important element in Mexican backwardness, in the sense of missed potential wealth creation was what, though he did not use it, I would succinctly describe as “legal infrastructure”⁵. By this I mean not only the tendency to have a mercantilist rent-seeking quality of legal measures proper, which at one time or another have recurrently reappeared in Mexico and other countries so as to redistribute wealth, but, also the low quality, overlap and problems of their enforcement by, and between, the executive and judiciary powers at, both federal and sub federal levels and; of course how all of this “soft infrastructure” interacts with day to day entry, operation or exit of business, and the “daily life” of its citizens⁶.

In this sense, I venture to claim that Mexican history can be organised around a constant conundrum, how the tensions of its day to day practice and its “legal infrastructure” are de facto, not really solved or legally settled but, lived out or experienced.

In this sense, Mexico is now at a new crossroad; even though modern Mexico has had a federal constitution, in the interaction between federal and sub federal entities, not unlike the US, it had, at least in the period between the end of its civil war, (around 1920) and until around the end of the 20th century, been a de facto a centralised state. The

⁴ An effective deregulation/regulatory improvement unit is always scouting for opportunities for either. Inevitably, much of its work is preventing or diluting excessively costly regulation.


⁶ Economists often claim that this non-enforcement in an extensive and sparsely populated land with a variety of ethnic groups and tensions may have even been for the better in the sense that legal measures were economically perverse, i.e. piracy and smuggling. This dismal nth best certainly did not precisely favour respect for the law.
challenge for Mexico in this new millennium is whether the schism or tension referred to in the paragraph above can, be effectively reduced without dire disruption\(^7\).

The reason to do a brief setting of the historical stage of “la grande durée” is to accommodate, the small story of Mexican deregulation in the last fifteen years. My claim is that at this fascinating, and possibly dangerous inflection point for Mexico, the historical stage can help us organise and understand the specific failures and successes of Mexican deregulation as federal coordination with sub federal entities happens or fails to do so, which if for no other reason may make it interesting for a reader who is not specially attracted by the arcane issues of regulatory reform.

Today, any regulatory improvement process, including red-tape reduction at subfederal level, depends on states and municipalities’ will and capacity to coordinate with each other. When this happens, as it surprisingly has, however slowly, the Cofemer can diffuse its own technology. Alternatively, jealous subfederal compounds may, on their own, emulate on improve upon best practice.

<table>
<thead>
<tr>
<th>Date</th>
<th>Initiative</th>
<th>Principal actions or effects (as regards the reduction of paperwork and formalities)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989 (DOF: February 19(^{th}), 1989)</td>
<td>Creation of Economic Deregulation Unit</td>
<td>• See Box 2 and 3</td>
</tr>
<tr>
<td>1992 (DOF: July 1(^{st}), 1992)</td>
<td>Federal Metrology and Standards Law enacted</td>
<td>• Creates a regulatory process with a detailed consultation procedure and a cost-benefit analysis requirement for new technical standards.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Clarifies important aspects of the regulatory process, in particular concerning rights of appeal.</td>
</tr>
</tbody>
</table>

\(^7\) Currently it appears that the tension shall be reduced by moving from a de facto centralised state operation to an increasingly decentralised one which is closer to the de jure compact, but it is too early to know which new dimensions of the schism will be aggravated, e.g. fiscal discipline may be jeopardised as subfederal de facto accountability is practically nonexistent because in the previous de facto solution it relied on federal oversight which is now impossible.
<table>
<thead>
<tr>
<th>Date</th>
<th>Initiative</th>
<th>Principal actions or effects (as regards the reduction of paperwork and formalities)</th>
</tr>
</thead>
</table>
| 1995 (DOF: November 24th, 1995) | Agreement for the Deregulation of Business Activity (ADAE)                    | • Ordered 12 federal agencies to submit in a homogenous format to the UDE.  
• See Section VII: Main Features 1995-1996 (Supra). |
| 1996 (Gaceta Oficial: December 16th, 1996) | Agreement that creates the first fast-track programme to start-ups (SAINE)    | • Creates a programme which improves regulation of business entry in Mexico City (D.F.).                                                      |
| 1996 (DOF: December 24th, 1996) | Reforms to the Federal Administrative Procedure Law                           | • Regulatory impact analysis (RIA) mandated for all new regulations.  
• Gives authority to the UDE to publicly review RIA.                                           |
| 1997 (DOF: May 20th, 1997) | Reforms to the Federal Metrology and Standards Law                            | • See box 5                                                                                                                                      |
| 2001 (DOF: June 25th, 2001) | Agreement for the Deregulation and simplification of Business and civic formalities | • Identification of five highest impact formalities in each ministry and decentralized agency for simplification or elimination. (see RIA and ongoing results at [www.cofemer.gob.mx](http://www.cofemer.gob.mx)) |
| 2002 (DOF: Jan 28th, 2002) | Presidential agreement that creates the new Fast track for Start-up programme (SARE) | • Creates the programme that reduces the federal formalities and the time for starting a low risk business.  
(Enforcement: March 1st, 2002) (see RIA at [www.cofemer.gob.mx](http://www.cofemer.gob.mx)) |
| 2002 (DOF:June 11th, 2002) | Federal Law of Transparency and access to government public information       | • Ensure that anyone can obtain almost any kind of non-proprietary government information requesting for it.  
• Facilitates access to general information by publishing most of the relevant information of all the federal government agencies on the internet.  
• Protects information considered confidential.  
• Created an autonomous federal institute that applies the law. (IFAI), (see RIA at [www.cofemer.gob.mx](http://www.cofemer.gob.mx)) |
| 2003 (DOF: March 31st, 2003) | Fiscal Miscellaneous for year 2003.                                            | • Here are the legal observations applicable for tax compliance that reduce the number of days necessary for starting a business.  
• After 2000, the Treasury has not only complied but also gone beyond its legal obligations as it has a self-contained guide for tax formalities (see [www.cofemer.gob.mx](http://www.cofemer.gob.mx)) and created a programme for one day top-ids for start-ups (See Annex). |
| 2003 (DOF 9th, September, 2003) | Presidential agreement that “Guide for Executive proposals within the Executive”. | • As a result of departments “bypassing” standard procedures and having the legislature initiate the process the President’s Legal Council issued a guide that adds the need to do a budgetary impact assessment. |
III. REGULATORY ENVIRONMENT PRIOR TO 1989

The easiest way to understand the status quo ante is to consider that since the 1930s the Mexican government had accumulated an impressive array of unnecessary powers and regulations and that those measures that may, in the best of cases, have been socially justified (either in the interest of consumers, the environment or health), were often unusually burdensome giving the government excessive discretion and either really not solving what economists would understand as market failures or, they created expensive and corrupt institutionalised government failures with an impact on budget expenditures and public finance. Naturally, regulation is often a scheme to redistribute wealth, which politicians can hardly precommit not to do, but ideally wealth redistribution through regulation should be overt and minimise wealth creation erosion\(^8\).

Whether much of the consequences of these regulations came about in an inadvertent manner because, Mexico was aping some other country or it had a short run populist political return or whether they came about, as Public Choice may argue, because the bureaucracy found the rent creating opportunities attractive in a political system that was not intensely contested and was, in spite of all its problems popular and democratically elected, remains an unsettled issue, but the fact is that once the regulation was issued there were bureaucrats whose jobs or, their respective legitimacy, depended on the existence of these measures. Next, I will present a brief review of the investment climate.

In the late 1930s most of the basic “tutelage principles” were enacted in existing labour laws to this day still in force\(^9\). These populist laws, created during the presidency of Cárdenas, were to have and continues to have momentous and costly consequences on public education, health and the entire government-owned energy-industry, both oil and electricity. During the Second World War, Congress also granted the president extensive central planning powers.

Later, in the period of stabilising development, during the fifties and sixties, and though the government kept sound public finances, perverse federal price controls from

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\(^8\) In fact none Mexican expropriations like banking in 1982, were certainly overt but highly and unnecessarily inefficient.

\(^9\) E.g. closed shop clauses for collective contracts, hiring halls, compulsory collective contracts for an aggregate industry, compulsory union membership, etc.
everything ranging from movie tickets to phone calls, staples, sugar, milk, land, transport, parking lot regulation, private schooling were pervasive. Even though the inflation rate was low and, often, price controls were not binding, the fact is that the federal executive, through his department secretaries, had the power to initiate or reimpose a binding control. Clearly, the private sector understood this and thus, continuously negotiated with the government. This of course, did not do much to encourage a level playing field for business.

In addition to the pervasive threat of “potentially” binding price controls the transport sector, land, air and sea, was subject to strict barriers to entry. Routes, rates and investment plans were subject to a strict discretionary review and regulation, creating substantial barriers to entry\(^\text{10}\).

Barriers to entry in the creation of elementary, secondary and terminal private education were extremely discretionary\(^\text{11}\).

As is common in many countries, agriculture was extremely distorted. Not only were price controls, creating highly unfavourable terms of trade for staple agriculture, both on outputs and inputs present but, for a period spanning over thirty years up to 1991, the central government had the optional authority to decide amounts of land to be allocated to specific crops and though, it was flexible, the discretion created uncertainty for investments and led wealthy agribusiness, whether it be in sugar or staples, to invest time and resources peddling and influencing and rent seeking with the agricultural authorities.

On technological transfers, as late as 1988, the Secretary of the Economy had an agency to enforce required approval of the terms and the transfer of “foreign technologies” to the sector.

In short, even though the Mexican economy was de facto a capitalist one, it was heavily distorted by a government that held excessive fine-tuning, micro, and price control

\(^{10}\) Though much progress has taken place a full liberalisation of all transport barriers to entry has not been completed, in land transport the incumbents have shown to be effective political constituents, see Salas and Zabludovsky, “NAFTA as a Tool to Precommit Market Openness”, mimeo, Stanford, forthcoming, 2004, see also appendix: “An Assessment of the Cost for International Trade in Meeting Regulatory Requirements” in OECD (2000) and “Administration defends Mexican Trucks decision at Supreme Court”, Inside U.S., Vol. 22, No.7, 2004.

\(^{11}\) As of 2004, barriers to entry in the creation of schools for teachers remain in place, whereas other barriers have been reduced and are less binding, but remain excessive.
management powers\textsuperscript{12}. To an outsider, judging only from the legal measures which the federal executive could exert and not evaluating their application, Mexico was not a capitalist but a command and control economy. Of course, in fact many of these controls were either not exerted, had discretionary loopholes, or were not binding but, in times of crisis, or due to the whim of a Minister or, high inflation or for small and un-influential businessmen they were discouraging and protected incumbents or those who knew their way around them. Obviously, in addition to the direct economic effects of unnecessary uncertainty for new entrants, this investment climate did not do much to have an outspoken private sector, and even though high level government corruption was privately despised, businessmen rarely, if ever made a public denunciation.

Finally, in the mid 1980s, as disenchantment with wealth creation and failed populist policies during the 1970s, a number of Mexicans with a sound technical training in economics, for the first time in recent time, had the opportunity to enter into policy positions, previously reserved for lawyers or other professionals without these skills.


After bouts of abandoning public finance discipline which led to recurrent stop and go macro crisis, between 1970 and 1982, the De La Madrid administration (1982-1988) finally decided to join GATT and Mexico began unilaterally to open its current account\textsuperscript{13}.

In the Salinas administration (1988-1994) there was a small number of economists who had luckily reached key ministerial positions and who shared the view that much of the inefficient bureaucratic powers and controls had to be dismantled to make the economy more efficient and provide a better business climate. The administration was certainly not homogenous with this position\textsuperscript{14}. The party in power certainly did not automatically share the historical view and facts on which to base these priors, but the party machine, was

\textsuperscript{12} Not to mention the parasitical parastate sector much of which remains so.

\textsuperscript{13} See Leopoldo Solis, "A Monetary Will of the Wisp", Pergamon Press. Many products still maintained quantitative restrictions but in 1987 the average most favoured nation tariff applied to industrial imports reached its lowest level of 5.6 per cent, See, Blanco Herminio, “Las Negociaciones Comerciales de México con el Mundo”, Fondo de Cultura Económica,1994.

\textsuperscript{14} There was tension in the cabinet because important portfolios were held by talented politicians who opposed dismantling the power and discretion of agencies, to a large extent because the capacity to distribute rents or favours would be severely limited. Such was the case with most government agencies except the Trade and Industry, the Treasury, Budget and Programming, the Economic Office of the President and the Central Bank.
sufficiently disciplined to follow the president’s line\textsuperscript{15}. The reason why such a small group of highly placed bureaucrats could bring about substantial changes in spite of being such a top down small number, and also why easily identifiable specific reforms were not pursued was because, the necessary and sufficient condition for success was the support of a powerful president, who controlled the political party in power, the legislature and most state governors\textsuperscript{16}.

In such a context, the Secretary of Trade and Industry proposed the creation of a small technical unit: “Unidad de Desregulación Económica”, (UDE) in 1988, headed by a young economist who was the Secretary’s Chief of Staff\textsuperscript{17}.

Considering the relatively small budget and staff of the UDE its social rate of return was substantial. Of course not every proposal they made was successful\textsuperscript{18}.

**V. CONTEXT FOR THE ADOPTION OF THE SYSTEMATIC RED TAPE REDUCTION PROGRAMME AT THE FEDERAL LEVEL 1995**

Given Mexican history of rent seeking and lack of transparency in bureaucracy any programme oriented to systematically trim red-tape and requiring an agency to submit to an outsider for a public review of its formalities and new regulation would be, correctly perceived as one that would, by throwing sunshine, reduce the discretion and power of bureaucracy and thus would generally be opposed by many government agencies. This opposition would arise both at federal and subfederal level. As I will explain next, the crisis conditions, made such a programme extremely attractive, had the support of organised business while this coincided with a new President Zedillo, and his Legal

\textsuperscript{15} We will never know how far presidential line could actually go without creating coalition problems in the incumbent party, but it did go farther than some PRI shibboleths, such as agrarian reform and unconditional support Pemex union leaders.

\textsuperscript{16} Otherwise, the limit to the depth and rate of reforms was the time needed to design them builds some pervasive core, and the time needed to implement them.

\textsuperscript{17} His skills were “a perfect fit” because while he had an understanding of macro and trade shared by government’s economists, he also had a rarer trait among Mexican economists of the older vintage, in law and economics as well as industrial organization.

\textsuperscript{18} A relevant example of this, which would have changed the initial conditions of domestic telephony was that even though the UDE proposed the break up of the government owned vertically integrated telephone monopoly at its privatisation, much as the US had done earlier, at divestiture and Brazil, did later, not only was the company not broken up, but a franchise with a six year monopoly and the added sweetener of a national mobile telephony franchise was awarded to the privatised company.
Council, who shared the objectives of the proposal\textsuperscript{19}.

\begin{center}
\textbf{BOX 2 : UDE INITIAL AUTHORITIES}
\end{center}

Diario Oficial de la Federación, 19\textsuperscript{th} February, 1989

The UDE would review all legal measures (marco regulatorio nacional) impinging upon private agents in the economy so as to reduce barriers to entry, induce greater efficiency and ease (formal) job creation:

(i) it could directly propose to the President any legal reform in its area of competence (its turf),

(ii) it could also propose to the President reforms regarding the areas of authority of other ministries, but this would have to be done in a cabinet context (outside the Ministry’s turf),

(iii) it could seek coordination with sub federal entities (states and municipalities) so as to review legislative and

(iv) it could seek advice or cooperation from the private sector. The decree gave all the powers to the Secretary of Trade and Industry.

\section*{VI. THE UDE: 1994 - 1996}

In the winter of 1994, holders of Mexican bonds were faced with the prospect of being unable to cash their bonds at par value. The resulting run on the peso and the macroeconomic problems that ensued, including a systemic banking crisis, created substantial disruption in Mexico. This crisis, known as Tequila, which had its origins in accelerating disequilibria created at the beginning of that Mexican \textit{annus horribilis}, 1994, exploded in the first few months of the Zedillo administration (1994-2000) and within the first year of the entry into force of the North American Free Trade Agreement\textsuperscript{20}.

The crisis made domestic business obviously discontent. The “Mexican Business Council” (CCE) and the “Consejo Mexicano de Hombres de Negocio” were asked to support an orthodox stabilisation programme which added insult to injury, because taxes and prices

\textsuperscript{19} The proposed text of the Acuerdo para la desregulación de la actividad empresarial, DOF, 24 de noviembre de 1995, received complete support of the President’s Legal Council.

of the government-owned utilities were to be increased and after the fall in the exchange rate, the economy was not to be closed but to continue on the NAFTA track of a scheduled path of persistent opening, and the important federal business organisations were asked to help in publicly supporting all of these highly unpopular measures.
The Unidad de Desregulación Económica initially was comprised of six economists, three doctors in economics, three masters and four or five lawyers, plus some support staff directly under the Secretary of Trade and Industry. The most outstanding reforms they brought about were:

(i) dismantling of price controls and price control authorities both under the authority of Trade and Industry and other ministries was seriously started;
(ii) the law which required licensing of technology imports was repealed;
(iii) federal land transport was deregulated in the sense of reducing barriers to entry;
(iv) excessive powers that the executive had to impose command and control regulations were repealed\(^\text{21}\);
(v) the authority by the agriculture minister to issue commands on land areas to be allocated to specific crops was repealed;
(vi) Pemex (the government owned vertically integrated oil monopoly) terms for a gasoline franchise were, for the first time since 1938, made public and the undue discretion of Pemex (not) to grant the franchise was trimmed;
(vii) technical regulations and standards could be issued by any ministry, without much oversight and in a no transparent manner, a new law was successfully proposed to Congress, Ley Federal de Metrología y Normalización that had a massive repeal of all standards and introduced a disciplined and transparent process, homogeneous process to create new technical standards;
(viii) the 1917 Constitution forbade monopolies and monopolistic practices but Mexico did not have an implementing Antimonopoly law, so it was irrelevant, such a Law was proposed and passed through Congress and an antitrust commission\(^\text{22}\), which has been successful in merger control, was created\(^\text{23}\);
(ix) with the Mexican tax-chair, laws regulating Mexico City, which at the time was a federal entity, lease contracts had pretended to protect lease holders to the extent that no construction of apartments for lease was made. At the end of the administration a law was passed to balance rights, it was successful because supply has since substantially increased and
(x) with the Mexican tax-chair, requisition\(^\text{24}\) of the Port of Veracruz on May 31st, 1991. The union loaders operating as a closed-shop hiring hall making the Port costly and allowing for indentured labour.

\(^{21}\) For a review see the OECD and World Bank Report on Land Transport Deregulation in Mexico.
In such a context, in 1995, it was obvious that the country and government were in dire straits and had to find as much constituent support as possible. The Mexican Business Council argued that domestic businessmen were being asked to compete with US and Canadian ones, but Mexican government services were of inferior quality and business taxes heavier. Given that the fiscal astringency made it absolutely impossible to consider subsidies or tax breaks, the Business Council proposed a programme of trimming the government, and ideally reducing the size of bureaucracy. The government answered that the 1995 recession was the worst moment, from the point of view of social disruption, to fire any considerable chunk of bureaucrats and that bureaucrats would bear some costs of the crisis as real wages would continue to fall.

It was in this dismal context that in the summer of 1995 the Unidad de Desregulación Económica succeeded in proposing a programme where broad business regulation would continue to be reviewed, as in the immediate past, but it would focus on business red tape reduction, which meant federal formalities for starting and operating a business, and would invite states and municipalities to have a coordinated programme. The proposal was politically attractive, one, because its incremental cost was nonexistent, it would be pursued by a small historically efficient office within the Secretary of Trade and Industry; and two, the expectation was that salient organised business groups would become active participants in the task of improving government.

The UDE argued within the administration that this was not only something ideologically fashionable within the business community but, in a country with a tradition of rent seeking regulation, as Hernando de Soto had shown for the similar case of Peru, it coincided with a legitimate effort to improve the quality of governmental interaction with business and could indeed, if seriously and systematically pursued, beyond the current fickle support of a fad, effectively reduce opportunities for corruption.


22 The Law created emergency measures that were made extensive use of given that all standards were abruptly repealed. As time lapsed emergency standards were substituted for ordinary standards called “Normas oficiales mexicanas or NOMs”.


24 Requisition is when Federal Authorities take control of the Communications infrastructure.
PROGRAMME DESIGN

In order to have a successful programme several issues were addressed if not thoroughly solved, in the design: (1) how to involve private sector participation, (2) how to deal with sub federal entities which were acquiring a jealous independence according to the new *de facto* status, (3) how to make the task feasible, and result oriented, (4) how to maximise the willingness of agencies to undertake the review. After a few months on drawing board we decided the best bet for achieving something credible was to design a decentralised task force where each agency had to work on their own review of their business formalities with a centralised oversight of such a review that would centrally warrant some minimal standard of quality and relevance of the review.

During these months, several businessmen repeatedly suggested that a temporary legal moratorium for all business formalities be enacted. To many it was an enticing idea but the Legal Council and I shared some misgivings because in principle, all formalities had support in a legal measure: in a law or a presidential or ministerial ruling or decree. So, a moratorium on a formality could not take place unless the legal measures were also put in temporary partial moratorium, through a “moratorium act” obviously enacted by Congress. The unintended consequences of a “moratorium act” were clearly unknown; not only were the legal effects on injunctions of torts and liabilities hard to predict, which in Mexico were not as threatening as in the US, but more importantly, the responsibility for unintended damages was serious, or at least unknown.

In November 1995 a presidential decree ordered 12 federal agencies (Secretarías Federales) and Mexico City, which was still a federal entity at the time, to submit in a homogenous format to the UDE, the formalities requested to open and operate all types of business, with an identification of their legal support, explicit format, and explicit information requirements and their own reform proposals.

The decree renewed the optional authority for the UDE to review existing business regulation, and make proposals for reform within the broad scope defined by business interaction with the federal government. The UDE made active use of its optional authority

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27 There were 12 federal agencies. Public procurement, the turf of the Comptroller’s office, was excluded, formalities that were only required from citizens as opposed to firms were also excluded. A formality was defined as a requirement on paper or electronic copy that had to be completed and given to a government agency in order either to start operations or day to day ordinary business operation.
to make proposals beyond red tape proper (see boxes 5 and 6). The mandate for the review was to analyse whether a piece of existing new regulation or its formalities could be repealed or made less burdensome so as to reduce compliance costs, and it ordered most federal agencies to send any new draft of proposed regulation for review by the UDE. In short, the spirit of the presidential decree was to maintain a broad authority for the UDE but have it focus on reducing business red tape, and improve regulation for ongoing business operation. Certainly we did not begin from a tavola rasa, rather, we gained a good understanding from Australia, Canada, Holland, Italy, UK and USA regulatory reform projects that included red-tape reduction.

Through the composition of the Council two things were sought, one the highest level of the bureaucrats, “secretarios” were included (however deputies were allowed as substitutes for a Minister) made it easier to ask a minister whose agency’s formalities or regulations was being reviewed to take the task seriously, and two, the participation of the heads of the business organisations, (without substitutes) and academics, allowed them to tap the knowledge of firms and other experts to get involved in the detailed review of formalities and proposals.

**BOX 4 : THE COUNCIL OF DEREGULATION**

*Diario Oficial de la Federación, 19th April, 2000*

The Council of Deregulation is comprised by the Secretary of Trade and Industry, who chaired it, the General Comptroller’s Office, the Secretary of Labour, The Secretary of Finance, the Governor of the Bank of Mexico, five members of organised business, and two of each, organised labour, university presidents and agricultural organisations. The council could invite state governors and other civil servants have been added (See Ley Federal de Procedimiento Administrativo, Art. 69).

The first important task of red tape reduction was simply to have each agency identify the formalities they applied; they were completely responsible for the content and were asked

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28 To see an English explanation of the presidential decree, ADAE, see OECD, “Regulatory Reform in Mexico”, 1999, page 138.

29 We got generous free help from George Eads at Charles River Associates, who had been at the Council of Economic Advisors and from Robert Hahn at the American Enterprise Institute.

30 In five years there were over twenty council meetings. The objective of the Council was pragmatic, to commit an agency. There were plenty of meetings of the executive committee, which always included the head of the UDE, a deputy from another agency and an ad-hoc business group. Executive committees were used to close positions when the UDE and the other agencies could not agree. The other mechanism was the Council. Persistence was essential; some of my peers would do something because doing it was easier than escaping our calls and letters.
to send their reform proposals. The task was made easier because the President ordered in writing a deputy minister to become responsible to the UDE and the council, with the idea that “ownership and maintenance” relied within each agency. At the UDE we presumed that all, if not most, formalities were supported in either an administrative measure or an act but an explicit public registry did not exist, so bureaucracy could easily abuse its discretion even by creating unsupported red tape. Though we had no precise idea about the size of the task because in Mexico these were yet unchartered waters, it was clear that the easiest way to proceed was sequential\(^{31}\). The order chosen allowed us to do learning by doing process combining simple or more cooperative departments with tougher ones, either in anticipated size, complexity or cooperative attitude.

Once the UDE received the formalities (and their repeal or reform proposals) from a given agency, the UDE with the support of the business representatives, would analyse them so as to propose additional eliminations, or if not judged possible to cancel, then reduce or simplify their requirements or, introduce shorter time limits for the agency to answer or introduce a positive or negative automatic answer\(^{32}\). The proposals made by the UDE/Council were presented to the agency which had a few weeks to answer and a meeting was arranged where a negotiation took place, at times with the ad-hoc business groups\(^{33}\).

These analyses went well beyond formalities per se, for example with the department of Labour and that of Health, the business inspections were modernised. Inspections had been a source of persistent business complaints about abuses of authority, so now the terms of the labour inspection were bounded by a Presidential *Reglamento* and put on a paper which had to be shown and could be verified by the businessman on the phone, the identity of who was to be inspected was to follow a truly random process (see Box 6). Once an agreement between the responsible deputy minister and the UDE and the Council had been reached, the respective minister would present in writing, the test of his commitments to reform to the full-fledged council and then the UDE and the respective ministry would start the implementation of needed reforms. All legislative reform proposals initiated by the agencies were taken advantage of so as to introduce the changes agreed

\(^{31}\) Clearly the entire Registry did not have to be ready so as to be published. Rather, each publication was a drawer, which imposed a discipline on the agency applying the formalities contained in that drawer.

\(^{32}\) Meaning that if by a certain date the relevant agency had not answered their absence could be considered a positive or negative response.

\(^{33}\) For the sequential results see Box 5.
upon in writing in the Deregulation Council. The formal process was “ended” as soon as the agency published; in the federal register all its business formalities.

Given that new legal measures are always being created or repealed, and that these new measures may contain or reform formalities, all agencies had to present their draft projects to the UDE, so that the UDE could give a regulatory opinion in general and with regard to formalities could require the agency to change or at least answer in writing by the deputy responsible its proposals. Also, once issued each agency was responsible to inform and update the Federal Registry of Formalities. Departments found it useful to explicitly identify business formalities, which had never been done, e.g. Trade and Industry and Labour used this information to dismantle some areas and reallocate the personnel to other departments. At that point in time a second round of improvement of formalities started in 2000. Red tape simplification, accompanied by improvements in the quality of regulation is a pragmatic task which can go on recurrently, both because there are different technologies available and because the substance of regulation may change over time and, simply but importantly because bureaucratic resistance has to be met with an analogous counter persistence (which is helped by natural bureaucratic attrition).

VIII. FROM THE REGISTRY OF FEDERAL BUSINESS FORMALITIES TO THE INTRODUCTION OF REGULATORY IMPACT ASSESSMENTS: DECEMBER 1996

As already explained, the 1995 Presidential Decree ordered federal agencies to send their entire draft proposals, as long as they contained formalities, to the UDE. The UDE had the optional authority and it generally exerted it, to make them public within the next two days it received them. This apparently minor practice represented a serious break from previous Mexican tradition. For decades, standard practice had been to show drafts to interested constituencies on a selective, idiosyncratic manner and at times, not even giving a copy of the proposal, rather allowing the “mandarin-selected” business to read them within the premises of the sponsoring agency.

34 The simple criteria for the opinions were made explicit; see the Acuerdo and the agency’s proposal could not be sent to the next stage until the agency in question had answered UDE’s formalities’ proposals. The strength of the rest of the opinion was just sunshine.

35 Once the agency’s registry had been published in the Federal Registry, a simple advertisement with the changes in the formalities would also be published; this was done in the same publication as an annex of the new measure.

36 Clearly IT was largely responsible for being able to handle a threefold increase in trade formalities between 1995 and 1999 but reallocation of personnel stemming from cancelling some functions as we discovered useless information was useful for the reallocation.
BOX 5: REFORMS SPONSORED BY UDE/COFEMER/COUNCIL 1994 – 2000
WITH SUPPORT OF OTHER AGENCIES AND THE LEGAL COUNCIL

1. The Council Chair dismantled price controls for milk, eggs, and staples (corn tortillas).

2. Natural gas legislation (DOF 11-V-1995). Promoted by the UDE at the request of the President. The law and implementing regulations for the natural gas industry were completely overhauled to allow private investment in the transportation, storage and distribution of natural gas. The dominant transport company, Pemex Gas, has preempted investments in transportation.

3. Reforms to the Civil and Civil Procedures Codes and the Code of Commerce (DOF 24-V-1996). With the support of an ad-hoc group of lawyers, the BMA, Sodi, Elias and Loperena. Cumbersome court processes and formalities were stricken from the Codes, reducing both the number and duration of trials in Mexico City by more than half from 1995 to 1999. This has resulted in citizens saving approximately 200 million dollars in legal fees since the inception of the reforms. Home mortgage administrative requirements were also simplified, paving the way for their bundling and securitisation.

4. Reforms to the Federal Metrology and Standards Law (DOF 24-XII-1996, DOF 11-V-20-V-1997). An equivalence principle, whereby alternative compliance mechanisms to technology-based standards are allowed, was created; a fast-track procedure for the deregulation of obsolete standards was put in place; and now standards, both compulsory (NOM) and voluntary (NMX), must be reviewed every five years in order to ensure their effectiveness.

5. Bankruptcy (DOF 24-V-2000, DOF 31-XII-2000 with the Treasury) and secure transactions (DOF 24-V-1996, DOF 23-V-2000) laws. New bankruptcy applying only to non-financial firms and secure transactions laws were enacted in order to improve the allocation of business sector resources and facilitate access to credit.

6. Reform to the Mining Act (DOF 24-XII-1996), by request of the Council Chair. Procedure for bidding auctions on state-owned land was set. Procedures for application of mining concessions specified.
BOX 6: IMPROVEMENTS BY UDE/COFEMER/COUNCIL ON REFORMS

SPONSORED BY OTHER AGENCIES 1994-2000

1. Reforms to the Foreign Investment Law (DOF 24-XII-1996) sponsored by the Ministry of Trade. Procedures for the registration of firms in the Commercial Public Register (Registro Público de Comercio) and for the approval of neutral or indirect investments in sectors subject to foreign investment limits were streamlined.

2. Environment Law (DOF 13-XII-1996) sponsored by the Environment Ministry. The delimitation of powers between federal, state and local authorities was clearly defined and consistent with the 1994 Constitutional amendment and the cases in which federally required environmental impact statements explicitly and precisely stated.


4. General Health Law and implementing rules (DOF 7-V-1997, 21-I-1997, 4-II-1998, 9-VIII-1999, 4-V-2000) sponsored by the Health Ministry. Low risk activities were exempted from sanitary licence requirements, and the production and commercialisation of generic drugs was legalised.

5. Labour Inspections and Business Sanctions (DOF 6-VII-1998) sponsored by the Labour Ministry. Business inspections were redesigned so as to reduce corruption.


Imperfect compliance with the procedure of sending the drafts to the UDE and the practice of making them immediately available was achieved through the full cooperation of The President’s Legal Council. The problem with this informal system was that, one, various laws allowed Ministers to issue important administrative regulations without Presidential oversight and, two, it relied on the character and sound working relation of

37 Who would ask the agency whether the UDE had been given a draft before reviewing them and would at times verify this information with us?

38 This was the case, for example of the Rulings for local and long distance. In order to avoid any external agency oversight they were issued as ministerial rulings.
two individuals – Legal Council and UDE head and three, when some agencies read the fine print of the UDE authority, they put pressure on the UDE to exert its discretion so as not to make drafts publicly available.

In order to make this fragile arrangement more stable, the chairman at the Deregulation Council made the well-known point that the Mexican federal government was lagging behind the best OECD members in having an imperfect procedure of oversight of new regulations because, while the Zedillo administration, based on a presidential instruction, had ensured that drafts were made public through the UDE, nothing prevented other presidents from backtracking on this practice.


<table>
<thead>
<tr>
<th>Government agency</th>
<th>Date of Publication in the Official Registry (DOF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECOFI (Commerce and Industry)</td>
<td>April 7th, 1999</td>
</tr>
<tr>
<td>SRE (Exterior Affairs)</td>
<td>Jan 25th, 1999</td>
</tr>
<tr>
<td>SSA (Health)</td>
<td>September 14th, 1998</td>
</tr>
<tr>
<td>STPS (Labour)</td>
<td>August 25th, 1999</td>
</tr>
<tr>
<td>SECTUR (Tourism)</td>
<td>December 21st, 1998</td>
</tr>
<tr>
<td>SEP (Education)</td>
<td>June 2nd, 1999</td>
</tr>
<tr>
<td>SAGAR (Agriculture)</td>
<td>July 23rd, 1999</td>
</tr>
<tr>
<td>SE (Energy)</td>
<td>May 5th, 1999</td>
</tr>
<tr>
<td>SEMARNAP (Environment)</td>
<td>February 21st, 2000</td>
</tr>
<tr>
<td>SEGOB (Interior)</td>
<td>February 23rd, 2000</td>
</tr>
<tr>
<td>SCT (Communications and Transport)*</td>
<td>October 2nd, 2000</td>
</tr>
</tbody>
</table>

* Except COFETEL. See the text for an explanation.


In fact, Mexico seriously lagged behind the vast majority of OECD countries in strict transparency procedures for new regulations39, if this were not persuasive enough; Mexico was the only NAFTA country that had no implementing legislation to make drafts of legal measures issued by executive agencies easily and publicly available40.

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39 We reviewed the US, Canada, Australia, the UK, Holland, and Italy, see the RIA.

40 NAFTA, article 1802.
In addition to these arguments, the Mexican Business Council, Concamin and Coparmex were shown an OECD report on the usefulness of Regulatory Impact Assessments (RIAs), and their use to improve the quality of regulation in order to assess the impact on business\textsuperscript{41}.

By the fall of 1996, with the support of the private sector members of the Council and the President’s Legal Council we proposed a one paragraph reform to the “Ley Federal de Procedimiento Administrativo”\textsuperscript{42}. It simply stated that all federal agencies pretending to issue any new measures would have to send them to the UDE accompanied by their respective Regulatory Impact Assessment. The UDE could issue, within a strict maximum deadline, a public nonbinding opinion on the proposal and its respective RIA. In short the battle for the RIA was won but full enforcement of public transparency of drafts in addition to RIAs was not there yet\textsuperscript{43}: the UDE was not bound to publicise received drafts proposals.

When the December 1996 single paragraph reform of the “Ley Federal de Procedimientos Administrativos” took place we were uncertain as to how it would work. Could we get the agencies to take seriously both the elaboration of RIAs while allowing for sufficient time for RIA/draft disclosure so as to have the UDE/Council elaborate a public opinion, with expert help when needed, of sufficient quality? \textsuperscript{44} As soon as the amendment was enacted we knew that depending upon whether we could be successful in one task the other would follow and vice-versa. i. e. when the sponsoring agency issued a high quality RIA which would elicit a better draft proposal, then they would want to maximise public exposure and conversely the agency were not to take the task seriously it would want little publicity. Obviously the expected variance of the RIA performance was big but all we needed were a series of selective successes so as to build credibility.

The importance of the quality of the technical staff can not be underestimated. In the UDE

\textsuperscript{41} The Council meeting took place in the summer of 1996. We were also lucky to have OECD’s Chair, Johnston at a lunch with the presidents of the business associations and he inadvertently helped us by talking of the usefulness of RIAs.

\textsuperscript{42} The reform was approved and published December 24, 1996.

\textsuperscript{43} The entry into force did not happen until October 1997 when the guide for producing a RIA was issued publicly.

\textsuperscript{44} A few agencies would make the drafts public before sending it to the UDE but the objective of increased transparency was achieved. A detailed review of how the RIA adoption process improved was given in OECD (1999), “Regulatory Reform in Mexico”, page 37.
case they were extremely committed, highly motivated, and talented. These professionals, mostly economists, lawyers or engineers, perceived their job as an exciting task, they were creative in seeking and filtering free outside advise from business, academic, scientific and peer-agencies in the US or Europe.

Their recruitment was meritocratic and they gained the respect, though not the popularity, of their peers in the agencies having to compose the RIAs. Making use of the material that OIRA and OMB, in the US, and the Office of Better Regulation of the UK had issued for their “RIA-equivalent”, as well as some guidance from Robert Hahn at the American Enterprise Institute, and the “learning by doing” of the interacting with the Mexican agencies from the Winter of 1996 to October 1997, the UDE staff made publicly available on the web, a useful version of a guide to compose a RIA.\textsuperscript{45}

In the two year period spanning October 1997, through 1999, the UDE publicly reviewed slightly over 350 drafts and their RIAs\textsuperscript{46}. Though there were few unabashed instances of non-compliance there was often an enormous pressure on the UDE not to issue critical opinions or more often to use a ridiculously short amount of time to issue the UDE/Council opinion. This practice in fact pre-empted the usefulness of the RIA and quality of the public UDE opinion since it meant the span of time was available for UDE/Council opinion and consultation converged to zero. When this happened, the UDE/Council had two choices, not to issue an opinion or, in the little time available plea with a specialist or knowledgeable business for an independent view of a single outstanding issue of the proposal.

Agencies which had an interest group behind the issue of a new regulation would immediately tell their constituents that the reason why it had not yet been issued was because the UDE was creating an unnecessary burden by requesting a RIA and un called for public exposure. Instead of deregulating, they argued, UDE was creating additional burdensome bureaucracy!

In exceptional cases we had to let them go with one day of public exposure and poorly drafted RIAs and no UDE opinion\textsuperscript{47}. However this difficult learning period of two years

\textsuperscript{45} The current version is available online at: \url{www.cofemer.gob.mx}

\textsuperscript{46} The name of the draft and the sponsoring agency was posted on the web with an ad for requests of available copies. It was done within two working days of receiving it.

\textsuperscript{47} The scope of the law defined by “Ley Federal de Procedimiento Administrativo” in 1996 allowed for a
both on the side of the UDE and the agencies and the legal council allowed us to understand how a measure would be drafted so as to have a greater effectiveness in preventing or diluting unnecessary regulations or, enhancing the quality of a worthwhile one. When we received business criticism for delays, we immediately contacted the chair of the respective business organisation and showed him the dates when we had received it and the limited time we had taken to issue an opinion with the request for inputs from all council members.

Our secretary general of the UDE did a meticulous job of keeping track of the dates the drafts were received and he kept us informed as to when the opinion deadlines approached. I was also outspoken with my peers in other agencies responsible for complying with the new obligations and argued that it was a cheap shot and outright dishonest to claim that we were the bottleneck. Obviously, I argued the capacity the UDE with the business and academic support had, in improving RIAs and regulation drafts crucially depended on the amount of tight time available to review the regulation. It was essential to have a minimum period for draft exposure and not only maximum deadlines for issuing an opinion, no matter how intensely a specific business group wanted a fast track process for a specific piece of regulation. Business could not have it both ways: better regulation and no analysis when perceived to be in the interest of a specific group.

The experience of these two years taught us that it turned out that many experts were shy about talking to the issuing agency, not only because they saw them as the powerful regulator but because they were concerned about NGO’s perceptions whereas, we legitimately added better information as we allowed for an effective Chinese wall between sponsoring agencies and other also feared politically-correct-constituencies\(^\text{48}\). Often well crafted critical public reviews, which did postpone the process of issuing a regulation, i.e., they did not send it to the President’s Legal Council, not because our opinion was binding but because we had exposed some contradictory or even legally questionable items in the draft and the high level civil servant which signed the draft or the RIA was somewhat embarrassed with the Legal Council. So in this sense the UDE was operating as it was supposed to be, a quality filter\(^\text{49}\), and what the Minister of the sponsoring agency

handful of important exceptions: PEMEX, IMSS, INFONAVIT and all the “descentralizados”, the Treasury and a set of additional exclusions which remained so after 2000.

\(^{48}\) This was useful in the case of environmental regulation. A trustworthy relation was developed between some industries and the UDE, on the one hand and, the Environmental agency on the other.

\(^{49}\) For example the UDE managed to indefinitely postpone a binding energy saving regulation that effectively meant that all of Mexico would have Canadian building standards.
perceived was a delay. In short, the problem arose because maximum deadlines meant the UDE was not protected from a peer pressure to reduce the time for analysis, consultation and exposure. So inevitably, the deputy ministers would press the UDE to take less time than the maximum by having the business men benefiting form the regulation place heat on my Chairman and on the Mexican Business Council about the “delays elicited by the UDE”.

IX. COORDINATION WITH STATES AND MUNICIPALITIES

Obviously business and citizens operate and live within laws and their application which is not only federal. The issues, which fall under more than one level of government, are not only the start up of a business but, for example, environmental, land-transport regulation and the provision of public or private services such as water or sewage (see Box 8).

### BOX 8: DIVISION OF MAIN REGULATORY POWERS

<table>
<thead>
<tr>
<th>Policy area/public service</th>
<th>Federal level</th>
<th>State level</th>
<th>Municipal level</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Defence</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign relations</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International trade</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monetary policy</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water transport</td>
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</tr>
<tr>
<td>Railway transport</td>
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<td></td>
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<tr>
<td>Post office</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic trade</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Anti-Poverty Programme</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Culture</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Industry and Agriculture</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Environment</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Public transport</td>
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<td>X</td>
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<td>Education</td>
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<td>Electricity*</td>
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<tr>
<td>Natural Gas Distribution and Transport*</td>
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<td>Health care</td>
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<tr>
<td>Water</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Urban planning</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Housing</td>
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<td>X</td>
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</tr>
<tr>
<td>Staple Markets</td>
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</tr>
<tr>
<td>Slaughterhouses</td>
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<td>X</td>
<td></td>
</tr>
<tr>
<td>Hazardous Waste disposal</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Note: in the case of environment, regulations overlap and may have inconsistencies because state regulations have generally not been updated to allow for the redefined scope of powers in the 1996 law and the 1994 constitutional amendment. This is a serious problem that few states, if any, have addressed.

(*) The overlap is due to rights of way. Source: Regulatory Reform in Mexico, OECD, 1999 and my updating and comments.

Even though the essence of federal of constitutional compact has not changed since
1917, the political outcomes and institutions have had substantial changes\(^{50}\). Before 1994, the President was also the head of the incumbent and dominant party in Congress, and that party held most governorships and municipalities. Thus, even though Mexico was constitutionally decentralised, in fact the level of local autonomy and lack of coordination was de facto somewhat limited. While Governors and mayors had legal autonomy in practice, it was smaller than what it was in writing and thus, informal effective coordination was much easier than today.

After 1994, partly because the incumbent party began to lose important governorships and municipalities and finally in 1997 when it lost the simple majority in the Lower House, the sub federal entities began to exert their *de jure* autonomy with an excess of jealousy and informal federal/subfederal coordination became difficult if not impossible. An example of this is what happened in Mexico City.

In 1996 and 1997 the UDE worked with Mexico City to design a programme of prompt and easy start ups and review their entire business regulation\(^ {51}\). Late in 1998, Mexico City was inaugurated as an independent state and the first governor came from the opposition. Among the first things he did was dismantle the programme that would have eased the opening of new firms in spite of the opposition of the historically powerful Mexico City Chamber of Commerce (“Cámara de Comercio de la Ciudad de México”).

The prototype developed in Mexico City began in 1996 involved an ad-hoc business committee with the “Camara de Comercio” and a fully cooperative Mexico City Deregulation Unit and the UDE. First it diagnosed business problems for start ups, for business inspections and ongoing operations. Then it met with each authority involved and proposed changes. Actually the presidential appointee, the Regent of Mexico City did issue a temporary moratorium on business inspection and nothing awful happened which was used as an argument to propose the total redesign of business inspections in Mexico City. Then the team implemented the administrative and legal changes in late 1997\(^ {52}\).

In spite of the fiasco, the prototype developed in Mexico City was the basis of the “Sistema de Apertura Rápida de Empresas” (SARE) or the Prompt Business Start up system” launched in 1999 and implemented in Guadalajara, Aguascalientes and Puebla.

\(^{50}\) See OECD, p 142, “Regulatory Reform in Mexico”, 1999.


\(^{52}\) Congress on which Mexico City was heavily dependent was still controlled by the incumbent party.
And then, as will be explained below, relaunched with renewed strength and additional reforms at the beginning of the Fox Administration (January 2001).

X. TIMELINESS, “POLITICAL LUCK, OR TOIL AND SWEAT”: ADDITIONS AND REFORMS TO THE FEDERAL ADMINISTRATION PROCEDURES LAW 1999-2000

Often when Ministers asked their subordinates why it was some specific piece of draft proposal had not been issued, the onus was placed on the UDE. As I have explained, this delay in the issuing on the draft may have been correctly blamed on us, not because we had shirked our job but because we may have done it, i.e. the UDE had publicly revealed a serious problem and, the Legal Council often made use of this revelation to request the sponsoring agency to “go back to the drawing board”, so as to be able to continue the procedures to issue the regulation\textsuperscript{53}. In these circumstances, when my council chairman and even I, received calls from Ministers complaining about the UDE bottleneck, we immediately identified whether the UDE/Council had issued a negative opinion and explained that it was definitely not binding. At this stage of the programme one or two Ministers were overtly opposed to the UDE or as one deputy peer told me “not to the UDE existence itself but the exertion of its optional authority\textsuperscript{54}.”

Survival was warranted by my Chairman’s commitment shown in his willingness to get presidential support, which we got, the importance of which cannot be underestimated. Of course, support existed because they understood that the recurrent complaints were a measure of effectiveness.

In this context it was not too hard to diagnose that the work and effectiveness of the UDE was a lucky experiment, which depended on the specific combination of individuals and the opportune support of very senior political appointees. But a regulatory improvement programme should ideally be robust. As a matter of fact, Mexican public administration culture and even the tradition of a selectively co-opted private sector made the UDE experiment extremely countercultural – “a disequilibrium fluke” which was likely to be “settled” in a quiet manner: have the UDE not exert its optional authority or have it loose its integrity in its opinions. Unless we could get it more institutionalised, its chances of effective survival were small\textsuperscript{55}. The failed experience of Mexico City clearly showed us

\textsuperscript{53} Or the agency on its own would decide to redraft the proposal.

\textsuperscript{54} By which he meant that all would be fine “only if we let things go by immediately or issue a positive opinion independently of our mandate”, i.e. use our discretion not to issue an opinion.

\textsuperscript{55} This is exactly what was to happen to the Comisión Reguladora de Energía.
that what had taken two years to build, the set of reforms requiring Congressional approval for Mexico City, could be quickly undone.

In the winter of 98 the UDE presented the Chairman of the Council its shared concerns, that the regulatory improvement programme was fragile. In the last three years we identified five undesirable features of the regulatory infrastructure which made it essential to institutionalise the programme, and thus maximise the likelihood of its persistence in the next administration. These features were:

(1) **Need for continuous search and collection:** while the Salinas and Zedillo administration had repealed inadequate legal measures, the fact is that, many obvious ones remained and though the political costs of a direct entire overhaul of these measures had been currently unfeasible to undertake, an institutional “champion” was needed to have initial proposals advanced, collected, requested or analysed as the political situation, always fickle, may unexpectedly change\(^56\).

Moreover this agency could contribute with persistent opportunistic search for small reforms, either at the margin of an entire law, i.e. a simple and short, hard to object amendment, or at an administrative level, not requiring Legislative approval, and when a myriad small reforms took place they could effectively and at a lower political cost chip away some of the undesirable features of legal measures, when considered in their entirety, they could be a second best to the unfeasible overhaul\(^57\).

(2) **UDE Non-optional draft and RIA prepublication and minimum time periods of exposure**\(^58\): even assuming that the past-decade overhaul of the stock of legal measures had been broad and deep, agencies continuously sponsor new proposals for measures, either as the result of a legitimate concern or as a response to some vested interest. The quantity and quality of the flow of new measures, in the long run, would not only undo the overhaul of the last decade but was likely to elicit backtracking as the nature of quality-regulation may indeed be a public-good. As a matter of fact, in the 18 months prior to November 1998 over three hundred and fifty measures had been reviewed, and we could point to proposals with disturbing low quality and difficult to legitimise on public-interest grounds. Clearly the rate at which

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\(^{56}\) E.g.: the unexpected opening up of natural gas distribution and transportation in 1996.

\(^{57}\) E.g.: our contribution with the Mexican Law Bar to the Civil Code and Civil Procedures DOF, 24-V-1996.

\(^{58}\) Maximum periods for review already existed.
the existing corpus of legal measures could change both at the legislative and administrative level made it necessary to increase the quality of agencies’ proposals, and however much discontent it may have created the best OECD practice was through a quality programme of RIAs and enforcing public transparency. Disagreements between the UDE and sponsoring agencies had already arisen as to making proposals drafts available. Alternatively, we had instances of Ministers requesting the UDE to issue an opinion in a couple of hours eroding the usefulness of the evaluation process. This lag in transparency was highly inefficient: corrections of avoidable mistakes were pre-empted by the absence of exposure,

(3) **Untapped opportunity to diagnose how legal measures are applied in a specific area or industry:** to review, not the legal measures per se, but either the effectiveness of the existing measure in achieving the stated objective or the level of compliance or the cost-benefit of enforcement of a legal business measure. Clearly, as far as administrative business regulation was concerned if the level of non-compliance was pervasive it suggested something should be done to promote a repeal or amendment,

(4) **Need to persist in programmes that may be adopted or emulated by a sub federal compact:** the challenge posed by the need to coordinate federal, state and municipal measures within the constitutional contract was likely to increase as subfederal entities became increasingly jealous of their powers. The failure of the Mexico City programme showed that the idea of having a prototype for combined federal, state and municipal regulatory reform which could be emulated was difficult to diffuse, even when it centred around as unobjectionable a topic as red tape reduction. Clearly the problem arose because the incentives of subfederal political agents were not attuned or compatible with a programme of better regulation, but there were states and cities where governors were interested in attracting business and, though the average mayor’s time horizon of a year and a half did not help and there is no re-election, some could be found that would cooperate,

As any diffusion of a new technique, subfederal programmes to review regulation, centred on red tape would take time, but once enough subfederal combinations (states and municipalities) had worked for sufficiently long time so as to show
results, the rate of adoption by other combinations of subfederals would increase. As a matter of fact, there already were some successful cases that needed to get more exposure. Our only chance to succeed was a stubborn persistence and additional resources because the needed subfederal diffusion was intense in travelling costs and time of talented and scarce staff.

(5) Need to increase incentives for agency compliance in formalities registry: even though some members of the business community claimed to be losing heart on the programme, it was no reason to let go. My explanation of their disappointment ran along the following lines, some businessmen had unrealistic expectations based on their idea of a Tivoli Rasa of business formalities (a temporary moratorium on all formalities) and, furthermore they did not make a distinction between reforming legal measures and formalities and how this process was to translate itself within a short time lag, in a change of daily bureaucratic practice. Dealing with the first issue, the programme had not followed the moratorium because the legal implications were unclear, instead it had required agencies to explicitly compile and understand their existing formalities; this “second best” inevitably compromise time for analysis and time for legal or administrative implementation. What had been achieved thus far had never been done, Mexicans, for the first time in their history would know with some certainty which federal business formalities were applicable. As far as their latter concern they were absolutely correct; obviously, the objective of any programme was to change how federal agencies did interact with business and we could definitely show concrete short run successes that were early recognized.$^{59}$ However, no regulation programme in itself could warrant that, once legal measures had changed, day to day change of behaviour of the agencies had actually taken place.$^{60}$ Compliance depended on the commitment of the reforms by higher level agency politicians, which varied considerably and could be increased at a cost. Surely most businessmen, could not themselves be realistically expected to make public disclosure of bureaucratic non-compliance, as they continued to fear some retaliation in a culture of excessive bureaucratic discretion but, perhaps business chambers could be involved in a serious task of identifying pockets of

$^{59}$ Labour and health inspections.

$^{60}$ To my business colleagues at the Council, I explained it made no sense to vertically integrate oversight at the deregulation unit. Clearly the tasks were substantively different and there was an ex-ante conflict of interest.
noncompliance. Alternatively, the degree of intensity of active oversight of the Comptrollers Office, which could, if it so desired, use sampling techniques of current day to day practice in federal agencies. Furthermore, in principle, nothing prevented the Comptrollers Office, after a period allowed for diffusion and adoption, from announcing to the agency heads that it would start to reveal and rank levels of compliance by agencies but surely this was not a task for the deregulation unit.61

Given that the existing legal measures were “imperfect” in the sense that an automatic, predictable consequence of an agency’s non compliant behaviour was currently nonexistent, we had to figure out some predictable automatic and credible consequences of non-compliance. We could make use of a future moratorium clause, which would be attractive and useful. The idea was simple: with the new law, once an agency had finished its federal registry of formalities, no additional formalities or information could be requested62.

Obviously, the registry would be alive, i.e., real time changes to the agency’s registry may need to take place whenever regulation changed, but if a formality contained in any legal measure in effect before the agency’s public registry and the entry into force of the new law had been overseen or forgotten, it would be automatically repealed by the law63. Given that the law would give public standing to this moving moratorium (the registry could change with future legal measures), a citizen could place an administrative complaint or a judiciary injunction in case that additional requirements were actually made64. The future automatic moratorium (which we called “guillotine of requirements”) would partially address the important issue of enforcement.

The conclusion was that, in order to reduce the fragility of deregulation, the mandate given to the UDE as well as its bounded authority and the federal agencies’ transparency

61 The Comptrollers Office had a programme of simulated oversight that turned out to have serious legal problems in its design. Certainly if big firms do it, the Mexican government could, political will existing, find a legal way to sample performance.
62 The 1995 decree contained such a clause but as a presidential order, it need not create rights and obligations vis-à-vis third parties, i.e. business.
63 Such a clause was relevant because Mexican legal measures often contained the ambiguous phrase: all other measures that oppose the current one are repealed. The problem being that a previous Act may contain sections that have not been repealed as they may not oppose the current one.
64 Successive publication of each agencies formalities and their changes, in the federal registry is absolutely needed to support an injunction.
and RIA obligations, including clear terms for exemptions had to be made explicit in a Legislative Act\textsuperscript{65}.

The Council Chair was enthusiastic about the proposals but made it clear that its final outcome was highly uncertain. Two issues would be crucial to maximise the likelihood of success, one, the objective for the regulatory reform/deregulation institution had to be impeccable, politically unobjectionable and simple; two, the timing had to be meticulously carried out as we had already entered the last 16 months of the administration and the windows of Congressional opportunities were tight. Once the proposal was mature and we had a draft supported by the President’s Legal Council, and the explicit support of the non governmental members of the Deregulation Council, he would gladly make a pitch with the President.

With the hindsight afforded by these three years and, looking back at 1999 and the four months until the law passed both Houses in April of 2000, I can say that there were a series of fortunate situations that made the process of (i) bringing on board the Legal Council, (ii) the support of the non government members of the Deregulation Council, (iii) the negotiation within the Executive and the support of the President, (iv) and, the negotiation within Congress, possible. Next, I will briefly describe how these lucky events developed.

The President’s Legal Council said that if we had come to him a couple of years earlier he would have objected, but, after these years of collective learning by doing experience, and having read through OECD about best practice in other countries, he felt sufficiently confident that the persistence of a RIA elaboration requirement as well as an opinion review of the proposal by an agency other than the sponsoring one, was something worth preserving. His commitment on transparency was total but he observed that, as was true in all foreign legislations, exemptions were to be carefully crafted so as to make the law politically credible and thus enforceable. He argued for the broadest possible scope of federal agencies, but, as was to be expected, it needed the acquiescence of Interior, the Comptrollers Office, and the Treasury. He observed that the law to institutionalise the UDE should be an amendment to the Federal Procedures Law, which we had already reformed to make RIAs compulsory. In short, with him timing was right, and he was an undisputed ally.

\textsuperscript{65} Obviously we carried out a public RIA with international comparisons. It was reviewed by the council and the President’s Legal Council.
Late in 1997 we had made a successful pitch to have Mexico in the first batch of countries, whose regulatory reforms would be reviewed. An area analysed would be the Mexican “capacity to assure high quality regulation”, which in fact meant a peer review of UDE’s work and performance⁶⁶.

In March 1999, the deputy at OECD, came to Mexico City to make their report public. The Council Chair organised a luncheon for her with key business representatives, including the chair of the Mexican Business Council as had previously happen with the OECD head. For our cause, it turned out to be a fateful occasion. With charm and diplomacy she emphasised the report’s conclusion that the country should aim to broaden the scope of its regulatory reform beyond business regulation. This, she argued, would allow the programme to have a direct impact on the average citizen. Additionally a legally robust, easily enforceable system to warrant that proposals were publicly available was lacking in Mexico⁶⁷.

By May 1999 we had reached a text with only five brackets with the President’s Legal Council and the corporate lawyer of the Business Council. The proposal created a decentralised entity, with technical and operational autonomy, within the Trade Ministry that would be called Commission for Regulatory Improvement (COFEMER, its acronym) and an Advisory Council for the Commission⁶⁸.

Now came the time to negotiate the remaining brackets within the administration. Interior (Gobernación) was the head of the Federal Registry and as an issue of turf the deputies at Interior, with whom I dealt objected to the required coordination and dependence created for the Federal Registry on the Cofemer (See 2nd paragraph Box 12). Luckily we had been working for three years with Interior and the Minister was about to present their results, including the registry of his formalities at the end of May. The Minister was at the time a likely presidential candidate and his Council presentation was predictably packed. The presentation went well for him and the Chairman of the Council asked him to endorse

⁶⁶ The OECD carried out a useful, accurate review of the UDE in 1998 and my peer was a Dutch deregulator who did a superb job where I learned a lot.

⁶⁷ The mantra was yet again repeated: transparency was not just an issue of reducing Mexico’s laggard position vis-à-vis other OECD countries, but something substantial that would help improve the quality of regulation by allowing business and citizens to comment.

⁶⁸ The head of the Commission is appointed by the President, but unlike the Competition Commission, which is also a decentralised entity of Trade, the appointments are not for a fixed term. This was one of the brackets remaining. The other one was minimum time for exposure that was later solved trough the Transparency law in 2003.
the proposed reform, which he did in writing\textsuperscript{69}.

**BOX 9 : MANDATE OF THE COFEMER**

*Mandate of the Commission: to promote (i) transparency in the elaboration and application of legal measures (originated within the Executive) and (ii) legal measures which have a higher (social) benefit than a cost and maximum social benefit for society at large (*“Ley Federal de Procedimiento Administrativo”, Article 69-E, DOF, April 19\textsuperscript{th}, 2001).*

**BOX 10 : SCOPE OF THE COFEMER**

*Scope of the law extended only for the mandate and authority of the Commission (i.e., not for the rest of the law): all federal entities within the executive power, except the Army, the Navy, the Tax Collection Authority. Agrarian or Labour Relation Boards, District Attorney’s Office (Ministerio Público Federal). It was extended to include relevant entities, i.e., federal ministries, decentralised entities, state owned firms, such as PEMEX and CFE, and IMSS, INFONAVIT; public procurement and finance authorities (except the Central Bank which is independent).* (*“Ley Federal de Procedimiento Administrativo”, Art. 4, DOF, April 19\textsuperscript{th}, 2001)*

**BOX 11 : AUTHORITY AND OBLIGATIONS OF THE COMMISSION**

(i) optional (1) review federal regulation, (2) diagnose its applications and (3) elaborate proposals of reform for the President, (4) review regulatory reform programmes pursued by federal agencies or specific economic sectors (Article 69-E);

(ii) non-optional federal entities have to send their draft proposals for legislative or administrative measures (Article 4) with a RIA (Article 69H) and the Commission will make them public (Article 69-K). Publicity is on the web: www.cofemer.gob.mx;

(iii) within a strict deadline of 30 working days of having received a proposal and RIA (Article 69-J), it can elaborate a public opinion, based on its mandate, of draft proposals and RIAs sponsored by those federal agencies within the scope of the federal procedures law (Article 1); it can also request a change of the RIA, and when the draft legal measure is not satisfactory it can request a third party, public expert opinion (Article 69-I);

(iv) oversee the Federal Registry of Formalities and Services (Article 69-E), which was expanded to include those exclusively for citizens, public procurement, public health and social security entities and technical standards; and

(v) provide technical support to federal sub entities when they request it (Article 69 E).

\textsuperscript{69} A few months later he became the PRI presidential candidate.
BOX 12 : COFEMER ENFORCEMENT PRINCIPLES

HOW TO ENSURE AGENCIES’ COMPLIANCE

Guillotine or moratorium for a “living” Federal Registry of Formalities* (on the web: www.cofemer.gob.mx): the composition of the registry was sequential but it was completed for the entire scope of the Act by May 2003. Once each agency completed its explicit registry, federal entities can not request anything which is not in that registry (which agencies have an interest in keeping updated so as to prevent administrative complaints or judiciary injunction (Article 69-Q) ).

Federal Registry, any government act supported by a legal measure is void if the measure has not been published in the Federal Registry (Article 4). A requirement to publish in the Federal Registry is that the sponsoring agency demonstrates it has completed Cofemer’s procedures (Article 69-L).

Sanctions, notwithstanding Acts of Civil Service Responsibility (Responsabilidad de los Servidores Públicos), the Law imposes automatic displacements for those Civil Servant that do not comply with the information contained in the Federal Registry (Article 70-A).

(*) Full enforcement it should be published in Federal Registry

BOX 13 : RIA AND PREPUBLICATIONS EXCEPTIONS

RIAs are not needed if the measure imposes no cost to private agents. When an agency presumes to be in such situation it must send the draft project and request the opinion of the Commission and a brief explanation of why it does not create any cost, which will be made public. (Article 69-H). RIA elaboration can be postponed for 20 working days after its issuance, if the agency considers it an emergency and the Commission agrees with this opinion. When there is no agreement and the measure requires presidential approval the President’s Legal Council will decide.

Transparency: Publicity of drafts and RIAs can be made exempt from publicity if the commission agrees with the sponsoring agency that it jeopardises the presumed effects of the measure. In cases requiring Presidential signature his Legal Council shall determine. If a draft is not given publicity, the commission will make public the reasoning for having kept it unpublicised after it is issued (Article 69-K).
BOX 14 : OVERSIGHT OF THE COFEMER

Ley Federal de Procedimientos Administrativos

(i) *Its opinions are public and only made within the terms mandate,*
(ii) *The Commission shall present its work programme and results to the Council,*
(iii) *The Commission shall present a yearly report on the performance of its mandate to Congress.*

An important hurdle had been passed but others were soon to come, the Treasury was not a small one. The status quo ante was extremely favourable because it was completely excluded from the 1994 Federal Administration Procedure Law.\(^70\)

As already explained, the authority of the UDE was partially supported by a 1996, single paragraph amendment of the Federal Administrative Procedures Law.\(^71\) In 1996, the scope of the Law had been maintained identical to the original 1994 (see Box 1).

Furthermore, by the end of the Zedillo administration (1994-2000) all except two agencies bound by the presidential decree, twelve, had undertaken reforms, both legislative and administrative, to “train and improve” their business regulations and had issued in the Federal Registry their Registry of Business formalities.\(^72\) The exceptions were the Treasury, which in the Autumn of 1999, got a third party interpretation that it was excluded from 1995 the deregulation programme,\(^73\) and the Cofetel (the Telecommunications Commission) which had had three directors and, when the last one arrived in 1999, had no time to comply given the amount of red tape and litigation faced by this poorly designed commission.

In the intense summer meetings with my peers to discuss the scope of the “deregulation” Law amendment at the Treasury, we did not reach an agreement and kept bracketed texts. The lady responsible for the tax area was more flexible than the deputy responsible

\(^{70}\) It was included in the 1995 Presidential Decree as one of the twelve agencies to undertake a review of its formalities.

\(^{71}\) The other support was a presidential decree.

\(^{72}\) See Box 7.

\(^{73}\) The law did exclude the Treasury but the 1995 decree did not. This interpretation to exclude the Treasury was not made by the President’s Legal Council, a solid lawyer, but by a third party cabinet member.
for finance; in fact, we almost reached an agreement with her. I had my ad-hoc team fully informed, as well as the head of the Mexican Business Council, but asked them to be discreet, plea which they honoured.\textsuperscript{74}

In late November 1999 given that the scope issue had not been solved, the Chairman of the Council of Deregulation, and I met with the Minister of Finance and our positions became more distant than with the deputies.

After the meeting the Chair asked for a defence of our position since now the issue could only be solved by the President. But as the last two windows of opportunity in Congress approached, our Congressional Council at Trade argued we were already running late. This was not the time to continue negotiations within the administration but the moment to begin negotiations in Congress. The Chair and I pressed the Legal Council to submit the text and its RIA to the President. They were both prompt and, within a month on December 3\textsuperscript{rd} 1999, the proposal was submitted to the Senate.

With the help of our Congressional Council we approached five senators who were the key supporters in the Upper House\textsuperscript{75}. While this happened, the Chairman had the issue of scope settled with the President. The solution was to include financial issues, without any caveat and exclude tax measures.

A few days later, after studying the proposal the Senators involved asked why it was that the Treasury was completely excluded and, we made an argument for including financial services. At this stage the Senate modified the scope. The order in which the issue had been settled was tight, otherwise the outcome on the scope issue may have jeopardised the project as any delay in Congress could have been fatal.

The law was passed unanimously by the Upper and Lower House and entered into force May 20th, 2000 six months before the administration finished but in the last Congressional working period.

In the 2000-2006 Fox administration, the Cofemer has already made use of its optional authority to propose new measures in at least three areas: (1) with Interior, it co-

\textsuperscript{74} A very high-ranking officer from Desc, and a senior partner of Mexico’s most prestigious tax consulting firm at the time. The Chair of the Mexican Banking Association and his technical director for finance issues. All of whom have my gratitude for their trust and humour.

\textsuperscript{75} Javier Medellín from PRI and San Luis Potosí, Norberto Corella, PAN from Sonora, Gilberto Gutierrez, PRI from Baja California, and Rosendo Villareal, PAN from Chihuahua.
sponsored the Transparency Act (2003), and (2) with Treasury, Foreign Affairs, Labour, it co-sponsored the administrative reforms so as to reduce federal procedures for start-ups (See Annex) and (3) with 11 states and 14 municipalities sponsored the “extensionism” for federal/subfederal fast track start up programme (See Annex).

An unexpected consequence of the 2000 law has been at least that two federal agencies wanting to pursue a legislative reform have done so completely bypassing all internal procedures within the Executive. The most salient case was a 2003 reform of the Waters Law that was lobbied by deputies at Federal Water Commission, directly in the Senate, was eventually approved by both Houses and then was vetoed by the Executive and is now being reconsidered.

CONCLUSION

The UDE was an effective agency which opportunistically and persuasively tapped Executive support so as to use its optional authority to propose deregulation/better regulation. Now, after 2000, the Cofemer’s authorities are sustained by an Act, which allows for a comfortably robust situation as far as the exercise of its non-optional powers are concerned and, even though the effectiveness of its optional authorities remains somewhat dependent on its ability to tap Executive support, its basis for persuasion have been enhanced both by the Law and, and the interaction with the Council. Moreover, with the 2000 reform the Legislative gave the private sector members of the latter the actual possibility of tapping the relevant optional authority of the Cofemer, which they have not yet done in the case of diagnosing the application of sectoral regulation.

The task of this paper was twofold:

i. to describe how an institutionally fragile but politically well supported unit, the UDE, transformed itself into a legally consolidated institution whose political support within the Executive, the Council and the public in general yet remains to be fully tested as it makes use of its optional authorities and,

ii. given that the non-optional authority of the UDE/Cofemer is predominantly

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76 As a result of this “bypass” the Legal Council issued a “Guide for Executive proposals within the Executive” which adds the need to do a budgetary impact assessment (DOF 9-IX-2003).

77 The veto was exerted because the measure approved contained serious legal problems as well as backtracking from previous improvements on the law. As this is written a new version is being proposed by Congress.
procedural to describe how the decentralised oversight was actually deployed.

Mexico’s federal regulatory improvement programme aims not only to repeal or prevent or filter unnecessary regulation, or “deregulation proper”, but, to produce higher quality regulations when they achieve legitimate goals at the least possible cost, or “regulation improvement proper”. At the end of the day, the ultimate purpose of the Cofemer is to instil a process through which regulatory decisions are taken on the basis of careful analysis, transparency and public consultation where the RIA public exposure and external review are the essence of the procedure.

The focus of the programme has evolved from, act one, opportunistic and optional authority for “deregulation” and “regulation improvement”, from 1989-1994, to act two, same as act one but focusing on federal business red-tape reduction from 1995-1999 and, act three (2000 - to the present), the institutional consolidation of a system of regulatory management through legislative reforms in April 2000 creating the Cofemer.

Though it has specific innovative features developed along the three years of UDE practice, the Cofemer as a concept was not an indigenous creation. The innovative detailed features were designed to compensate for Mexico-specific fragility, or a climate where Cofemer type of organisations are countercultural and thus always run the risk of being dismantled or gutted and made irrelevant. The challenge was to craft a sufficiently effective institution by reducing the optional nature of some of its authorities while maintaining procedures that could be credibly applied on the government agencies.

A better public recognition of the Coverer’s tasks and achievements is likely to make it more effective; however, as long as it remains a “decentralised entity” of a given Ministry and not within the President’s Office there is an inherent difficulty in salesmanship; e.g., when the agency is originating or catalysing a new proposed measure, such as the Transparency Act, it must seek sponsoring allies, such as Interior and the ally requests recognition so as to become a political sponsor; alternatively, when the Cofemer undertakes a deregulation task such as eliciting the repeal, postponement or dilution of socially costly measures, it can not overtly publicise it without alienating the sponsoring agency.

78 To craft the draft proposal we did international benchmarking and also called upon OECD and generous support from Robert Hahn at AEI- Brookings, see the RIA for the amendment of 2000.

79 The CRE was gutted, see Instituto Mexicano para la Competitividad, IMCO, (2003), chapter III, section 5.
In essence, the practice of the Cofemer attests to the fact that deregulation/regulatory improvement is a “public good” in the sense that in the absence of a “champion” the quantity/quality of regulation will be inadequate. The Cofemer does have a clear mandate and is technically autonomous but the effective autonomy would be enhanced if the head were named by the President for a fixed-period.

Much of the effectiveness of the red-tape trimming or deregulation programme depends on either the Comptroller’s Office or private litigation against agencies that are not applying the formalities in an adequate manner. To the best of my knowledge, the Comptroller has not sanctioned a single civil servant for inadequate application of formalities, even when this is a recurrent practice. Also the Comptroller has not proposed the reforms necessary for legally undertaking a quality-oversight of the services provided by the government departments by “simulating random requests”. In short, the Comptrollers Office has so far not shown much concern for applying the “Ley Federal de Procedimiento Administrativo”.

Given that Mexico is a federal republic, great emphasis is being placed on the improvement of procedures not only at the federal level, but also within state and municipal governments. Rules, particularly in the areas of environment and road freight, must be made fully compatible and complementary in order for the nation as a whole to reap the benefits of improved systems of governance and regulation of private activities. Inter-state barriers to trade must be held at bay with support of the Supreme Court and the Comisión Federal de Competencia, Public Registry of Commerce and Real State at each subfederal level must be updated, digitalised and interconnected.

As the Annex shows, in this administration Cofemer has helped fourteen subfederal compacts to create fast track start-up schemes which simultaneously could start updating their respective regulatory frameworks so as to make themselves more attractive locations for investment and job creation. For these improvements to continue, it is essential that the private sector continue to play an active role in promoting regulatory improvement through the objective evaluation of their practices not only of state and municipal governments, but also, why not, the federal ministries and regulatory agencies.

As for Coverer’s Council use of the new optional authority acquired in 2000 to diagnose sectoral applications acquired in 2000 of regulation, much depends on the active role and support of the private sector, the academics and the President’s Legal Council and his Economic Advisor can play through the deregulation Council. Obviously, the conflict of
interest advantage of a cost-benefit sectorial diagnosis by the Cofemer is that it would not be carried out by the agency directly responsible in applying its own regulation.

The essence of the authority of the Cofemer, as well as other similar agencies in other countries, is procedural, but is relevant because procedures have an impact on outcomes. Ultimately, what these agencies do is reflect sunshine on new proposals and publicly review claims made by the sponsoring agency on the impact, costs and benefits, of the new regulation, including but not bounded to formalities.\textsuperscript{80}

Obviously, when these agencies are effective they are unpopular among ministers whose discretion to issue special interest regulation is certainly far from been pre-empted but legitimately made more costly through sunshine not only of the text of the proposal proper but, of the reasoning of the proposal through impact assessments. In the Mexican case, the experience during the 1994-2000 administration showed that its effectiveness crucially depends on the substance of the Executive, the Chief of Staff of the President and the President's Legal Council.

As such the creation of these agencies is generally opposed by agencies or ministers either because they prefer broader discretion or see it as an issue of fighting for boundary “turf” and, it is generally supported by the Legislature, for the same reason i.e. because it reduces unnecessary executive discretion.

In order to get around administrative opposition to the creation of these agencies, one way out is to focus their mandate to business formalities, which is more palatable to the other agencies than a broad regulatory oversight project and can also produce easily measurable results. The only problem with this approach is that if not temporary, the agency can get permanently stuck in this narrow mandate and then it is hard to keep a talented staff and more importantly the potential gains from preventing or softening bad regulation will suffer.

In this sense we, in Mexico, were lucky; our initial “authority-endowments” inherited from my predecessors in the previous administration (1988-1994) was favourable. In fact, in 1995 we got an extension of horizontal authority motivated by red tape reduction but went beyond it. Naturally, another way out of holding a powerful bureaucrat at bay is to allow for the exclusion scope to be bigger at the beginning of a deregulation unit, but then

\textsuperscript{80}Moreover, in the case of Cofemer, agencies are required to answer, in writing, questions on the proposed regulation and it may ask them to bear the costs of a third party review.
scope expansion is always difficult. In hindsight the UDE in 1995 turned out to have a privileged position: the scope of non-optional authority was fairly accurate, bounded strictly to business activities and excluding powerful agencies while the optional authority was broad in scope. Much care was placed on not having a mandate, which was not credible, but on slowly and sequentially building credibility and dealing with more federal agencies. Only when we had learned about the dimensions and actual complexity of the non-optional tasks and the actual availability of resources for the unit did we propose an increase of the non-optimal scope for the decentralised oversight in the year 2000.

Another variable which eases the creation or successive consolidation of a regulatory reform programme is the moment of the political cycle, the later it enters into force the easier it is. The fact that the law, with its change in the scope and better enforcement, which consolidated the programme was applied at the end of an administration was of course useful but the other point is that the amendment entered into force as soon as possible, for the last six months of the Zedillo administration. The only explanation for this is that administrative opposition can always be held at bay if a President’s acumen can be brought on board. This experience remains also relevant for subfederal entities; can someone get the governor committed?

Mexican regulation is federal and subfederal (state and municipality), presumably complimentary, at times overlapping\textsuperscript{81}. Today high-powered incentives for coordination between regulatory agencies at federal and subfederal level are absent. The only low-powered incentives for coordination would be to have federal development banks introduce conditionality on subfederal deregulation programme.

The simple observation is that given Mexico is inaugurating a different de facto situation where, subfederal entities can use their \textit{de jure} autonomy combined with a de facto non accountability, as the standard informal mechanisms for accountability for subfederal authorities no longer apply. When Governors control the state congress and, have no \textit{de jure} transparency obligations, they really have little accountability because there is no reelection. So, this may be a difficult context for them to embrace serious regulatory reform programmes, which would include transparency for new regulation.

However, the surprising good news is that the number of red-tape start up programmes

\textsuperscript{81} Could even be incompatible, if not outright contradictory as may be the case with some environmental measures.
has increased and in some cases these go beyond red tape\textsuperscript{82}. Unlike local tax subsidies to attract investment, rivalry and emulation and competition in regulation reform is socially productive. The social pressure that the public at large and the business community in particular can place on subfederals for a programme need not be underestimated.

The economics and politics of regulation are complex, it is clear that a systematic effort to improve regulation in the sense of using available information to evaluate it, from a cost–benefit framework, and considering the alternatives is likely to be a type of public good. In other words, private agents, businessmen, consumers, or simple ordinary citizens tend to have an insufficient private gain to invest in reviewing existing or proposed regulation when the impact is highly diluted, e.g. much like public mail, but specific business may be keenly interested in particular regulation in a biased sense, e.g., standards which may affect barriers to entry within a specific industry. Clearly, those large business which tend to be directly affected by regulation, become constituents of the agencies that regulate them and in a Chicago version of regulation they capture the regulators.

Rafael La Porta, Lopez de Silanes et al. have shown that countries with more complex formalities for opening a business, also tend to be countries where there is more corruption and less effective consumer protection. So, they argue that a lot of the complex regulation or business regulation is not likely to be there to protect consumers, health or life, but rather it is there to create rent seeking opportunities for bureaucrats. If their conjecture is right for business formalities, as is consistent with a Public Choice view, then a programme to trim them across the board is likely to continue to have bureaucratic opposition whether it is at the subfederal level.

Ironically, the recent cases of federal departments bypassing the Executive authority is evidence that the COFEMER procedures do work as a quality filter, otherwise why such overt effort to bypass? the more daunting problem is the current absence of Congressional accountability. Let me explain, obviously concentrated vested interests in favour of a rent creating or rent redistribution legislation have always been able to lobby Congress directly, but this possibility was not relevant when the incumbent party controlled both the executive and the legislative; whereas now the optional authority of Congress to propose regulation is increasingly being used, and if this is combined with the absence of reelection by congressmen as well as a lax regulation on how lobbying

\textsuperscript{82} In this sense it is important to continue the Mexican Business Council rankings of regulatory and red tape reduction programmes and to have the local business community and the press applaud those states that are at the head of the heard.
can(not) be carried out, the consequence is that Congressional Commissions can be easily captured and, there is no reason why Congress will not backtrack on improvements to existing measures so as to satisfy special constituencies. In such a case, the Executive would have to be willing to recurrently exert its veto power and eventually create sufficient credibility so as to allow it to negotiate with the threat of a veto, as in other democracies, or simply let things pass and persistently degrade the quality of regulation. In this context, it is no wonder Congress today, wants to strip the executive of its veto power and have longer working periods so as to have more “pork” through legal measures.

At this difficult Mexican junction where informal accountability mechanisms from the centre no longer work while new ones have not been implemented, the question is whether Congress would at least be willing to create procedures for public-disclosure and objective, non-partisan impact analysis?

In the new juncture of absence of an incumbent party discipline from the Executive to the Legislative, many congressmen revel in their new unaccountable power and it is not likely that they would soon seriously legislate any self-discipline mechanism either in draft transparency or non-partisan evaluation of their proposed measures. Yet, in the long run sufficient congressmen may worry about the loss of prestige of the Legislative Power and be willing to propose some serious regulations as long as it did not apply on their own legislative work.83

Currently, Mexican democracy has dismantled informal accountability of governors and mayors to the centre while not yet creating legally working procedures and practical relevant capacity for local oversight. In the absence of constitutional reforms, such as reelection for mayors and developing a capacity to oversee state’s expenditures is developed at the local level, the private sector (non-government) is the only one that can play a role of oversight on subfederal performance. In this dismal context, the diffusion and creation of a capacity to oversee subfederal red tape is a modest but realistic beginning, as long as it can evolve into a deeper and broader scope.

83 In addition, a long vocabatio leger is needed to set up a first class non-partisan evaluation agency.
ANNEX: Mexican fast-track for start-ups

Table A.1. Terms of compliance of federal formalities only

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of formalities</td>
<td>8</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Business days</td>
<td>50</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>Days</td>
<td>90</td>
<td>16</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Own elaboration with data of the Mexican Business Council.

Description of Municipal SARE: Fast Track programme for start-ups

For the complete benefits of the start-up programme on economic activity, coordination between the three levels of government (federal, state, and municipal) is necessary, the reduction of formalities at the federal level helps, but it is not enough when it comes to substantially reducing time periods and costs for start-ups.

Municipal presidents (mayors) must invest time and resources in a programme that may not be concluded within their tenure when not started within the first few months (tenure lasts for 3 years and there is no possibility for re-election). Also, the municipal president has to be willing to act as a referee between the different municipal agencies. In addition, the state may control (it may vary from one state to another) some cost items and formalities. Today governors have formal local accountability but often it does not work. They control state congress and there is little legal and practical capacity, if any to review expenditures and state programmes. States do not have effective transparency laws.
Table A.2. Municipal fast track programme implementation

<table>
<thead>
<tr>
<th>Stage I</th>
<th>Stage II</th>
<th>Stage III Organizational design of the programme</th>
<th>Stage IV Programme implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.-Reform of the State Administrative Procedures Law (when it exists).</td>
<td>1.-Municipal formalities -Define the agency that will manage the programme. -Analysis of formalities is started by identifying the economic activities to be incorporated to the programme.</td>
<td>1.- Information on state and municipal website.</td>
<td>1.-Coordination mechanisms among the authorities federal/sub-federal.</td>
</tr>
<tr>
<td>2.-Re-design of the municipal formalities.</td>
<td>2.- Review and evaluate of the impact formalities and the requisites for the start-ups.</td>
<td>2.- One stop window.</td>
<td>2.-Presentation to the business community.</td>
</tr>
<tr>
<td>3.-Creation of the formalities registry.</td>
<td></td>
<td>3.- Inter-governmental operation centre: federal, state and municipal.</td>
<td>3.-Mechanisms for monitoring the programme’s performance.</td>
</tr>
</tbody>
</table>

Source: COFEMER and CIDE (2002)

Conjecture: municipalities tend to adopt the programme after the nearby municipalities have done it, because the state government has already shown willingness to cooperate and there is an emulation effect. The log normal distribution applied for technology diffusion may be applicable.

Many cities (or municipalities) among the wealthier ones have not even started working on implementing the program.
Table A.3. SARE Fast track for start-ups operation by January 2004

<table>
<thead>
<tr>
<th></th>
<th>SARE In complete operation</th>
<th>Significant advance in starting the program</th>
<th>SARE Work in process</th>
<th>Regulatory Improvement Unit at the municipal level</th>
<th>Not working on SARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Tehuacan, Pue. (10/X/03)</td>
<td>Toluca, Edomex.</td>
<td>San Luis Potosi, S.L.P.</td>
<td>Ciudad Victoria, Tamps.</td>
<td>Apodaca, N.L.</td>
</tr>
<tr>
<td>3</td>
<td>Los Cabos, B.C.S. (16/X/02)</td>
<td>Metepec, Edomex.</td>
<td>Cordoba, Ver.</td>
<td>Cuernavaca, Mor.</td>
<td>San Nicolás de los Garza, N.L.</td>
</tr>
<tr>
<td>5</td>
<td>Zapopan, Jal. (28/V/03)</td>
<td>Mazatlan, Sin.</td>
<td>Querétaro, Qro.</td>
<td>Ciudad Juarez, Chih.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Tijuana, B.C. (02/VI/03)</td>
<td>San Andres Cholula, Pue.</td>
<td>Monclova, Coah</td>
<td>Tultitlan, Edomex</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Mexicali, B.C. (02/VI/03)</td>
<td>Tapachula, Chis.</td>
<td>Saltillo, Coah.</td>
<td>Lerma, Edomex</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>León, Gto. (1/VII/03)</td>
<td>Merida, Yuc.</td>
<td>Nezahualcóyotl, Edomex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Tlalnepantla, Edomex. (8/IX/03)</td>
<td>Villahermosa, Tab.</td>
<td></td>
<td>Atizapan, Edomex</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Cancún Q. Roo (18/XII/03)</td>
<td>Coatzacoalcos, Ver.</td>
<td>San Juan del Río, Qro.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Pachuca, Hgo. (15/I/04)</td>
<td>Boca del Río, Ver.</td>
<td>Puerto Vallarta, Jal.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Piedras Negras, Coah</td>
<td></td>
<td>Zacatecas, Zacs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Distrito Federal</td>
<td></td>
<td>Ramos Arizpe, Coah.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Irapuato, Gto.</td>
<td></td>
<td>Ensenada, B.C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Celaya, Gto.</td>
<td></td>
<td>Nayarit, Nay.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Colima, Col.</td>
<td></td>
<td>Gomez Palacio, Dgo.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Chetumal, Q. Roo</td>
<td></td>
<td>Durango, Dgo.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Tlaquepaque, Jal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table A.4. Scope of population and production covered by SARE (Mexican fast track for start-ups)

<table>
<thead>
<tr>
<th></th>
<th>2003 Total population in México</th>
<th>2002 Total production in Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(millions of people) %</td>
<td>%</td>
</tr>
<tr>
<td>SARE in full operation</td>
<td>11.26 11%</td>
<td>15%</td>
</tr>
</tbody>
</table>

Scope of population and production covered by fast track for start-ups (SARE with significant advances or in process)

<table>
<thead>
<tr>
<th></th>
<th>2003 Total population in México</th>
<th>2002 Total production in Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(millions of people) %</td>
<td>%</td>
</tr>
<tr>
<td>SARE with significant advances</td>
<td>16.49 16%</td>
<td>28%</td>
</tr>
<tr>
<td>SARE work in progress</td>
<td>3.53 3%</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>20.02 18%</td>
<td>32%</td>
</tr>
</tbody>
</table>

Scope of population and production covered by the rest of municipalities (No fast track for start-ups)

<table>
<thead>
<tr>
<th></th>
<th>2003 Total Population in México</th>
<th>2002 Total Production in Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(millions of people) %</td>
<td>%</td>
</tr>
<tr>
<td>Without fast track for start-ups</td>
<td>72.94 70.0%</td>
<td>52%</td>
</tr>
</tbody>
</table>

* Division the municipalities in four groups by the advances in SARE implementation. Source: Own elaboration with information from INEGI.

Table A.5. Federal, state and municipal advance in fast track for start-ups programme

<table>
<thead>
<tr>
<th></th>
<th>Puebla, Pue.</th>
<th>Los Cabos, B.C.S.</th>
<th>Aguascalientes, Ags.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Without SARE</td>
<td>With SARE</td>
<td>Without SARE</td>
</tr>
<tr>
<td>Period of activity</td>
<td>1 year 8 months</td>
<td>1 year 3 months</td>
<td>9 months</td>
</tr>
<tr>
<td>Number of days before the business is able to start operating</td>
<td>58 2</td>
<td>35 1</td>
<td>29 1</td>
</tr>
<tr>
<td>Number of municipal procedures</td>
<td>27 5</td>
<td>16 5</td>
<td>7 2 a 5*</td>
</tr>
<tr>
<td>Number of visits to different offices</td>
<td>5 1</td>
<td>10 1</td>
<td>6 1</td>
</tr>
</tbody>
</table>

*Depends on the location and specific type of activity.
Table A.6. Quality of website publicly available information on the municipalities with fast track start-up programmes

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Web link</th>
<th>Quality of Information on the web</th>
</tr>
</thead>
<tbody>
<tr>
<td>Puebla, Pue.</td>
<td><a href="http://www.cgemerpuebla.gob.mx">www.cgemerpuebla.gob.mx</a></td>
<td>Excellent</td>
</tr>
<tr>
<td>Mexicali, BC</td>
<td><a href="http://www.mexicali.gob.mx">www.mexicali.gob.mx</a></td>
<td>Excellent</td>
</tr>
<tr>
<td>Aguascalientes, Ags.</td>
<td><a href="http://www.muniags.gob.mx">www.muniags.gob.mx</a></td>
<td>Excellent</td>
</tr>
<tr>
<td>Tlalnepantla, Mex.</td>
<td><a href="http://www.tlalnepantla.gob.mx">www.tlalnepantla.gob.mx</a></td>
<td>Excellent</td>
</tr>
<tr>
<td>Pachuca, Hgo.</td>
<td><a href="http://www.pachuca.gob.mx">www.pachuca.gob.mx</a></td>
<td>Sufficient</td>
</tr>
<tr>
<td>Tijuana, BC</td>
<td><a href="http://www.tijuana.gob.mx">www.tijuana.gob.mx</a></td>
<td>Sufficient</td>
</tr>
<tr>
<td>Zapopan, Jal</td>
<td><a href="http://www.zapopan.gob.mx">www.zapopan.gob.mx</a></td>
<td>Sufficient</td>
</tr>
<tr>
<td>Torreón, Coah.</td>
<td><a href="http://www.torreon.gob.mx">www.torreon.gob.mx</a></td>
<td>Sufficient</td>
</tr>
<tr>
<td>Los Cabos, BCS</td>
<td><a href="http://www.loscabos.gob.mx">www.loscabos.gob.mx</a></td>
<td>Poor</td>
</tr>
<tr>
<td>Guadalajara, Jal</td>
<td><a href="http://www.guadalajara.gob.mx">www.guadalajara.gob.mx</a></td>
<td>Poor</td>
</tr>
<tr>
<td>Leon, Gto.</td>
<td><a href="http://www.leon.gob.mx">www.leon.gob.mx</a></td>
<td>Not working</td>
</tr>
<tr>
<td>Tehuacán, Pue.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Oaxaca, Oax.</td>
<td><a href="http://www.oaxacainfo.gob.mx">www.oaxacainfo.gob.mx</a></td>
<td>None</td>
</tr>
<tr>
<td>Cancún, Q.Roo</td>
<td><a href="http://www.cancun.gob.mx">www.cancun.gob.mx</a></td>
<td>None</td>
</tr>
</tbody>
</table>

Table A.7. Improvement in regulation of entry
(Not including the time spent in formalities by the notary public and going to municipal offices)

<table>
<thead>
<tr>
<th>Number of days taken by formalities by level of government</th>
<th>1996 Before red tape reduction</th>
<th>1999 1st round red tape reduction</th>
<th>2003 With Federal SARE only</th>
<th>2003 With Federal, state and municipal SARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>50 days</td>
<td>11 days</td>
<td>1 day</td>
<td>1 day</td>
</tr>
<tr>
<td>State</td>
<td>20 days</td>
<td>20 days</td>
<td>20 days</td>
<td>1 day</td>
</tr>
<tr>
<td>Municipality</td>
<td>36 days</td>
<td>36 days</td>
<td>36 days</td>
<td>1 days</td>
</tr>
<tr>
<td>Total</td>
<td>106 days</td>
<td>67 days</td>
<td>57 days</td>
<td>3 days*</td>
</tr>
</tbody>
</table>

*There are other practical formalities that are not officially compulsory but in practice may be necessary.

Source: Own elaboration with data from COFEMER (2003), Djankov, et al. (2001), and Regulatory Improvement Units of the municipalities.
Also, the cost and procedures for start-ups have been reduced dramatically in the last four years.

Table A.8. Start-ups costs (Federal, state, and municipal)

<table>
<thead>
<tr>
<th>Costs</th>
<th>Before red tape reduction</th>
<th>1st round of red tape reduction</th>
<th>After SARE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of formalities</td>
<td>15</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>1995</td>
<td>1999</td>
<td>2003</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Costs</th>
<th>1995</th>
<th>1999</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost (US dollars)</td>
<td>$2,492*</td>
<td>$2,492</td>
<td>$ 775</td>
</tr>
<tr>
<td>Cost + Time (opportunity costs)</td>
<td>$9,474</td>
<td>$3,671</td>
<td>$ 890</td>
</tr>
<tr>
<td>Cost (% GDP per capita)</td>
<td>56.70%</td>
<td>56.70%</td>
<td>13.17%</td>
</tr>
<tr>
<td>Cost + Time (% GDP per capita)</td>
<td>161%</td>
<td>83.44%</td>
<td>15.13%</td>
</tr>
</tbody>
</table>

Source: Own elaboration with information of notaries public, COFEMER, deregulation municipal offices, government websites and Djankov, et al. (2001).

1/ Djankov et al., The Regulation of Entry, 2001.
2/ Simple average of eight municipalities in México (Aguascalientes, Cuernavaca, Puebla, Tampico, Colima, Navojoa, Obregón and Mexico City).

* Assumptions: The costs of complying with all the required formalities are the same (ceteris paribus) with the exception of the opportunity cost of time.

According to data available, in 2003 a start-up requires an average of 8 total entry procedures and a start-up cost of $890 US dollars (15.1% of GDP per capita), including opportunity costs of the time it takes to complete the formalities. This is an overwhelming improvement if we consider that in 1999, a start-up required $3,671 US dollars, and although the data shows great variations in start-up regulation across municipalities, the municipalities with fast track for start-ups programme have fewer business days and lower costs than the rest of municipalities without fast-track programmes.84

Table A.9.

<table>
<thead>
<tr>
<th>Municipalities with fast track for start-up programmes 1/</th>
<th>Time</th>
<th>Cost (US dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Business days</td>
<td>Natural days</td>
</tr>
<tr>
<td>Average</td>
<td>10.6</td>
<td>2 weeks</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Municipalities without fast track programmes 2/</th>
<th>Time</th>
<th>Cost (US dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average</td>
<td>3 weeks and 3 days</td>
<td>$1,018</td>
</tr>
</tbody>
</table>

84 The evidence shows that in municipalities with fast track programme have slightly greater formalities than municipalities without fast track programme.
1/ The municipalities with fast track for start-up companies in the sample are: Aguascalientes city (State of Aguascalientes), Cuernavaca (Morelos), Puebla City (Puebla), Tampico (Tamaulipas) and Colima city (Colima).
2/ The municipalities with no fast track in the sample are: Mexico city (D.F.), Navojoa (Sonora) and Obregón (Sonora).

**Table A.10 Differences across municipalities (2003). Federal, state, and municipal formalities**

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Fast track start-ups programme</th>
<th>No fast track programme</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Aguascalientes City</td>
<td>Mexico City</td>
</tr>
<tr>
<td>State</td>
<td>Aguascalientes</td>
<td>D.F.</td>
</tr>
<tr>
<td>Formalities (federal,</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>state, and municipal)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business days</td>
<td>5</td>
<td>26</td>
</tr>
<tr>
<td>Natural days</td>
<td>1 week</td>
<td>1 month, 1 week, 1 day</td>
</tr>
<tr>
<td>Cost (US dollars)</td>
<td>$ 368</td>
<td>$ 1,329</td>
</tr>
<tr>
<td>Cost + time (US dollars)</td>
<td>$ 433</td>
<td>$ 1,477</td>
</tr>
<tr>
<td>Cost (% GDP per capita)</td>
<td>7.36%</td>
<td>25.11%</td>
</tr>
</tbody>
</table>

Source: Own elaboration with information of notaries public, COFEMER, deregulation municipal offices, government websites and Djankov, et al. (2001).

<table>
<thead>
<tr>
<th>Federal, state and municipal formalities ¹/</th>
<th>Time (business days)</th>
<th>Cost (US$ dollars) ²/</th>
</tr>
</thead>
<tbody>
<tr>
<td>Go to municipal offices and ask for the formats</td>
<td>1</td>
<td>$ -</td>
</tr>
<tr>
<td>Fill out the official formats ³/</td>
<td>1</td>
<td>$ 9.17</td>
</tr>
<tr>
<td>Go again to the municipal offices and register the new company ⁴/</td>
<td></td>
<td>$ -</td>
</tr>
<tr>
<td>Check for name uniqueness and notify to SRE)</td>
<td>0.33 ¹¹/</td>
<td>$ 72.02</td>
</tr>
<tr>
<td>Notarise the company deed in municipal offices ⁵/</td>
<td>0.33</td>
<td>$ -</td>
</tr>
<tr>
<td>Register at Property Public Registry ⁶/</td>
<td>0.33</td>
<td>$ -</td>
</tr>
<tr>
<td>Register for taxes (SHCP) ⁷/</td>
<td>0.20</td>
<td>$ -</td>
</tr>
<tr>
<td>Open a bank account and deposits start-up capital ⁶/</td>
<td>1.00</td>
<td>$ 275.23</td>
</tr>
<tr>
<td>Municipal permit to allow the firm to use the building as working place ⁹/</td>
<td>0.20</td>
<td>$ 4.36</td>
</tr>
<tr>
<td>Obtain an environment certificate ⁹/</td>
<td>0.20</td>
<td>$ -</td>
</tr>
<tr>
<td>Notify the health and safety state authority ⁹/</td>
<td>0.20</td>
<td>$ -</td>
</tr>
<tr>
<td>Obtain a municipality license ⁹/</td>
<td>0.20</td>
<td>$ 7.06</td>
</tr>
<tr>
<td>Opportunity costs ¹⁰/</td>
<td></td>
<td>$ 65.39</td>
</tr>
</tbody>
</table>

| Total | 5 | US$433 | MXP$4,722 |

% GDP per capita 7.36%

1/ We focus on a private limited company (low-risk firm stipulated by INEGI).
2/ Exchange rate of 10.90 MX pesos per US dollar.
3/ This formality is free. We only consider the costs of the photocopies.
4/ The following formalities, shown in the figures, are elaborated in the municipal offices, except for opening a bank account.
5/ We consider that the entrepreneurs found a private-limited company (S. de R.L.), so is not necessary to go to a notary public.
6/ According to the Ley General de Sociedades Mercantiles, the minimum start-up capital for a private limited company (S. de R.L.) is $3,000 MX pesos.
7/ The Municipal office gives to the entrepreneur a temporary permit. After 20 working days (average), SHCP gives the official documents.
8/ Average cost of a company with low and high risk.
9/ Not all the companies need to do this formality. Average cost of a company with low and medium risk.
10/ Opportunity costs: (Per capita average income per working day in Aguascalientes calculated with INEGI's data) * 8 * Number of formalities. There are some exceptions.
11/ One third of 8 hours.
Figure A.1. Start-up formalities in Aguascalientes municipality*

Fast track programme for start-ups, 2003

1. Go to municipal office and ask for the formats
2. Fill out the official formats
3. Go again to the municipal office and register the new company
4. Check name for uniqueness and notify to SRE
5. Notarize company deed in the municipal office
6. Register at Property’s Public Registry
7. Register for taxes
8. Open a bank account and deposit a start-up capital
9. Municipal permit to allow the firm to use the building
10. Obtain an environment certificate
11. Notify the health and safety state authority
12. Obtain a municipality license
13. Opportunity costs

*UNO is the fast track for start-ups programme in Aguascalientes City.

Note: Formalities are lined up sequentially on the horizontal axis. The details are shown in the text box. The time, in business days, required to complete each formality is described by the height of the bar and measured in the left scale. Cumulative costs (US dollars) are plotted using a line (right scale).

On the contrary, in the Mexico City the entrepreneurs face excessive regulations of entry. In average, they spend 26 business days and $1.477 U.S. dollars to start a new firm (see tables below).
Table A.12. Time and costs of start-up in México City (D.F)

No fast track programme for start-ups, 2003

<table>
<thead>
<tr>
<th>Federal, state and municipal formalities ¹/</th>
<th>Time (business days)</th>
<th>Cost (US$ dollars) ²/</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check for name uniqueness (SRE)</td>
<td>1</td>
<td>$50.92</td>
</tr>
<tr>
<td>Notify of company foundation to (SRE)</td>
<td>1</td>
<td>$18.81</td>
</tr>
<tr>
<td>Register at Property’s Public Registry ³/</td>
<td>21</td>
<td>$77.52</td>
</tr>
<tr>
<td>Register for taxes (SHCP) ⁴/</td>
<td>1</td>
<td>$91.74</td>
</tr>
<tr>
<td>Fees to notary public + giving law’s power to a legal representative ⁵/</td>
<td>1</td>
<td>$631.93</td>
</tr>
<tr>
<td>Open a bank account and deposits start-up capital ⁶/</td>
<td>1</td>
<td>$275.23</td>
</tr>
<tr>
<td>Obtain permit to use the building as a working place ⁷/</td>
<td>1</td>
<td>$182.39</td>
</tr>
<tr>
<td>Opportunity costs ⁸/</td>
<td></td>
<td>$148.54</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>26</strong></td>
<td><strong>US$1,477</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>MXP$16,100</strong></td>
</tr>
</tbody>
</table>

¹/ We focus on a standardised firm (low-risk firm stipulated by INEGI).
²/ Exchange rate of 10.90 MX pesos per US dollar.
³/ Notarise company deeds with an minimum start-up capital of $3,000 MX pesos.
⁴/ In case that a notary public has a permit to register a company at SAT (Federal Tax Authority).
⁵/ Annually fee stipulated by "Gaceta Oficial del D.F."
⁶/ According to the Ley General de Sociedades Mercantiles, the minimum start-up capital for a private limited company (S. de R.L.) is $3,000 MX pesos.
⁷/ Stipulated by "Código Financiero del D.F.", art. 127.
⁸/ Opportunity costs: (Per capita average income per working day in D.F. calculated with INEGI’s data) * 8 * Number of formalities. There are some exceptions.
Figure A.2. Start-up formalities in Mexico City (D.F)
(Fast track programme for start-ups)

1. Check name for uniqueness (SRE)
2. Notify of company foundation to SRE
3. Register at Property’s Public Registry
4. Register for taxes
5. Fees to notary public
6. Open a bank account and deposit a start-up capital
7. Obtain permit to use the building as a working place
8. Opportunity costs

Note: Formalities are lined up sequentially on the horizontal axis. The details are shown in the text box. The time, in business days, required to complete each formality is described by the height of the bar and measured in the left scale. Cumulative costs (US dollars) are plotted using a line (right scale).

Also there are remarkable differences within each municipality depending if the start-up registers to a fast track start-up programme and if the economic activity is eligible to enter to the programme.

A good example is in Tampico municipality (State of Tamaulipas). If a start-up registers to the fast track programme (SAIET), the entrepreneur spends less time and lower start-up costs than registering by the standard process.\(^{85}\)

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\(^{85}\) SAIET: Sistema de Apertura Inmediata de Empresas en el estado de Tamaulipas.
Table A.13. Differences within one municipality

<table>
<thead>
<tr>
<th></th>
<th>Fast track for start-ups programme</th>
<th>No fast track programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipality</td>
<td>Tampico State of Tamaulipas</td>
<td></td>
</tr>
<tr>
<td>Formalities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business days</td>
<td>21</td>
<td>12</td>
</tr>
<tr>
<td>Natural days</td>
<td>1 month and 1 day</td>
<td>2 weeks and 2 day</td>
</tr>
<tr>
<td>Cost + time (US dollars)</td>
<td>$1,184</td>
<td>$493</td>
</tr>
<tr>
<td>Cost (% GDP per capita)</td>
<td>20.1%</td>
<td>8.4%</td>
</tr>
</tbody>
</table>

Source: Own elaboration with information of notaries public, deregulation municipal offices and government websites.

Table A.14. Change in formalities with Federal Fast track for start-ups programme

<table>
<thead>
<tr>
<th>Before the 2002 fast track for start-ups programme</th>
<th>After the 2002 fast track for start-ups programme</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Federal Tax Registration (RFC with the tax collection authority SHCP)</td>
<td>Federal Tax Registration (RFC with the tax collection authority SHCP)</td>
</tr>
<tr>
<td>2 Partnership constitution license (Exterior Affairs Ministry, SRE) and notification.</td>
<td>Partnership constitution license (Exterior Affairs Ministry, SRE)</td>
</tr>
<tr>
<td>3 Employee and employer registry in the Social Security, Housing, and Retirement institutions (IMSS, INFONAVIT, SAR)</td>
<td></td>
</tr>
<tr>
<td>4 Payment of employer’s and employees social security obligations. (IMSS, INFONAVIT, SAR)</td>
<td></td>
</tr>
<tr>
<td>5 Formalities for the training of employees with the labour authority (STPS)</td>
<td></td>
</tr>
<tr>
<td>6 Constitution of the commission between the employer and employees for the training of employees (STPS).</td>
<td></td>
</tr>
<tr>
<td>7 Constitution of the safety and hygiene commission with the labour authority (STPS)</td>
<td></td>
</tr>
<tr>
<td>8 Statistics institute registration (INEGI)</td>
<td></td>
</tr>
</tbody>
</table>

*The rest of the formalities must be complied within the next few months after starting operations. Specifically: Employee and employer registry in the Social Security, Housing, and Retirement institutions (IMSS, INFONAVIT, SAR): 5 business days after the employee hiring; payment of employer’s and employees social security obligations. (IMSS, INFONAVIT, SAR): 1 month after the employee hiring; formalities for the training of employees with the labour authority (STPS): 1 business day; constitution of the commission between the employer and employees for the training of employees (STPS): 1 business day; constitution of the safety and hygiene commission with the labour authority (STPS): 15 days after the celebration of the contract; statistics institute registration (INEGI): 3 months after starting operations.

** For some specific types of activities there are another two possible formalities that firms must comply with: Toxic waste disposal inscription with the environmental authority (SEMARNAT) and
notice of operations to the health department (SSA). A significant reduction of the amount of activities that have to comply with these formalities was accomplished with the start-ups programme.

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**Box A.1 Federal red tape-reduction: Round Two (2002-3)**

The process of creation of SARE at the federal level is as follows:

1. **Presidential agreement for Fast track for Start-up programme (SARE)** (DOF: Jan 28th, 2002) (Entry into force: March 1st, 2002): Creates the Fast track for Start-up programme in 80% of the activities grouped by the INEGI and that are considered low-risk activities which encompass start-ups.

2. **List of activities to which SARE is applicable** (annex to art. 5 of previous agreement)

3. **Fiscal Miscellaneous for year 2003. (SHCP)** (DOF: March 31st, 2003): Legal observations that are applicable for tax compliance and federal rights that reduce the number of days necessary for starting a business.

4. **Agreement on maximum term for resolving the licenses on partnerships (SRE)** (DOF: February 20th, 2002): same day if they are formulated before 11 am or next business day if after.

5. **Agreement that modifies the general criteria for administrative formalities for the training of employees (STPS)** (Entry into force: March 1st, 2002) If there is no written objection by the authority the next business day, the formalities are considered accepted. Also, they can be made via Internet.

6. **Agreement that informs which businesses should present the formality “Notice of operations” (aviso de funcionamiento) in the SARE program. (SSA)** (DOF: February 27th, 2002)

7. **Agreement from the Mexican Institute of Social Security (IMSS) to inform the formalities to be made with them according to the SARE program. (IMSS)** (DOF: February 25th, 2002)

8. **Agreement that informs the businesses that should present the formality “Generator of toxic waste” in the SARE program. (SEMARNAT)** (DOF: February 28th, 2002)

Further information available upon request at srodriguez@solescon.com
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