

## **Sub-Federal Deliberative Exclusions and Free Trade: Mexico's Centralized Federalism and Weak Institutional Capacities**

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Résumé de l'article

Cet article explore la relation entre le commerce et les exclusions délibératives sous-fédérales dans le cas du Mexique. Le fédéralisme centralisé mexicain explique l'absence de gouvernements sous-fédéraux (GSF) dans les négociations des accords de libre-échange, même s'ils sont chargés de traiter les résultats commerciaux au niveau local. Cet article soutient que les exclusions délibératives sous-fédérales ne se manifestent pas seulement par la répartition fédérale des compétences, mais aussi par leurs capacités institutionnelles limitées (restrictions budgétaires et de personnel, manque de professionnalisation et absence de coordination interinstitutionnelle). C'est le cas de l'ALENA, de l'ACÉUM et de l'Accord de libre-échange entre le Mexique et l'Union européenne dans ses versions originale et récemment renégociée. Malgré les contraintes imposées par le fédéralisme et les limitations institutionnelles, les GSF s'engagent dans la promotion du commerce et des investissements par le biais d'accords interinstitutionnels (AII) permis par la législation secondaire.

# SUB-FEDERAL DELIBERATIVE EXCLUSIONS AND FREE TRADE: MEXICO'S CENTRALIZED FEDERALISM AND WEAK INSTITUTIONAL CAPACITIES

Marcela López-Vallejo\* and Jorge A. Schiavon\*\*

This article explores the relationship between trade and sub-federal deliberative exclusions in the case of Mexico. Mexican centralized federalism explains the absence of sub-federal governments (SFGs) in the negotiations of free trade agreements, even if they are responsible for dealing with trade outcomes at the local level. This article argues that sub-federal deliberative exclusions are not only evident under the federal allocation of powers but also by their limited institutional capacities (restrictions in budgets and personnel, lack of professionalization, and absence of inter-institutional coordination). This is the case of *NAFTA*, the *USMCA*, and the *Mexico-European Union Free Agreement* in its original and recently renegotiated versions. Despite constraints by federalism and institutional limitations, SFGs engage in trade and investment promotion through inter-institutional agreements (IIAs) allowed by secondary legislation.

Cet article explore la relation entre le commerce et les exclusions délibératives sous-fédérales dans le cas du Mexique. Le fédéralisme centralisé mexicain explique l'absence de gouvernements sous-fédéraux (GSF) dans les négociations des accords de libre-échange, même s'ils sont chargés de traiter les résultats commerciaux au niveau local. Cet article soutient que les exclusions délibératives sous-fédérales ne se manifestent pas seulement par la répartition fédérale des compétences, mais aussi par leurs capacités institutionnelles limitées (restrictions budgétaires et de personnel, manque de professionnalisation et absence de coordination interinstitutionnelle). C'est le cas de l'*ALENA*, de l'*ACÉUM* et de l'*Accord de libre-échange entre le Mexique et l'Union européenne* dans ses versions originale et récemment renégociée. Malgré les contraintes imposées par le fédéralisme et les limitations institutionnelles, les GSF s'engagent dans la promotion du commerce et des investissements par le biais d'accords interinstitutionnels (AII) permis par la législation secondaire.

Este artículo explora la relación entre comercio y exclusiones deliberativas sub-federales en el caso de México. El federalismo centralizado en México explica la ausencia de gobiernos sub-federales (GSF) en las negociaciones de tratados de libre comercio, aun cuando estos gobiernos sean responsables de resolver los resultados en materia comercial a nivel local. Este artículo argumenta que las exclusiones deliberativas sub-federales no sólo son evidentes en la distribución de poderes en el esquema federal, sino también en las limitadas capacidades institucionales (restricciones de presupuesto y personal, falta de profesionalización y ausencia de coordinación inter-institucional). Esto es el caso en el *TLCAN*, el *T-MEC* y el *Tratado de Libre Comercio entre México y la Unión Europea* en sus versiones originales y recientemente renegociadas. Aun ante las limitaciones institucionales y del federalismo, los gobiernos sub-federales participan en la promoción comercial y de atracción de inversiones a través de los acuerdos interinstitucionales (AII) permitidos en la legislación secundaria.

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Contemporary free trade agreements (FTAs) account for different types of deliberative exclusions, being the lack of participation of civil society during their negotiation the most common. The degree of involvement of civil society during the FTAs processes is usually related to how deliberation performs.<sup>1</sup> Nonetheless, FTAs processes account for a second type of deliberative exclusion. Territorial interests have either limited participation or are absent during the negotiations of trade agreements.<sup>2</sup> This type of exclusion is controversial given that “new generation” FTAs are more complex and include issues under the competence of subnational political units.<sup>3</sup> In federal systems, excluding sub-federal governments (SFGs) from the negotiation of FTAs makes deliberation problematic. Federations guarantee SFGs certain powers, which prevent that policies are only subject to the will of the federal government.<sup>4</sup> Therefore, when FTAs touch on sub-federal competences or jurisdictions, strong intergovernmental collaboration is required. If governmental levels fail to collaborate, the implementation of trade agreements will hardly be successful.<sup>5</sup>

Despite contemporary trade complexity, SFGs do not participate in trade negotiations in Mexico. The Constitution and trade laws grant the exclusive power to negotiate trade agreements to the Mexican federal government.<sup>6</sup> Although states are “sovereign” under Article 40 of the Constitution, they function under a centralized federalist structure, where different policy domains are exclusive to the federal government (e.g. trade or foreign policy).<sup>7</sup> In trade issues, the territorial representation is limited to the ratification process under the Senate. The exclusion of SFGs was evident during the negotiation of the United States, Mexico and Canada FTA (*USMCA*, former *North American Free Trade Agreement* or *NAFTA*) and the *Mexico-European Union Agreement (MXEU.2)*, the refurbished version of the original *Mexico-European Union Free Trade Agreement (MX-EU-TA)*. Both FTAs were negotiated in the last five years and touched on SFGs competences.

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<sup>1</sup> Andreas Dür & Dirk de Bievre, “Inclusion without Influence? NGOs in European Trade Policy” (2007) 27:1 *J Public Policy* 79; Dorval Brunell & Sylvie Dugas, “Civil Society Organizations against Free Trade Agreements in North America” in Jeffrey Ayres & Laura Macdonald, eds, *Contentious Politics in North America: National Protest and Transnational Collaboration under Continental Integration* (Basingstoke: Palgrave-Macmillan, 2009) 57; Silke Trommer, “Activists beyond Brussels: Transnational NGO Strategies on EU-West African Trade Negotiations” (2011) 8:1 *Globalizations* 113; Jean-Baptiste Velut, “What Role for Civil Society in Cross-Regional Mega-Deals? A Comparative Analysis of EU and US Trade Policies” (2016) 55 *R Interventions économiques* 1.

<sup>2</sup> Michelle Egan & Maria H. Guimaraes, “The dynamics of federalism, subnational markets and trade policy-making in Canada and the US” (2019) 29:4 *Regional Federal Studies* 459.

<sup>3</sup> Patricia Goff, “Limits to deep integration: Canada between the EU and the US” (2017) 30:5-6 *Cambridge Rev Intl Affairs* 549; Egan & Guimaraes, *supra* note 2.

<sup>4</sup> Matthew Schaefer, “Twenty-first Century Trade Negotiations, The US Constitution, and the Elimination of US-State Level Protectionism” (1999) 2:1 *J Intl Econ* L 72.

<sup>5</sup> Patrick Fafard & Patrick Leblond, “Twenty-first Century Trade Agreements: Challenges for Canadian Federalism” (2012) at 3, online (pdf): *The Federal Idea* <[citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1039.8688&rep=rep1&type=pdf](https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1039.8688&rep=rep1&type=pdf)>.

<sup>6</sup> Mexico Laws. (2019b). *Constitución Política de los Estados Unidos Mexicanos*. Mexico City: Porrúa.

<sup>7</sup> *Ibid*, art XL.

This article argues that trade exclusions are not only evident by constitutional constraints for SFGs to participate in FTAs negotiations but also in the limited institutional capacities of SFGs which prevent them from engaging more strongly, to influence the negotiations and to deal with trade outcomes. Either to provide infrastructure, efficient governance processes, security, or to address trade disputes, SFGs need local capacities. In developing countries such as Mexico, this poses institutional structural challenges. Limited budgets, lack of professionalization, absence of inter-institutional coordination or even the lack of procedures to face trade are also forms of sub-federal deliberative exclusions.

Such legal and institutional constraints explain the absence of Mexican SFGs in trade politics. However, although in a very limited way, Mexican SFGs do engage in trade. By utilizing “inter-institutional agreements” (IIAs), they have found alternative channels to participate in trade politics. Although constrained to SFGs competences, IIAs help SFGs to promote their own trade agendas and somehow try to overcome the lack of institutional capacities required for FTA engagement. IIAs were established by an amendment to the *Law on Celebration of Treaties (LCT)* in 1992 which granted SFGs and governmental agencies at all levels the capacity to negotiate and sign cooperation agreements with foreign counterparts in diverse topics including trade and investment promotion<sup>8</sup>. They do not require ratification or approval by the federal government or the Senate.

This article contributes to the literature on deliberation in trade politics from a local perspective. It conceives deliberation as a wider process. Firstly, not only civil society needs participation, but also other governmental channels of territorial representation, such as states, provinces, cantons, departments, cities, municipalities, communities, among others. Analyzing the role of these governments is fundamental to understand the political and policy processes not from above or below, but from “the middle” as SFGs’ political action becomes one of the last frontiers between globalization and territorial agendas.<sup>9</sup> Secondly, even though SFGs could constitutionally voice their interests during the negotiation of FTAs, they not always have the institutional capacities to influence trade processes.<sup>10</sup> Although there is plenty of literature on the role of SFGs in trade politics in developed countries with federal systems (e.g. Canada, the United States or the European Union), the contribution of this article is to analyze how limited institutional capacities account for more profound deliberative exclusions in developing countries, such as Mexico.

The article is divided into five sections. The first discusses why and how SFGs are usually excluded from trade politics in federal systems. The second

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<sup>8</sup> *Ley de Celebración de Tratados*, Mexico City: Diario Oficial de la Federación, 1992.

<sup>9</sup> Brian Hocking, “Patrolling the ‘Frontier’: Globalization, Localization and the ‘Actorness’ of Non-central Governments” in Francisco Aldecoa & Michael Keating, eds, *Paradiplomacy in Action: The Foreign Relations of Subnational Governments* (London: Frank Cass Publishers, 1999) 17.

<sup>10</sup> Fafard & Leblond, *supra* note 5; Julie M. Simmons, “Canadian multilateral intergovernmental institutions and the limits of institutional innovation” (2017) 27:5 *Regional Federal Studies* 573.

section analyzes the constraints imposed by the Mexican federalism to prevent SFG trade engagement. The third section explains the SFG limited participation in negotiation of *USMCA* and *MXEU.2* as well as problems faced during *NAFTA* and *MEX-EU-TA*. The fourth section details how IIAs become alternative pathways for SFG trade engagement. Lastly, the conclusions present the central findings of the article.

## I. SFGs deliberative exclusion in free trade agreements

Deliberation is intrinsically linked to liberal democracy and conceived as an inclusive idea of policy and political process where dialogue and debate are fundamental for collective action and for producing collective goods.<sup>11</sup> Within the political sphere, the aggregation of values and interests supports the idea of legitimacy of policy outcomes. In this sense, civil society's direct participation is crucial to prevent deliberative exclusions in free trade, and thus pushes forward a policy process coming from "below."<sup>12</sup> With its participation, civil society, organized groups or collectivities ideally voice their interests, demands and identities to redistribute resources and power. However, power relations change and reconstitute interests and values themselves through political practices.<sup>13</sup> Deliberative inclusion, then, needs to consider all practices and institutions involved somehow in free trade.

In a context of a legitimacy crisis of free trade, contestation arises from different fronts: civil society fights against disparities and exclusions resulting from trade, and states struggle against the influence of international actors in domestic policies.<sup>14</sup> Recent-generation FTAs try to address contestation either through legal mechanisms intended to correct market distortions and compensate for asymmetric trade relations (i.e. dispute settlement mechanisms) or by non-commercial conditions representing social interests (i.e. the inclusion of democracy and human rights clauses in FTAs).

The lack of or limited social participation in the design of these mechanisms represents failures in deliberation. Whereas civil society is key for contestation, SFGs are fundamental to implement outcomes of the bargaining between FTA negotiators and civil society.<sup>15</sup> In this sense, SFGs represent the middle ground

<sup>11</sup> Chantal Mouffe, "Deliberative Democracy of Agonistic Pluralism" (2000) Institut für Höhere Studien (IHS) Reihe Politikwissenschaft/Political Science Series No 72; Joshua Cohen, "Democracy and Liberty" in Jon Elster, ed, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998) 185.

<sup>12</sup> John R. Parkins & Ross E. Mitchell, "Public Participation as Public Debate: A Deliberative Turn in Natural Resource Management" (2005) 18:6 Society Natural Resources 529; Velut, *supra* note 1.

<sup>13</sup> Mouffe, *supra* note 11.

<sup>14</sup> Michael Fakhri, "Book Review of Andrew Lang, *World Trade Law after Neoliberalism. Re-imagining the Global Economic Order*" (2012) 23:3 Eur J Intl L 903; Andrew Lang, *World Trade Law after Neoliberalism. Re-imagining the Global Economic Order* (Oxford: Oxford University Press, 2011).

<sup>15</sup> Christopher J. Kukucha, "The Role of the Provinces in Canadian Foreign Trade Policy: Multi-Level Governance and Sub-National Interests in the Twenty-First Century" (2004) 23:3 Policy Society 113 at 113-14.

between free-trade values and political interests at local scales. SFGs become the political arena in which political practices link the public and the private, as well as the local and the global. In arguing that SFGs participation in free trade processes is fundamental to voice other more local channels, this article assumes that SFGs become the last governmental space for regulation, enforcement of public policies and political responses to global or national pressures towards correcting market failures resulting from trade.<sup>16</sup>

In this sense, contemporary trade agreements scrutinize federal arrangements, impacting internal markets and intergovernmental relations.<sup>17</sup> FTAs intrude in domestic markets as they touch on sub-federal provision of goods, services, public procurement or political provisions, such as human rights or anti-corruption measures. Within the state, social actors and SFGs articulate interests, which generally aim to protect domestic markets from liberalization.<sup>18</sup> Therefore, in federal systems, the allocation of competences plays a key to the negotiation and SFGs engagement in FTAs.<sup>19</sup>

In some federations, there is a clear set of competences in each policy domain. Some SFGs have historically fought for independent trade policies, such as in Wallonia, Scotland or Quebec.<sup>20</sup> They have even used their powers to veto or redesign FTAs, such as when Wallonia vetoed the Canada-European Union FTA. In contrast, others such as US states and the rest of the Canadian provinces encounter ambiguity in trade distribution of competences.<sup>21</sup> Additionally, some other SFGs have clear but limited trade powers granted by their federal governments. In these cases, trade involvement is usually limited to the ratification process through second chambers (i.e. the Senate).

When an FTA concludes its ratification process and enters into force, SFGs need to implement obligations resulting from the negotiated FTA. It is in this stage of trade politics that institutional capacities can determine the success of liberalization. As scholars note, autonomy granted by federalism implies regulatory diversity, which can undermine efficiency when implementing FTAs.<sup>22</sup>

The case of Mexico shows how limited capacities and centralized federalism play along as obstacles SFGs face when trying to engage in trade politics.

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<sup>16</sup> Marcela López-Vallejo, "En la frontera del debate global-local: La provisión de bienes públicos desde la gobernanza escalar" (2017) 69:2 *Revista Española de Derecho Internacional* 171; Hocking, *supra* note 9 at 17-21.

<sup>17</sup> Goff, *supra* note 3; Egan & Guimaraes, *supra* note 2.

<sup>18</sup> Schaefer, *supra* note 4.

<sup>19</sup> Goff, *supra* note 3; Fafard & Leblond, *supra* note 5; Schaefer, *supra* note 4.

<sup>20</sup> Ohio Omiunu, "The Evolving Role of Sub-National Actors in International Trade Interactions: A Comparative Analysis of Belgium and Canada" (2017) 6:2 *Global J Comparative L* 105; Hubert Rioux Ouimet, "From Sub-state Nationalism to Subnational Competition States: The Development and Institutionalization of Commercial Paradiplomacy in Scotland and Quebec" (2015) 25:2 *Regional Federal Studies* 109.

<sup>21</sup> Kukucha, *supra* note 15; Schaefer, *supra* note 4.

<sup>22</sup> Egan & Guimaraes, *supra* note 2 at 462; Kukucha, *supra* note 15.

The next section details SFGs legal constraints under the Mexican federal structure and their limited institutional capacities.

## **II. Mexican federalism and weak institutional capacities: Limits to SFG trade involvement**

The Mexican Constitution, promulgated in 1917 and reformed more than 1,000 times throughout its history, establishes that Mexico is a presidential and federal system, with strong bicameralism. Thus, in terms of institutional division of power, it is a system with the strongest possible formal level of separation of powers. However, as a result of more than 70 years (from 1929 to 2000) of hegemony or dominance of the official party, the *Partido Revolucionario Institucional* (PRI), Mexico functioned as one of the most centralized political systems in the world. The extremely powerful federal Executive in Mexico can be understood by analyzing the relation between two central political actors in the system: the president, who has served as chief of state and government, and the official party. According to Weldon, presidential power depends on: 1) the constitutional powers of the Executive, 2) the legislative strength of the President's party; 3) the degree of discipline exercised by the leaders over party members; and, 4) the competition that the President faces from rivals within his own party.<sup>23</sup>

Due to the centralization of the system and the non-competitive nature of the elections that sustained the Mexican political system before 2000, the PRI had a majority (in some cases of more than 90 % of the seats) in both houses of Congress from 1929 to 1997. Since the mid-thirties, the president also was *de facto* the leader of the party; this, combined with the fact that there was no congressional or presidential re-election since that time, and that the party delegated to the president the power to designate his successor and control key party nominations, generated a supremacy of the federal Executive over Congress and SFGs. The latter was implemented through the nomination of party candidates to state and local posts, who typically won in uncontested elections. Also, the president could freely remove governors from power, through the PRI-controlled Senate or negotiated resignations. Even in the last decade of the authoritarian system in the nineties, the control over the 32 federal units still existed. As an example, during President Carlos Salinas' administration (1988-1994), 16 constitutionally elected governors were removed from their posts.<sup>24</sup>

As the practically undisputed leader of a highly disciplined party that held uninterrupted congressional majorities in both Houses of Congress for close to 70

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<sup>23</sup> Jeffrey A. Weldon, "Political Sources of Presidentialism in Mexico" in Scott Mainwaring & Matthew S. Shugart, eds, *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1997) 225 at 227.

<sup>24</sup> Peter M. Ward, Victoria E. Rodríguez & Enrique Cabrero, *New Federalism and State Government in Mexico: Bringing the States Back In* (Austin: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1999).

years, the federal Executive was far from restrained by constitutionally limited powers. The other relevant political actors in the system had incentives to ally with the Executive and support his policy preferences because he controlled, due to the rule of no re-election, their career advancement possibilities.<sup>25</sup> Thus, even if there were several *de jure* veto points in the Mexican institutional system, due to the presidential, bicameral and federal divisions of power, the Mexican president was able to exercise *de facto* control over all the political actors in the system. To put it simply, he had the power to enact his preferred policies, including trade policy and FTA negotiations. There was no space for SFGs to actively participate in international affairs, including trade policy.

However, once the official party lost the presidency and its majority in the Houses of Congress in 2000, the federal Executive lost his extra-constitutional powers, keeping only those granted by the Constitution. This new democratic competition generated divided and juxtaposed governments at all federal levels. These changes impacted the traditional authoritarian federalism scheme and opened the door to decentralizing certain policy domains. Under this new scheme, SFGs participated in public policy design both locally and in collaboration with the federal government. Some SFGs (mainly from opposition parties to PRI) set their own domestic priorities and policies, including those to engage internationally with global markets.<sup>26</sup>

Nonetheless, to date, SFGs engagement in trade politics is still prevented by the Constitution and secondary legislation. In Mexico, the legal framework regarding foreign and trade policy can be found in the Constitution, where the powers of the three branches of government are clearly defined. Article 124 of the Constitution establishes that “the powers that are not explicitly defined in the Constitution [...] are reserved for the states.”<sup>27</sup> However, there is a very clear rule in the case of treaties, including FTAs: it establishes that “states cannot, in any case, enter into alliances, treaties or coalitions with other States or foreign powers.”<sup>28</sup>

Secondary legislation reinforces constitutional mandates. The specific attributions on foreign policy issues are defined in the *Organic Law of Federal Public Administration*, whose Article 28.I establishes that the *Secretaría de Relaciones Exteriores* (SRE) has the attribution to coordinate the external negotiations of all the ministries and agencies of the federal Executive and SFGs, without affecting their attributions.<sup>29</sup> As such, SRE’s main responsibility is to conduct foreign policy. To do so, it has the power to participate in all types of treaties, agreements and conventions of which the country is part.

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<sup>25</sup> Weldon, *supra* note 23 at 248.

<sup>26</sup> Jorge A. Schiavon, *Comparative Paradiplomacy* (London: Routledge, 2019).

<sup>27</sup> “Mexico Laws” (2019b), *supra* note 6, art CXXIV.

<sup>28</sup> *Ibid*, art CXVII, § 1.

<sup>29</sup> Mexico Laws. (2019a), *Ley Orgánica de la Administración Pública Federal*, Mexico City: Porrúa, art XXVIII, § 1.



More important is the *Law on the Approval of Economic International Treaties (LAEIT)* which does not allow SFGs to sign economic and trade treaties.<sup>30</sup> For this topic, the only form of participation for SFGs and other social actors is through Senate commissions and public hearings, where the participation of society is only for consultation purposes. This puts SFGs in a difficult and confusing situation, as the Senate hardly represents territorial interests but party preferences. The consequence of this lack of deliberation is that no SFG can contest or resist the implementation of FTAs once they are ratified by the Senate.

Apart from being excluded in the negotiation process and not being fully represented by the Senate, SFGs face weak institutional capacities to engage in trade politics.<sup>31</sup> Limited institutional capacities of Mexican SFGs are embedded in bureaucratic and political centralization practices in the Mexican federal system. Centralization is still produced and reproduced at different scales, posing important limitations and challenges for SFGs to conduct their international activities (see Table 1): limited and non-regular local budgets (mostly depending on party loyalty), lack of professionalization of decision makers in international topics, and limited capacities to coordinate international affairs and trade promotion, among others. Based on a survey conducted in 2016-2017, only half of them (55.17 %) consider that their current legal and operative status facilitates the fulfillment of their responsibilities.<sup>32</sup> The most important challenges that they face in their everyday activities are insufficient budgets (22 states, 75.86 %, say they do not have sufficient budget) and human resources (17 states, 58.62 %, say they do not have enough staff members); on a lesser level, 11 states (37.93 %) believe they have limited training in international affairs, and 13 states (44.83 %) think they lack inter-institutional coordination mechanisms between state institutions.

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<sup>30</sup> *Ley sobre la Aprobación de Tratados Internacionales en Materia Económica* (México: Diario Oficial de la Federación, 2004).

<sup>31</sup> Fafard & Leblond, *supra* note 5; Simmons, *supra* note 10.

<sup>32</sup> Jorge A. Schiavon developed the survey in August 2016. With support from the General Direction for Political Coordination of the SRE (SRE's area in charge of relations with SFG in international affairs) and the Asociación Mexicana de Oficinas de Asuntos Internacionales de los Estados (the only association in Mexico that brings together and coordinates the actions of state agencies in charge of the international relations of 27 out of 32 states), the survey was sent to all 32 Mexican states in October 2016. The level of response was very high: the highest state authority for international affairs (or its representative) of 31 states (96.88 %, all except Baja California Sur) answered the survey between October 2016 and October 2017. Two of them (Hidalgo and Veracruz) said they had no office for international affairs, so 29 states answered almost every question.

**Table 1. Institutional capacities of Mexican SFGs (2016-2017)<sup>33</sup>**

Survey question: What factors challenge the operation of the office or area in charge of international affairs? (Select all options that apply)

State	Lack of an adequate legal framework	Insufficient budget	Insufficient human resources	Lack of training in international affairs	Lack of adequate inter-institutional coordination with state institutions
Aguascalientes	No	No	No	No	No
Baja California	No	Yes	Yes	No	Yes
Campeche	Yes	Yes	Yes	Yes	No
Chiapas	No	Yes	No	Yes	Yes
Chihuahua	Yes	Yes	Yes	No	No
Ciudad de México	Yes	Yes	No	No	Yes
Coahuila	No	No	No	Yes	No
Colima	Yes	Yes	Yes	Yes	Yes
Durango	No	Yes	No	No	Yes
Estado de México	No	Yes	Yes	No	No
Guanajuato	No	Yes	No	No	Yes
Guerrero	No	Yes	Yes	Yes	No
Jalisco	No	Yes	Yes	Yes	Yes
Michoacán	No	Yes	Yes	Yes	Yes
Morelos	Yes	No	No	No	No
Nayarit	No	No	No	No	No
Nuevo León	No	Yes	No	Yes	No
Oaxaca	No	No	No	No	Yes
Puebla	No	No	Yes	No	No
Querétaro	Yes	Yes	No	No	Yes
Quintana Roo	Yes	Yes	Yes	No	Yes
San Luis Potosí	Yes	Yes	Yes	Yes	Yes
Sinaloa	Yes	Yes	Yes	No	No
Sonora	Yes	No	No	No	No
Tabasco	Yes	Yes	Yes	No	No
Tamaulipas	Yes	Yes	Yes	No	Yes
Tlaxcala	Yes	Yes	Yes	Yes	No
Yucatán	No	Yes	Yes	No	No
Zacatecas	No	Yes	Yes	Yes	No
	No: 16 (55.17%) Yes: 13 (44.83%)	No: 7 (24.14%) Yes: 22 (75.86%)	No: 12 (41.38%) Yes: 17 (58.62%)	No: 18 (62.07%) Yes: 11 (37.93%)	No: 16 (55.17%) Yes: 13 (44.83%)

<sup>33</sup> Jorge A. Schiavon & Marcela López-Vallejo, "Mexican Sub-Federal Actors and the Negotiation and Implementation of Free-Trade Agreements" in Jörg Broschek & Patricia Goff, eds, *Multilevel Trade Politics: Configurations, Dynamics, Mechanisms* (Toronto: University of Toronto Press, 2020), 130. Only includes the states that answered almost every question of the survey (29 out of 32).

This data demonstrates that some Mexican SFGs have already put in place legal mechanisms to deal with trade and international politics. Additionally, they are in the process of professionalizing their personnel, but they have to operate with limited budgets and scarce human resources. Another issue failing is inter-institutional coordination, where there is fragmentation of trade policies among different SFG agencies.

To sum up, centralized federalism and limited domestic capacities prevent Mexican SFGs from participating fully in FTAs. The next section showcases the role of SFGs in the renegotiation of *USMCA* and *MXEU.2*. Although these FTAs touch on states' competences, SFGs were only present during the ratification process through the Senate.

### III. SFGs limited participation in *USMCA* and *MXEU.2*

Since Mexico became a signatory of the *General Agreement on Tariffs and Trade (GATT)* in 1986 and with the liberalization trend in the decade of 1990, it opened its economy to trade relations and became one of the countries with most FTAs enacted. This path was consolidated by the signing of *NAFTA* in 1994, becoming member of the Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) that same year, and its membership in the World Trade Organization (WTO) since 1995. In line with this trend, tariffs and non-tariff barriers were dramatically reduced in the first ten years of the *NAFTA*.<sup>34</sup> In the nineties, Mexico signed several other bilateral and multilateral trade agreements, as well as complementation and investment protection agreements, with different countries in Latin America and the Global Agreement with the European Union in 1997. Since the first decade of the 21<sup>st</sup> Century, Mexico signed more treaties with other countries in Latin America, Asia and Middle East. In none of these negotiations did civil society fully participated and SFGs were absent. Only in the original *MX-EU-TA* of 1998 (Title I, Article I) civil society had a saying under the democracy clause, which promoted respect for participation and human rights.

Both contemporary FTAs (*USMCA* and *MXEU.2*) took two different approaches to incorporate social concerns. In the original version of the *USMCA* (the 1994 *NAFTA*), the inclusion of legal mechanisms, such as Chapter 11 to protect private investment, of services and non-tariff barriers, as well as of two parallel agreements (environment and labour) represented a new generation of agreements in the nineties which transcended the traditional model of exchanging goods. This trade model included a broad range of issues addressed by regulation and driven by domestic politics.<sup>35</sup> The *USMCA* followed this trend by including a minimum wage for workers

<sup>34</sup> Carol Wise, "The North American Free Trade Agreement" (2009) 14:1 *New Political Economy* 136 at 136.

<sup>35</sup> Finn Laursen & Chistilla Roederer-Rynning, "Introduction: the new EU FTAs contentious market regulation" (2017) 39:7 *J Eur Integration* 763; Egan & Guimaraes, *supra* note 2 at 460.

of the automotive industry, transforming the former environmental and labour agreements into trade clauses, and including Chapter 27 regarding anti-corruption measures related to trade.<sup>36</sup>

The *MXEU.2* added new topics to the political coordination area (one of the three pillars of the agreement alongside with economy/trade and cooperation), going beyond *USMCA* goals. Besides previously established articles on democratization, human rights and social cohesion, the 2018 *MXEU.2* included new clauses addressing the need for transparency, anti-corruption, accountability, citizen security, organized crime, arms controls, cybersecurity, gender equality, and environmental and labour protection.<sup>37</sup> Civil society from the EU and Mexico claimed that their participation was not enough in the first stages of the *MXEU.2* negotiation, contrary to what the EU Commission asserted.<sup>38</sup> However, during the last rounds of negotiation in 2017 and 2018, both partners' civil societies had more presence, yet it was limited to specific sectors and projects. In contrast with the participation of civil society, SFGs were absent in the negotiation of both FTAs.

#### A. The *USMCA* and the exclusion of Mexican SFGs

On September 30, 2018, Canada, Mexico and the United States announced that they had reached agreement on the *USMCA* FTA, which would replace the 25-year-old *NAFTA*; it was signed by the presidents of Mexico and the United States and the Canadian Prime Minister on November 30, during the G20 summit in Buenos Aires, Argentina. After this signature, each country has followed its own ratification process. The ratification process was relatively smooth in the case of Mexico (majority vote only in the Senate), since the political party of the current Executive (MORENA) had a majority in the legislature. Since the agreement could not be modified during the ratification process, this led to the negotiation of a side agreement between the United

<sup>36</sup> Antonio Ortiz Mena, "Unpacking the USMCA: Answers to the Essential Questions" (2018) at 5, online (pdf): *Albright Stonebridge Group* <[www.albrightstonebridge.com/files/Unpacking%20the%20USMCA.pdf](http://www.albrightstonebridge.com/files/Unpacking%20the%20USMCA.pdf)>; Hugo Perezcano Diaz, "Trade in North America: A Mexican Perspective on the Future of North America's Economic Relationship" in Centre for International Governance Innovation, *The Future of North America's Economic Relationship: From NAFTA to the New Canada-United States-Mexico Agreement and Beyond* (Waterloo: Centre for International Governance Innovation, 2018) 7 at 14.

<sup>37</sup> Lorena Ruano, "The 'Modernisation' of the Global Agreement between Mexico and the EU" in Antonella Mori, ed, *EU and Latin America. A Stronger Partnership?* (Milan: Italian Institute for International Political Studies, 2018) 47 at 65; Francisco Del Río & Raúl Saavedra, "Modernización de los capítulos de diálogo político y cooperación del Acuerdo Global México-Unión Europea" (2018) 112 *Revista Mexicana de Política Exterior* 33.

<sup>38</sup> Deborah Martens et al, "Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index" (2018) 23:1 *Eur Foreign Affairs Rev* 41; Martin, "Mexico and European civil society concerns and proposals about 'modernisation' of the EU-Mexico global agreement" (27 June 2017), online: *Seattle to Brussels Network* <[s2bnetwork.org/eu-mexico-civil-society/](http://s2bnetwork.org/eu-mexico-civil-society/)>; EC, Directorate-General for External Policies, *The Modernisation of the European Union-Mexico 'Global Agreement'* (Brussels: European Union, 2015).

States and Mexico in the area of labour rights in Mexico to ensure its approval in the House, as it happened with *NAFTA* in 1993.<sup>39</sup>

Mexican SFGs were completely absent from the negotiation stage of the agreement. There was no formal consultation mechanism between Mexican federal authorities and SFGs, even in areas like government procurement at the state or local level. Even if the Mexican Senate has the power to ratify the agreement and Mexican senators are representatives of the federated states, they can only vote for or against the whole agreement, and thus, are not able to make line-item changes based on the preferences of their SFGs. Also, the Mexican electoral system did not allow consecutive re-election of legislators until 2018; this placed the political future of legislators on national party leaders. Therefore, senators have generally voted following national party lines instead of promoting the interests of their states or governors, reinforcing the party discipline in congressional votes.<sup>40</sup>

The *USMCA* is 12 chapters longer than the original agreement, including new chapters on issues like state-owned enterprises, energy, digital trade, competitiveness, good regulatory practices, and exchange rates; it also includes some social mechanisms to promote small and medium enterprises, anti-corruption measures, and minimum wage setting for the automotive sector in Mexico of USD\$16/hour. In terms of anti-corruption, Chapter 27 sets out domestic and international obligations, including the application and enforcement of existing anti-corruption laws. The social mechanisms that existed in *NAFTA*'s side agreements on the environment and labour were integrated into *USMCA*, limiting the environmental scope of topics, but with more enforceable capacity.<sup>41</sup> Canada's progressive agenda was watered down,<sup>42</sup> but all parties accepted to protect marine mammals, prohibit harmful fisheries subsidies and establish new obligations on air quality, marine litter and forest management. However, there is no mention of climate change cooperation, a topic intrinsically related to decarbonization policies not welcomed by the Trump administration. In terms of labour, Mexico agreed to recognize and guarantee collective bargaining rights.<sup>43</sup> All these changes were agreed by the Mexican federal government negotiators without consultations with SFGs or civil society, even if these commitments are enforceable at the federal, state and local levels, through consultations and the dispute settlement mechanism included in the agreement.<sup>44</sup>

As it was argued in the two previous sections, SFGs did not participate in the negotiation of *USMCA* and their interests were not taken directly into consideration.

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<sup>39</sup> Jorge A. Schiavon & Antonio Ortiz Mena L.N., "Apertura comercial y reforma institucional en México (1988-2000): Un análisis comparado del TLCAN y el TLCUE" (2001) 41:4 (166) *Foro Internacional* 731.

<sup>40</sup> Schiavon, *supra* note 26 at 100-06.

<sup>41</sup> Evgeny Postnikov, "Unravelling the Puzzle of Social Standards' Design in EU and US Trade Agreements" (2018) 24:2 *New Political Economy* 181.

<sup>42</sup> Especially in areas like climate change cooperation, protection of endangered species and biodiversity, and forest and natural resources management, among others.

<sup>43</sup> *United States-Mexico-Canada Agreement*, 30 November 2018 at Annex 23-A of Chapter 23 (entered into force 1 July 2020).

<sup>44</sup> Ortiz Mena, *supra* note 36.

On the Mexican side, the only social actor which participated indirectly in *USMCA* negotiations was the business sector, which sent an advisory group to support the Mexican negotiating team. However, only big business was represented in this advisory group, excluding small and medium enterprises. The participation of big business as an advisory group in the negotiations of *USMCA* replicates what happened in the negotiations of *NAFTA* in the early nineties. Mexico's most important businessmen were constantly consulted on what was being negotiated in both cases; this group was called "the room next door."<sup>45</sup>

Due to constitutional and legal rules, SFGs did not have any input in the debates and negotiation of the agreement, generating a multi-scale constraint for SFGs in the process. SFGs have to implement the new regulations that derive from *USMCA*, in which they had no involvement in the agenda setting, policy design, negotiation and definition, in areas like energy, digital trade, competitiveness, good regulatory practices, promotion of small and medium enterprises, minimum wage setting, extended labour rights, enforcement of national and international anti-corruption laws, among many others. The instrumentation of these new regulations requires proficient bureaucracies and institutions at the SFG level. This is particularly difficult due to the limited structural capacities of SFGs to deal with neoliberal exclusions resulting from trade: scarce budgets and personnel, low professionalization, lack of inter-institutional coordination at the state level and the absence of legal rules and procedures puts them in a weak position to implement the FTAs locally. These are some of the ways in which institutional structural exclusion took place in the case of *USMCA*.

## **B. The *MX-EU.2* touching on SFGs competences**

The negotiation of the *MX-EU.2* took more time than the *USMCA*. The initiative to modernize this FTA took place in 2013, in a CELAC-UE meeting in Santiago de Chile. During the 2015 Seventh Mexico-European Union Forum, formal talks began, and one year later, the negotiation process started.<sup>46</sup> The goal was to broaden the scope of the three pillars of the original global agreement: trade, cooperation and political dialogue. Each of these pillars was negotiated under its own logic. In the trade area, norms of origin and intellectual property were updated, as well as areas like non-tariff barriers, dispute resolution mechanisms, subsidies, goods and services; it also included other issues such as digital trade, telecommunications, energy, sustainable development, small-and-medium size business, among others. The first three negotiation rounds were focused mainly on trade, but the following rounds also addressed cooperation and political dialogue. Topics included transparency, anti-corruption, human rights, migration, money laundering, drug traffic, climate change, and gender.<sup>47</sup>

In the *MX-EU-TA*, Mexican social groups were consulted through the Mexican Senate and specialized forums. Their participation focused mainly on development,

<sup>45</sup> Schiavon & Ortiz Mena, *supra* note 39 at 751-753.

<sup>46</sup> Del Río & Saavedra, *supra* note 37.

<sup>47</sup> Ruano, *supra* note 37; Del Río & Saavedra, *supra* note 37.

human rights and democracy.<sup>48</sup> However, since the Lisbon Agenda of 2007-2009, the European Union made a change in its FTA agenda toward a more politicized and contested process, where social and parliamentary actors and regulation play a key bargaining role.<sup>49</sup>

Under this new approach, civil society was not clearly defined.<sup>50</sup> For example, under the EU–Mexico Civil Society Forum (part of the *MX-EU-TA*), several meetings and participatory mechanisms were created, such as the Social Observatory and a Joint Advisory Committee. Both intended to represent business, trade unions, farmers, academia and civil organizations.<sup>51</sup> Although open to sectors and society, these mechanisms excluded SFGs. Only at the third meeting of the Civil Society Forum in 2006 did the EU express concern about SFGs’ institutional weaknesses and lack of accountability.<sup>52</sup> It was during the same year that the Mexico-EU Parliamentary Commission promoted dialogue with Mexican states and municipalities. In several meetings, the federal government was accompanied by some SFGs’ representatives; the Commission also met with certain SFGs individually.<sup>53</sup> The problem with the Parliamentary Commission is that it is only grounded on the rulings of the Strategic Association between both partners (signed in 2010), therefore, it is not a constitutional mechanism, and its enforceable capacity is limited.<sup>54</sup>

The only formal mechanism for SFGs to participate directly at the negotiation stage of FTAs is through Senate Commissions’ public hearings, as mandated by Articles 11 and 12 of *LAEIT*.<sup>55</sup> This poses a deliberation problem, where senators following party lines are overrepresented, undermining the local executives and legislatures in decision-making. Indirectly, SFGs engaged in the *MX-EU-TA* through two channels. The first one was the Social Cohesion Laboratory (I and II), a program to train local officials in the states of Oaxaca and San Luis Potosí in topics such as social prevention of violence and crime, and access to human rights, justice, security, employment, basic public services, and migration.<sup>56</sup> However, the main filter for SFGs’

<sup>48</sup> Del Río & Saavedra, *supra* note 37; Laursen & Roederer-Rynning, *supra* note 35.

<sup>49</sup> Ruano, *supra* note 37; Laursen & Roederer-Rynning, *supra* note 35; Velut, *supra* note 1 at 10.

<sup>50</sup> Velut, *supra* note 1.

<sup>51</sup> Secretaría de Relaciones Exteriores, “México–Unión Europea. Mexico City: Secretaría de Relaciones Exteriores” (1 January 2016), online: *Gobierno de México* <[www.gob.mx/sre/acciones-y-programas/mexico-union-europea?idiom=es](http://www.gob.mx/sre/acciones-y-programas/mexico-union-europea?idiom=es)>; Delegation of the European Union in México, “The European Union–Mexico Political Relations” (2016), online: *Delegation of the EU to Mexico* <[eeas.europa.eu/delegations/mexico/eu\\_mexico/political\\_relations/political\\_relations\\_framework/index\\_en.htm](http://eeas.europa.eu/delegations/mexico/eu_mexico/political_relations/political_relations_framework/index_en.htm)>.

<sup>52</sup> Centro de Estudios Internacionales Gilberto Bosques, *XXI Reunión de la Comisión Parlamentaria Mixta México–Unión Europea* (Bruselas: Centro de Estudios Internacionales Gilberto Bosques and Senado de la República, 2016); Secretaría de Relaciones Exteriores, “México–Unión Europea. Mexico City: Secretaría de Relaciones Exteriores”, *supra* note 51.

<sup>53</sup> EC, Directorate-General for External Policies, *supra* note 38 at 48.

<sup>54</sup> Postnikov, *supra* note 41; Rosalba Icaza, “NAFTA Parity in Real Time: The ‘Making’ of the EU-Mexico Partnership” in Philippe de Lombaerde & Michael Schulz, eds, *The EU and World Regionalism: The Makability of Regions in the 21st Century* (London: Ashgate Publishing Ltd, 2016) 115 at 130.

<sup>55</sup> *Ley sobre la Aprobación de Tratados Internacionales en Materia Económica*, *supra* note 30, arts 11-12.

<sup>56</sup> Secretaría de Relaciones Exteriores, “Social Cohesion Laboratory II Mexico-European Union” (2018), online: *Mexico and the European Union* <[globalmx.sre.gob.mx](http://globalmx.sre.gob.mx)>; Secretaría de Gobernación, “Laboratorio de Cohesión Social México – Unión Europea” (2018), online: *Laboratorio de Cohesión*

proposals are the Mexican federal government and the European Union, where multi-scale constraint still takes place. This program was directed to strengthen the structural institutional capacities of Mexican SFGs. Yet, although the program helped to finance institutional buildings in Oaxaca and San Luis Potosí, this was not enough given the socio-environmental impacts of European trade in both places, especially regarding European energy projects. In this sense, the social consultation process of the political pillar was disconnected to the economic-trade pillar.<sup>57</sup>

In the 2018 *MXEU.2*, SFGs were involved more directly. The *MXEU.2* included innovations such as public procurement. Public procurement links two pillars of the global agreement: political and economic/trade. From 2000 to 2017, the investment of EU partners concentrated in a few Mexican states, and it came from almost only seven EU members.<sup>58</sup> In the *MXEU.2*, and for the first time in a Mexican FTA, there is a commitment made by the EU to sign agreements directly with Mexican states and municipalities to offer access for European companies to trade procurement. This gives institutional guarantees to European business to operate locally.<sup>59</sup> These direct agreements imply that good governance must operate at the local level in terms of accountability, anti-corruption, transparency, efficiency, security, labour, and environmental, among other political and economic standards.

The *USMCA* and the *MXEU.2* situate SFGs into a three-way puzzle, where deliberative exclusion takes place. First, SFGs need to deal directly with the exclusions that free trade accounts for vulnerable social groups and certain economic sectors, but they are ill-equipped to absorb large-scale external shocks. For example, Mexican states are powerless to prevent migration flows to major cities (Mexico City, Monterrey or Guadalajara) or to the United States.<sup>60</sup>

Second, both FTAs present different visions of free trade which SFGs must interpret and implement, where the North American FTA will freeride from the European more political approach. *USMCA*'s only goal is to grant security for investment and capital flows (through the anti-corruption chapter), and for the exchange of goods and services. Topics originally put on the table for negotiation, such as indigenous rights or gender issues, were only superficially mentioned in the final agreement. In contrast, the *MXEU.2* included in its original version political and cooperation schemes and a democratic clause<sup>61</sup>. Although supported by a procedural approach to democracy, they had no enforceability through trade sanctions and were never activated; this political approach was the request of several social groups in the European Union in the nineties. The democratic clause was never requested by any of the parts; however, on several occasions, the EU Commission has used it to visit

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*Social México – Unión Europea* <cohesionsocialmxue.org>; EC, Directorate-General for External Policies, *supra* note 38 at 33.

<sup>57</sup> Velut, *supra* note 1 at 12.

<sup>58</sup> Schiavon & López-Vallejo, *supra* note 33.

<sup>59</sup> Stephen Woolcock, "European Union policy towards Free Trade Agreements" (2007) 03/2007 ECIPE Working Paper at 7.

<sup>60</sup> Jorge Durand, *Historia Mínima de la Migración México-Estados Unidos* (México: El Colegio de México, 2016).

<sup>61</sup> *European Union-Mexico Trade Agreement*, 23 April 2018, art 1.



conflict areas in Mexico or make statements on human rights.<sup>62</sup> The new *MXEU.2* reinforces the anti-corruption and transparency clauses, and the requirement of social consultation during trade negotiations.

The third puzzle is that both agreements demand changes in local structural conditions that SFGs are unable to meet in the short term, as they belong to a structure of federalized power practices (i.e. decentralization of public policies with resources controlled by the federal government). Additionally, states and municipalities are usually implicated in dispute-resolution mechanisms or in building institutional capacity to operate FTAs, whereas they were not present when new power relations through free trade were constructed.

#### IV. IIAs as an alternative for trade engagement

Constitutionally, there is no prohibition for SFGs to negotiate agreements in international affairs in Mexico, except for international treaties. Mexican SFGs have the legal right to establish cooperation agreements with counterparts worldwide through international agreements which do not need the approval of the Senate. These agreements are called “interinstitutional agreements” (IIAs) and were introduced in 1992 with a reform to the *Law on Celebration of Treaties*.<sup>63</sup> Article 2.II of the *LCT* defines an inter-institutional agreement as

the agreement ruled by public international law, concluded [...] between any ministry or decentralized agency of the federal public, state or municipal administrations, and one or many foreign government agencies or international organizations.<sup>64</sup>

*LCT* also establishes that “the areas covered by inter-institutional agreements must be strictly circumscribed within the faculties of the ministries or decentralized agencies of the different levels of government.”<sup>65</sup> Additionally, SFGs and the bureaucratic agencies that enter IIAs must keep the SRE informed; this federal ministry can revise and determine if the agreements are legal, in which case, it registers them and keeps their official record under the Register of Inter-Institutional Agreements (RIIA).<sup>66</sup> Since not all SFGs register their IIAs before the SRE, this register does not include the totality of all existing agreements; however, it does include all the IIAs recognized as legal by the Mexican government, which is those that are legally binding according to Mexican and international law. Thus, non-registered IIAs, since they did not follow the legal procedure to be enacted, would not be considered binding by the Mexican federal government.<sup>67</sup>

<sup>62</sup> EC, Directorate-General for External Policies, *supra* note 38 at 20-22.

<sup>63</sup> *Ley de Celebración de Tratados*, *supra* note 8.

<sup>64</sup> *Ibid.*, art 2.II [translated by author].

<sup>65</sup> *Ibid.* [translated by author].

<sup>66</sup> Registry available online: *Registro de Acuerdos Interinstitucionales* <coordinacionpolitica.sre.gob.mx/index.php/registro-de-acuerdos-interinstitucionales-r-a-i>.

<sup>67</sup> Jorge Palacios Treviño, *Tratados. Legislación y Práctica en México* (Mexico City: Secretaría de Relaciones Exteriores, 2002).

The introduction of IIAs in 1992 as alternative mechanisms for SFG international engagement (recognized by the *LCT*) was consistent with Mexico's opening to global markets. Table 2 illustrates that the signing of IIAs has increased with every presidential administration, except for Peña. The vast majority of IIAs (97.09 % of all IIAs with all international partners) were signed after the initiation of *NAFTA* in 1994 and the opening of the Mexican economy. *NAFTA* opened two areas of opportunity for Mexican states: a huge market with reduced barriers for their exports and an important source of foreign direct investment (FDI). Also, the enactment of *MX-EU-GA* and democratization in 2000 pushed Mexican states to actively promote themselves internationally, thus generating incentives for external economic promotion and its institutionalization through IIA (85.23 % of all IIAs are post-2000). Before *NAFTA* only 26 IIAs were signed (2.91 % of the total), while before the *MX-EU-GA* there were only 132 IIAs (14.77 %) implemented. Therefore, FTAs clearly have an impact on local policy, especially in the incentives for SFGs to increase their international activities.

**Table 2. IIAs by Presidential Administration and Pre/Post  
*NAFTA* and *MX-EU-GA*<sup>68</sup>**

<b>Period <i>vis à vis</i> NAFTA</b>	<b>Number of IIAs</b>	<b>% of total IIAs (894)</b>
Pre-NAFTA (before 1994)	26	2.91 %
Post-NAFTA (1994--)	868	97.09 %
Pre-MX-EU-GA (before 1999)	132	14.77 %
Post MX-EU-GA (1999--)	762	85.23 %
<b>TOTAL</b>	894	100 %
<b>Presidential Administration</b>		
Miguel de la Madrid (1982-1988)	3	0.34 %
Carlos Salinas (1988-1994)	23	2.57 %
Ernesto Zedillo (1994-2000)	104	11.63 %
Vicente Fox (2000-2006)	159	17.79 %
Felipe Calderón (2006-2012)	359	40.16 %
Enrique Peña (2012-2018)	246	27.52 %
<b>TOTAL</b>	894	100 %

Facing an open and competitive global market with the existence of a more plural economic and political system in Mexico, where the logic of the market prevails, the international activities of SFGs began to pursue three main objectives: 1) finding markets for their exports; 2) attracting FDI, tourism and international decentralized cooperation (IDC) for productive activities within their territory; and 3) strengthening ties with their emigrant populations to promote their protection and to encourage the flow of remittances and the productive investment of a proportion of them.

<sup>68</sup> Samuel Lucas McMillan & Jorge A. Schiavon, "The Future of U.S.-Mexico Relations: The Role of Sub-State Governments" in Tony Payan, Alfonso López de la Osa Escribano & Jesús Velasco, eds, *The Future of U.S.-Mexico Relations* (Houston: Arte Público Press, 2020) at 76.

By 2018, SFGs had signed and registered 894 IIAs. Worth noting is that the international activities of Mexican SFGs are restricted to those areas in which they have powers. Therefore, it is not surprising that the areas covered by the IIAs are concentrated in those issues in which they are legally capable of subscribing. Since the central aim of SFGs international relations is to promote state and local development and welfare, the issues most widely included in the IIAs are those directly related to these topics, as evidenced in Table 3: strengthening human capital through education, culture, science, technology and human resources training; generating welfare through the promotion of trade, investment and tourism; and, to a lesser extent, improving the environment, urban development and security.<sup>69</sup>

**Table 3. Areas of cooperation of Mexico's SFGs IIAs (2014 and 2018)<sup>70</sup>**

<b>Area of cooperation*</b>	<b>% of Total (2018) (894 IIAs)</b>
Education	60.74
Culture	53.13
Tourism	36.47
Trade promotion	33.22
Science and technology	32.55
Training	24.38
Investment promotion	22.89
Environment	20.36
Urban development	17.90
Security	8.28

\*The areas of cooperation are not mutually exclusive, since one IIA may include several of them.

As we explained previously, IIAs should not interfere with FTAs. However, SFGs use trade and investment promotion to develop their own policy agendas to articulate domestic interests. Sometimes, SFGs trade priorities align to those of the federal government; other times, their interests take different paths.<sup>71</sup> To profit from FTAs signed by the Mexican federal government, between 1995 and 2018, SFGs signed IIAs to promote trade and investment with 15 US and Canadian SFGs and 11 with European partners. The signing of an IIA is preceded by promotion teams touring abroad to attract investment or promoting different economic activities. For example, the states of Nuevo León and Puebla usually send multi-sectoral teams to different trade fairs in the United States, Asia and Europe. Other strategies deal with relations with international organizations: states like Chiapas, Quintana Roo or Campeche, have close ties to the United Nations, which grants them funds for development and cultural conservation. Other states have cross-border relations with the United States for developing transregional markets and supporting their historical

<sup>69</sup> Schiavon, *supra* note 26 at 148.

<sup>70</sup> *Ibid.*

<sup>71</sup> Omiunu, *supra* note 20; Leslie Delgran, "Conflict in Trade Policy: The Role of the Congress and the Provinces in Negotiating and Implementing the Canada-US Free Trade Agreement" (1992) 22:4 *Publius J Federalism* 15.

economic relations.<sup>72</sup> Finally, some promote themselves through opening representation offices abroad. If SFGs attract FDI to their states, they ought to work with the federal government to watch for consistence with already signed FTAs. In this sense, SFGs need to adapt to the rules of FTAs already performing.

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This article argued that current FTAs generate different types of deliberative exclusions, and that participation of more actors during their negotiation processes can diminish the impact of these exclusions. In the Mexican case, civil society's participation has been very limited in the negotiation of *USMCA* and more widely promoted in the *MXEU.2*, while SFGs have been practically excluded from all FTAs negotiations. The problematic situations faced under investment disputes, social claims or public procurement in *NAFTA*, *USMCA*, *MEX-EU-TA* or *MXEU.2* evidence why SFGs participation in the negotiation of FTAs is fundamental for liberalization processes to be successful. The inclusion of SFGs into the policy trade process accounts for more efficient provision of collective goods<sup>73</sup>, widening the scope of "publicness" into other actors performing locally.<sup>74</sup>

The exclusion of Mexican SFGs of both FTAs happened for two central reasons. First, the federalist structure bans Mexican SFGs from the trade agenda setting, policy design and negotiation of FTAs, even if they must face FTA obligations at the local level. Second, even if SFGs had the legal powers to participate in FTA negotiations, their limited institutional capacities (low budgets and limited personnel, lack of professionalization, low interinstitutional coordination and absence of legal rules and procedures) constrains their power to influence the negotiations and puts them in a weak position to deal with trade outcomes.

Despite these exclusions, Mexican SFGs try to engage in trade politics through IIAs. Although these agreements only allowing for trade and investment promotion, they represent alternative routes for SFGs to either complement federal trade goals or set their own trade priorities abroad. As the data shows, the use of IIAs by SFGs has increased in time.

To address this issue, a more inclusive legal framework is necessary to disentangle verticality in the Mexican federal structure. This could prevent intergovernmental problems when dealing with trade outcomes and allow for institutional building of local capacities, thus facilitating the participation of SFGs

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<sup>72</sup> Gabriela Muñoz-Meléndez & Marcela López-Vallejo, "Building a Transregional Governance Architecture for Electricity Integration in the Baja California-California Border Region: The Cases of Tijuana and Mexicali" (2018) 9:2 Latin American Policy 349.

<sup>73</sup> Mouffe, *supra* note 11.

<sup>74</sup> López-Vallejo, *supra* note 16.

in FTA negotiations. For Mexican SFGs to participate more actively in FTA negotiation and further implement new FTAs, legal provisions at the federal level and more institutional capacity at the state and local levels are necessary.