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Regional development and internationalization of Mexico

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CONTENTS

Competitiveness of metropolitan zones in Mexico: a conceptual assessment	····· J. Jesus Arroyo Alejandro ····· 1 Erika Elizabeth Sandoval Magaña
Lifestyle of the Japanese community in the State of Jalisco	····· Martha Elena Campos Ruíz ····· 23 María Guadalupe Limón Herrera
Cultures in Business Conducts of Mexico and Japan	····· Antonio Mackintosh R. ····· 45
Comparative legal study on Small and Medium Sized Enterprises in Mexico and Japan	····· Taku Okabe ····· 65

Comparative legal study on Small and Medium Sized Enterprises in Mexico and Japan

Taku Okabe¹⁾

Synthesis

This paper pretends to perform a comparative analysis of Small and Medium Sized Enterprises (SMEs) laws between Mexico and Japan as members of the EPA, trying to detect the differences and similarities between the relative laws of both countries, in order to perceive the actual situation of Mexican policies to promote this sector.

According to the results of the study, in Mexico, the SMEs are considered relatively weak, in addition to being isolated or fragmented entities. Therefore, a series of measures such as “social or paternalistic policies” through the SMEs Act of Mexico enacted in 2002 in order to “save fragile entities” is established. In Japan the legal framework that emphasizes policies conducive to competition in order to promote their own autonomous efforts of SMEs, leaving the paternalistic policies that aim to strengthen SMEs as weak entities (logistic supports) is institutionalized, through the SMEs Law of Japan, amended and promulgated in 1999 (the original law was published in 1963).

In the SMEs Act of Mexico, the guideline or the basic principle of policies to promote SMEs is uncertain, at least in the legislation. Taking into consideration the strategies of the Mexican government, the goal of integrating them into the productive chains boosting its modernization is perceived. Then, it is asked if this policy is reasonable or not, making allowance for the “economic globalization” and

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“Japanese experience”. That is, the integration of SMEs in supply chains could promote their growth, but its excess can cause the problem of Dual Production Structure that occurred in Japan, where the SMEs would be exploited by big companies. However, the current SMEs Law of Japan “does not establish the image of SMEs from multiple dimension incorporating the problems of this sector, but only focuses its potential.” In this sense, it can’t be said that the policies of “social type” that Mexico implants are anachronistic, rather it should be said that this policy is in transit to the next stage or under current social circumstances.

Introduction

Economic globalization, which has been deepened since the 90’s, has been affecting various aspects of human life. One of the effects of globalization in business activity is prolonged inter-border production and distribution including the research and development. In parallel to the cross border companies, there are many both familiar and closed small and medium enterprises (SMEs). These enterprises have been conducting their activities in small market relatively in which the opportunity had been limited to compete with foreign products. However, today the SMEs are in a situation in that they are fronted to delay its development even disappear from globalized markets because of the changing conditions (or better said, changed conditions) by either international free trade agreements, multinational companies and emerging economies²⁾.

Under these conditions, it is important to create policies for strengthening SMEs in any economy³⁾. Furthermore, these policies must meet the following objectives,

2) Regarding the linkage between globalization and companies, see: Arciniega Arce, Rosa Silvia (2006) *Globalización, industria y reestructuración productiva*: Red Convergencia, México; Mazo Navarrete, Harold Wilson (2009) *Nuevo orden internacional, globalización, internacionalización de las empresas y competitividad*: El Cid Editor, Argentina. Además, respecto a las pymes en globalización, véase: Peña, Aura Elena y Bastidas, María Carolina (2005) *La pequeña y mediana empresa ante el fenómeno inminente de la globalización*: Red Actualidad Contable Faces, Venezuela; Gelmetti, Carlos J. (2011) *Pymes globales: estrategias y prácticas para la internacionalización de Pymes*, 2a. ed.: Ugerman Editor, Argentina.

3) See: Ferraro, Carlo Stumpo (2010) *Políticas de apoyo a las pymes en América Latina: entre*

namely:

- 1) Creation of the SME image applied to the world today; and
- 2) Determination and modification of the vision in the basic regulatory framework.

Development policies have been designed to SMEs to be able to respond to their needs and to create a favorable business environment for which governments must work with priority to achieve a balanced regional development for a qualitative growth that benefits to the whole society⁴⁾.

SMEs are those that represent the greatest percentage of firms in some economies among the OECD member countries having it averaged 99.5%, with the micro enterprises that comprise the largest percentage representing 88.7% on average, and is followed by small enterprises that represent 10.1%⁵⁾. This sector, worldwide, is able to create new products giving an innovation to existing products, to meet the needs and / or demands that customers, who are becoming more demanding, require and at the same time these enterprises can respond to changes given by technology advancement.

Despite the potential of this sector, they have several problems to be solved for further growth, as referred above.

Concerning SMEs who have the potential and the problems mentioned above, it is required, increasingly, to establish and implement policies for strengthening them in various forms, and one of the most important and which is in force in every country in the world is the legislation to promote SMEs.

In Mexico, the law to encourage SMEs has been established in 2002: Law for the Development of the Competitiveness of Micro, Small and Medium Enterprises. Since ancient times, various regulations and legislations relating to SMEs have been

avances innovadores y desafíos institucionales: CEPAL, Chile. And regarding to Mexico, see: Góngora García, Gabriel y Domingo Madrid, Antonia (2010) “Efecto del apoyo público sobre el comportamiento innovador y el rendimiento en PYMES”, en *Revista de Ciencias Sociales* No. 16 (3): Red Universidad del Zulia, Venezuela.

4) OECD (2002) *Small and medium enterprises Outlook*: Paris, OECD, p. 153.

5) OECD (2013) *OECD Studies on SMEs and entrepreneurship, Mexico, key issues and policies*: Paris, OECD, p. 26. The figure dates from 2007 covering the following 8 countries: Brazil, United States, England, Spain, France, Mexico, Portugal and Greece.

established, but they have been made at different levels (according to the needs of specified sectors at the time⁶⁾), in this regard, the law enacted in 2002 is seen as the first single legislation that aims at SMEs in general.

The background researches on this issue are not abundant⁷⁾. In addition, through the formation of a “global single market” by the wave of economic globalization currently being expanded, the policies to promote SMEs in a country should have more international vision. In this regard, international comparative studies on legislation concerning SMEs will be needed⁸⁾. This will promote greater understanding for today’s SMEs law in Mexico, in addition to possible corrections, clarify their perspectives, which may make the corresponding regulatory framework more functional and eventually develop this important sector.

This paper, therefore, is addressed to a comparative study of the laws related to SMEs. The country is taken as a counterpart of comparison is Japan.

Mexico has an economic partnership agreement with Japan, this agreement seeks to complement the economies of both countries by promoting trade and investment. Moreover, unlike similar agreements that Mexico has, the economic cooperation between the two countries in various fields is institutionalized in the agreement with Japan⁹⁾.

6) Gil Valdivia, Gerardo (1989) *Aspectos jurídicos del financiamiento público*: Porrúa, México, p. 193 et seq.

7) For example: CONINCEEL (2001) *Análisis comparativo de las leyes para el fomento de las pymes en Argentina, Brasil, Colombia, México y Venezuela*: <http://www.portalmicrofinanzas.org/gm/document-1.9.36135/analisis%20comparativo%20de%20las%20le.pdf> (Accessed: August 30, 2013); Serrano Camarena, Diana E. (2005) “Análisis comparativo de la legislación de la pequeña y mediana empresa (pymes) en México y Japón”, en *México y la Cuenca del Pacífico*, Vol. 8, Núm. 25: Departamento de Estudios del Pacífico de la Universidad de Guadalajara, México.

8) Fukushima, Hisakazu (2002) “International comparative study on the SME policies-its method of analysis and comparison criteria-”, in *Review of Institute for Economic Science Study*, No. 32: University of Japan, Japan, p.184.

9) Concerning the economic agreement between Mexico and Japan, see: Okabe, Taku (2005) “Sinopsis del acuerdo de asociación económica entre México y Japón”, en *México y la Cuenca del Pacífico*, Vol. 7, Núm. 23: Departamento de Estudios del Pacífico de la Universidad de Guadalajara, México; Carrillo Regalado, Salvador et. al. (2011) “Comportamiento de las relaciones económicas entre México y Japón en el contexto del Acuerdo de Asociación Económica”, en *Carta económica regional*, No. 106: DER-INESER del CUCEA, Universidad de Guadalajara.

It is important to note that it establishes an institutional economic cooperation agreement on SMEs. From the point of view of Mexico, such cooperation will allow for greater integration of Mexican SMEs in the industrial network filed that Japanese companies in Mexico establish, which will enable to activate corporate activities, while for Japan, for example, it will be vital for business activities in Mexico in that global production and distribution systems is adjusted to the Japanese standard relating to the products generated by the companies under the umbrella for what a cooperative relationship between Mexican and Japanese (SME) enterprises is needed.

Thus, because of the economic agreement between Mexico and Japan, it is estimated to increase more activate economic cooperation between the two countries, and it will be important to share the vision and ideology, in other words, a mutual understanding, which can create a proper cooperative relationship.

On the other hand, in the legal science there is a study branch called comparative law, which has its own history of development with different purposes and utilities. Comparative law also aims to establish a uniform law for the whole world or the unification of laws, and such efforts have been activated, in recent decades, in several areas, especially trade area, through international organizations¹⁰⁾.

The assimilation of laws, or rather, the need to assimilate the laws of countries concerned in the process of creating the framework of regional trade agreements have been observed. The unification of laws and / or the study on such movement in connection with these agreements, as indicated by legal observers, Lic. López Ayllón¹¹⁾ and Dr. Witker¹²⁾, have not been sufficiently developed despite the creation of regional trade agreements is an area in which the economy and the law are inter-related.

10) Okabe, Taku (2013) “Significado de estudios jurídicos con motivo del acuerdo regional de comercio”, en *Desafíos y alternativas para la globalización: caso de México*: Center for Glocal Studies, Seijo University, Japan, pp. 113-119.

11) López Ayllón, Sergio (2005) “El impacto del tratado de libre comercio de América del Norte en los sistemas jurídicos del continente americano”, en *Revista latinoamericana de derecho*, No.3: UNAM, México, pp. 211-232.

12) Witker, Jorge (2005) “Solución de controversias comerciales en América”, en *Revista Sequência*, No. 50: Universidad Federal de Santa Catarina, Brasil, pp. 617-629.

The unification of laws between independent countries would not be feasible due to the diversity and complexity of legal cultures and other social conditions. But the approximation of legal systems between countries concerned may provide legal certainty to promote economic activities such as foreign trade and investment, in addition to the cooperative relationship.

Based on the foregoing, this paper realizes a comparative analysis which seeks to identify the differences and similarities between the relevant laws, in order to perceive the situation in which Mexico's policies to promote SMEs under the Japan experience.

In this paper, at the set out, we analyze the regulatory framework of policies to promote SMEs in Mexico in order to clarify its structure, challenges and prospects with specific goals to analyze the following matters:

- a) Development of policies to promote SMEs in Mexico;
- b) Present circumstances of SMEs in Mexico; and
- c) Creation of the law of SMEs in 2002 (objectives of law and the definition of SMEs)

Secondary, the policies promoting SMEs in Japan, especially the major legislation on SMEs will be observed, encompassing analysis of the following matters:

- a) Brief economic history of Japan focused on SMEs;
- b) Creation of the Basic Law of SMEs in Japan in 1963 and its challenges;
- c) Objectives of the 1963 Act and its goals achieved in the development of SMEs in Japan; and
- d) Reform carried out in 1999 on the law of 1963 for new approach to promoting SMEs.

As a third point, we will conduct a comparative analysis of the relevant laws of both Mexico and Japan to discuss its similarities and differences. Finally, indicating the result of analysis we will complete this work indicating the prospects for regulation of SMEs in both countries.

It should be noted that the present work aims to analyze the selected laws in Mexico and Japan, and because of the question of space, doesn't seek to provide information on general policies that are currently available in both countries in the

field of SMEs.

I. Legislation of SMEs in Mexico

1 Developing policies to SMEs and actual situation in Mexico

When the Mexican economy began a process of growth identified with industrialization through import substitution during the 30's, there was a tendency for financial institutions preferred to support large enterprises to turn on the axes of economic development of the nation. This trend was maintained until about the early 70's then, SMEs were regarded as marginal in the development process. This disrespect for SMEs in various government economic development plans has generated increased obstacles for this sector¹³⁾. In the 80's and 90's there has been a reassessment of SMEs for their possibilities to influence the productive reorganization, especially in employment, GDP and equity. However, the development of SMEs has not successfully achieved due to lack of support with motivation, in turn, the lack of reliability of this sector.

Reflecting the current importance of SMEs, not only by the volume of employment and the number of establishments (as discussed below), but also by their size that allows them to sometimes be effective and flexible to manufacture inputs, while many large enterprises make it but with high costs, for that, promotion and support for SMEs is an urgent issue, and first of all, it is essential that the government supports them.

Speaking of Mexico, SMEs tend to be family-owned, and usually the family members are partners, but this brings many problems in the long term, because sometimes SMEs hire persons, but only introduce family or friends, it is not productive, and often do not know how to separate business with family, stir family finances with those of the company, the company's problems become family problems and vice versa¹⁴⁾. Hence, it can be said that various problems or

13) For example, see: Suárez Aguilar, Estela y Riera Ríos, Miguel (1994) *Pequeña empresa y modernización: análisis de dos dimensiones*: UNAM, México; Basave Kunhardt, Jorge (2000) *Empresas mexicanas ante la globalización*: Porrúa, México.

characteristics of SMEs are presented by the following such as: little or no expertise in management, close personal contact of director with those involved in the company, little dominant position in the consumer market and intimate relationship of the local community¹⁵⁾. Thus, the activities of SMEs in Mexico are relatively limited without exercising their potential or having enough opportunities to grow.

However, despite the problems they have, according to their volume of employment and the establishment, and even the contribution to GDP, SMEs are an important sector in the Mexican economy. Then today (number) of SMEs will be showed under the 2009 Economic Census:

Establishment and employment in enterprises, 2009

Economic unity	Establishment	Employment
Micro	4,897,141.0	12,643,697
Small	221,194.4	6,599,123
Medium	15,432.1	2,523,193
Large	10,288.1	5,961,393
TOTAL	5,144,056	27,727,406

Source: INEGI (2009): Economic Census 2009

Percentage distribution of selected variables of enterprises in Mexico, 2002 and 2009

	Micro	Small	Medium	Large
Economic unity	95.3 (95.0)	4.3 (4.0)	0.3 (0.8)	0.2 (0.2)
Employment	45.6 (41.8)	23.8 (15.3)	9.1 (15.9)	21.5 (27.0)
Total gross production	5.9 (8.3)	13.0 (9.0)	7.7 (17.4)	73.4 (65.3)

*()=data of 2002.

Source: INEGI (2009) Micro, pequeña, mediana y gran empresa: estratificación de los establecimientos : Censos Económicos 2009

14) Fong Reynoso, Carlos (2007) “La importancia de la pyme como objeto de investigación científica”, en *La pyme en México: Situación actual y retos estratégicos*: Universidad de Guadalajara, México, p. 17 et seq.

15) Rodríguez Valencia, Joaquín (2002) *Administración de pequeñas y medianas empresas*, 5^a edición: Thomson, México, p. 84.

According to the count conducted in 2009, Mexico had 5,144,056 enterprises (economic units), employing 27,727,406 persons. Between them, micro enterprises account for 95.2 percent (4.8 million) of the facilities, and small businesses occupy 4.3 percent (221,000), the mediums are 0.3 percent (15,000) and finally large companies only reach to occupy 0.2 percent (10,000). Speaking of employed persons in these enterprises, SMEs, including micro-enterprises, generated 78.5 percent of total employment (21.7 million people). Also, the contribution of SMEs in GDP has been between 35 and 25 percent, which represents that although it is not very large, the generation of GDP of this sector is important significantly.

Thus, as noted above, currently SMEs are extremely vital to the Mexican economy, but many of them face with both administrative and financial issues. In this situation, the government should promote this sector and continue their promotion due to its importance.

Taking into consideration the above-mentioned, the Mexican government had offered various programs to promote this sector. In fact, through the Nacional Financiera (later, called Nafin), tax incentives and preferential financing were the most used measures by various programs to promote SMEs from 1953 to mid-70's and with the arrival of the 80's, the first Law for the Promotion of Small and Medium Industry was promulgated in 1985 and the Program for the Integral Development of Small and Medium Industry seeking to minimize certain disadvantages of SMEs was established, in order to improve their productive structures; moreover, the program established the official definition of micro, small and medium industry¹⁶⁾.

In Mexico, after two economic crises and to achieve economic reform participating in NAFTA, the Sub-secretary of the SME was established in 2002, which was a monument to show their hard efforts to promote and develop this important sector. In the same year, also a systematic law was enacted on SMEs: Law for the Development of the Competitiveness of Micro, Small and Medium Enterprises (hereinafter SMEs Act of Mexico). The structure of the Act will be observed below:

16) Pueda Peiro, Isabel (1999) *Las micro, pequeña y mediana empresas en México: importancia, entorno, asociación y subcontratación*: Porrúa, México, Chile, Argentina, Brasil, Italia y España.

2 Legal Framework of the SMEs Act of Mexico

The SMEs Act of Mexico was published in December 2002. The law itself contains 5 chapters with 26 provisions as outlined in the following table.

Chapter One The Scope and Purpose of the Act	Artículo 1-4
Chapter Two Competitiveness Development of Micro, Small and Medium Enterprises	Artículo 5-14
Chapter Three The National System for the Development of the Competitiveness of Micro, Small and Medium Enterprises	Artículo 15y16
Chapter Four The National Council for Competitiveness of Micro, Small and Medium Enterprises	Artículo 17-22
Chapter Five The State Councils for Competitiveness of Micro, Small and Medium Enterprises	Artículo 23-26

2-1 Objectives of the SMEs Act of Mexico

The SMEs Act of Mexico, in its art. 1, establishes its overall objective:

Promote national economic development by fomenting the creation of micro, small and medium enterprises and support for its viability, productivity, competitiveness and sustainability. Also increase its market shares in a context of increasing production chains that generate greater domestic value added. This is to promote employment and social and economic welfare of all participants in the micro, small and medium enterprises.

According to this article, the SMEs Act of Mexico aims to develop the economy, promoting the creation of SMEs, strengthening their productivity and competitiveness in addition to seeking the possibility of joining the supply chain. It also aims to achieve improved welfare of those engaged in this sector.

This objective reflects the image of SMEs in the Mexican economy. The contribution that SMEs generate on employment, establishments and GDP is extremely important for the economy of Mexico, and therefore growing and

developing this sector will carry out the wealth of economy in large-scale.

2-2 Enforcement authority

According to art. 2 of the SMEs Act of Mexico, the Secretariat of Economy is the competent authority for the implementation of the Act. In the operations of the law, the Secretariat of Economy enters into agreements to establish procedures for the coordination of support to SMEs between federal, state, Federal District and Municipal authorities, in order to promote the comprehensive development planning of each state, Federal District and Municipalities, consistent with national planning. Also, the Secretariat of Economy in the field of her competence may agree with individuals to arrange the necessary actions for the coordination of support to SMEs.

Thus, to achieve the objective of the SMEs Act of Mexico, the Secretariat of Economy has the authority to establish and enforce policies to promote in collaboration with local authorities and even individuals (Chapter 2 of the Act referred).

2-3 Specific objectives to achieve the goal of the Act

In the art. 4 the specific objectives (so would be called) to fulfill the mission that the Act seeks to SMEs are established, which are divided into two classes, namely:

- (1) Establishment of the basis for:
 - a) Planning and implementation of activities aimed to develop SMEs under this Act;
 - b) Participation of the Federation, States, Federal District, Municipalities and Sectors for the development of SMEs;
 - c) Evaluation and update of policies, programs and advocacy tools for productivity and competitiveness of SMEs, that provide the necessary information for making decisions on corporate support, and
 - d) That the Secretariat develop policies with long-term vision, to raise productivity and national and international competitiveness of SMEs.

According to the article above mentioned, first, the SMEs Act of Mexico aims

to establish development policies to SMEs (a)). To achieve this, b) and c) seek to promote the active participation of local governments and establish various policies and programs through which aim to strengthen the productivity and competitiveness of this sector. In these operations, the Secretariat of Economy shall implements the measures for long term.

(2) Promotion for:

- a) A favorable environment for SMEs to be competitive in domestic and international markets;
- b) The creation of a corporate culture and procedures, practices and norms that contribute to the advancement of quality in the processes of production, distribution, marketing and customer service of SMEs;
- c) Access to finance for SMEs, the capitalization of the companies, increased production, creation of new enterprises and strengthening existing ones;
- d) Support for the development of SMEs across the country, based on the participation of the sectors
- e) The purchase of competitive national products and services of SMEs by the Public Sector, Mexican consumers and foreign investors and buyers under the applicable law;
- f) The conditions for the creation and consolidation of production chains;
- g) The schemes for modernization, innovation and technological development in SMEs;
- h) The creation and development of SMEs shall be done under organic standards and that these contribute to the sustainable and balanced long-term development;
- i) The cooperation and partnership of SMEs, through its Business Organizations in the national, state, regional and municipal area, as well as productive sectors and supply chains.

Second, other objectives to promote various sides concerning SMEs are established. According to them, SMEs Act of Mexico aims to create environments in which productivity and competitiveness would be strengthened (a) and b)). To

achieve this goal, promoting government purchase of goods and services produced by competitive SMEs is specified (e)). Thus, The Act attempts to achieve the creation and strengthening of SMEs through public support promoting the conditions conducive to the formation and development of productive chains (f).

2-4 Concepts of SMEs

The SMEs Act of Mexico, as mentioned above, is given in order to strengthen SMEs (their productivity and competitive positions) and delegate powers to the enforcement authority (Secretariat of Economy) for that this entity attempts to establish the suitable policies. That, unlike other legislation such as General Corporations Law that determines the structure of corporations, does not provide the organization called SME, so it can not be qualified exactly as “SMEs Act”.

Either way, the SMEs Act of Mexico boosts the supports to SMEs. To establish specific policies, it is necessary to define the concept of SMEs and / or the scope of support because of the need to specify the objects. It will be feasible to compare SMEs worldwide if it can be defined¹⁷⁾.

In the SMEs Act of Mexico, originally the definition of SMEs was established in the art. 3. But through the “Agreement of stratification of micro, small and medium enterprises” taken by the Secretariat of Economy (published in the Official Gazette on June 30, 2009), the original concept was replaced as indicated by the

Stratification of micro, small and medium enterprises-objectives of SMEs Act of Mexico

Sector	Size	Personnel	Range of anual sales amount (million peso)	Combined max value*
Industry	Micro	From 0 to 10	Until \$4	4.6
Service				
Commerce				
Industry	Small	From 11 to 50	From \$4.01 until \$100	95
Service				
Commerce		From 11 to 30		93

17) Takizawa, Kikutaro (1996) “What is SME: theory of the nature of SMEs”, in *What is SME: SME surveys for 55 years*: Yuhikaku, Japan, p. 1-34.

Industry	Medium	From 51 to 250	From \$100.1 until \$250	250
Service		From 31 to 100		235
Commerce		From 51 to 100		

*Combined max value= (Employees) × 10% + (Annual sales) × 90

following table:

The criteria for determining the SMEs will vary from country to country. In traditional way the number of employees or the size of the share capital (quantitative criterion) is used. In addition, annual sales, profits or assets can also be used (qualitative criterion).

As noted in the precedent section using the 2009 Economic Census data whose criterion for defining the strata of SMEs was based on the ranges of employed persons, which was established in the Official Gazette on 30 December, 2002. This criterion was already used in the two censuses (2004 and 2009).

Moreover, in the SMEs Act of Mexico other criteria currently is used as noted above. This criterion was published in 2009 and is based on not only employed persons but also annual sales. Both factors are used in the established formula for calculating the combined max value according to which the sizes of companies will be determined.

Thus, the strata or definitions of SMEs do not have the scientific feature so will depend largely on the objectives and / or the need for some measures, supports and policies established for the sector. In fact, the strata established in the SMEs Act of Mexico would be difficult to record companies in the process of conducting economic census due to the calculation based on the factors and annual sales, things that respondents may not report in a short time.

Moreover, the criterion according to the SMEs Act of Mexico regarding economic-direct support for SMEs should be taken. For example, the “Rules of operation of the Support Fund for Micro, Small and Medium Enterprises (SME Fund)” for the fiscal year 2013, have been published in the Official Gazette on February 28, 2013. This Fund aims to encourage national, regional and sectorial economic development through the ordered, planned and systematic entrepreneurship and business development across the country and to foster the consolidation of an

innovative, dynamic and competitive economy. With this background, the financial resources granted by the Federal Government, through the action of the Secretariat of Economy, will be offered through the National Institute of Entrepreneur to beneficiaries of the SME Fund in the terms that the Rules of operation thereof establish.

Beneficiaries to which the preceding paragraph are SMEs whose strata are based on the criteria of the SMEs Act of Mexico (3-XV of the Rules of operation of the SME Fund).

Thus, the concept of SMEs including the micro enterprises can be said as relative, depending on the need of definition for respective policies. It is not the object of this research work, although it will be necessary to scientifically determine the nature of business called SMEs, which will contribute, for example, for international cooperation.

In the preceding pages we have seen the legal framework of the SMEs Act of Mexico. Then, the legal scheme of support to SMEs in Japan will be seen below.

II. Legislation of SMEs in Japan

1 Historical development of SMEs in Japan

After the collapse of the bubble economy, Japan has continued with economic stagnation. In this context, SMEs are seen as an engine to enable the Japanese economy to be recovered. Since then, due to long-term economic stagnation, globalization and changing industrial structure, the circumstances surrounding Japan have been dramatically changed so that SMEs also face this transition¹⁸⁾.

18) Regarding the historical development of the Japanese economy, see: Nishikawa, Shunsaku. et. al. (1996) *200 years of Japanese economy*: Nihon-Hyoron-Sha, Japan; Kohama, Hirohisa and Watanabe Machiko (1996) *50 years the Japanese economy after World War II*: Nihon-Hyoron-Sha, Japan; Miyamoto, Mataro (2002) "Market economy and Japanese capitalism" in *Meaning of the market economy and Japanese capitalism*: Kansai Institute for Social and Economic Research, Japan; Valzuela Feijoo, José (2003) *Dos crisis: Japón y Estados Unidos*: Universidad Autónoma Metropolitana, México.

In this situation, SMEs in Japan account for 99% of all establishments and generated 72.8% of total employment. Thus, this sector has great importance in the Japanese economy.

Establishment and employment in enterprises in Japan, 2009

Economic unity	Establishment	Employment
Micro	4,330,160	6,351,595
Small and Medium	1,465,001	18,353,099
Large	58,725	14,619,576
TOTAL	5,853,886	39,324,270

Source: Ministry of Internal Affairs (2009), Economic Census 2009 – Basic study

Percentage distribution of selected variables of enterprises in Japan, 2009

	Micro	Small and Medium	Large
Economic unity	74.0	25.0	1.0
Total employment	46.6	16.2	37.2

Source: Ministry of Internal Affairs (2009), Economic Census 2009 – Basic study

Looking at history, Japan suffered great damage by the defeat of the Second World War, although recovered its economy radically. Regarding to SMEs¹⁹⁾, most of them started their operations in the chaotic situation during the reconstruction period (1945-1954). However, they faced great difficulties and lack of materials for production, serious inflation and preferred distribution of materials to large heavy industry companies in the framework of measures for the recovery after the war. The SMEs were troubled by a low level of management, especially in financial accounting, lack of technology, and of ability to finance, aimless investment and production, etc.

19) Information on the development of SMEs in Japan was recovered from the following source: Small and Medium Enterprise Agency, METI, “Japan’s SME policies in relation to the country’s economic development”: http://www.sme.ne.jp/policies/01_hensen/index.html (accessed August 30, 2013). Also see: Kamezawa, Hironori et. al. (2008) “Development of policies to promote SMEs after the reform of the Basic Law of SMEs and its current affairs” in *Legislation and Research Report*: Upper House of Japan, Japan.

As part of measures to promote SMEs and in order to avoid economic centralization, the Agency for Small and Medium Enterprises was established in 1948 as an authority of the Ministry of Trade and Industry. So systematic policies to support SMEs in Japan began. Thus, in the period of high growth, in its first stage (1955-1962), the Japanese economy recovered almost to the level of before the war and activities of SMEs became very active.

While the problem of “Productive Structure Dual” emerged during the 50’s and 60’s mainly, that is the coexistence of high production and low production industry sector. In the stages of recovery and high growth, the eminent difference between large companies and SMEs to productivity, profits and wages was observed. This structure, however, could exist under such conditions as: 1) Japan was in the high growth stage; 2) There was a subordinate relationship of SMEs to large companies; and 3) The process was completed within Japan. Thus, in the context of high economic growth and positive corporate activities while there was a big difference in productivity and competitiveness between large companies and SMEs, the latter could only be subordinated to the industrial network that the former established²⁰⁾.

In this context, crossing the second stage of rapid growth, the Basic Law of Small and Medium Enterprises (hereafter SMEs Law of Japan) was enacted in 1963, which was primarily intended to achieve the following goals:

I. Modernization of enterprises

Modernization of equipment and facilities

Improved technology

Optimization of administration

Size optimization of companies

Cooperation between companies

Modernization of commercial enterprises

Improving production through modernization of the SMEs structure

20) Araki Daisaku (2008) “The role of SMEs in the Japanese economy and policies of SMEs”, in *Journal of Economic Policy Studies*: University of Kagawa, Japan, P. 48 et seq.

II. Improvement of welfare

Optimization of the employment relationship

Improving the welfare of workers

III. Optimization of sme's disadvantages

Preventing excessive competition

Optimization of subcontractor's transactions

Ensuring appropriate transactions

Improved purchasing products and services of SMEs by the public sector

IV. Specific policies for small businesses

Improving the management of micro-small enterprises

V. Finance

Access to financing and benefits in the tax area

With the promulgation of the SMEs Law of Japan, which stipulated general concepts of SMEs, it began to implement various sophisticated and systematic measures for this important sector.

In this way promoting policies to SMEs in accordance with the SMEs Law of Japan of 1963 included the leveling of differences between large companies and SMEs, because of that SMEs were considered as weak entities.

Entering in 70's: transition period of economic growth to economic stability, the knowledge intensive industrialization began after the previous stage in which the Japanese produced and consumed massively. The 80's was the period of change after the overvaluation of yen through the Plaza Agreement, an economic downturn and rising domestic demand in that the SMEs became more active qualifying them as vital majority, although 70% of SMEs remained subcontractor²¹⁾.

In the 90's, the transition period, which occurred 80's, continued, and Japan experienced the bubble economy and its failure. Moreover, various socialist countries

21) Ueda, Hiroshi (2004) *SMEs in Japan today*: Iwanami-Shoten, Japan, p. 58.

became capitalists, and so the world deepened economic globalization, changing the traditional production structure in Japan. After the economic stagnation, which any company sought was to reduce costs, and began searching their subcontractors outside the country, which meant partially destroy of the relationship between large companies and SMEs. In this context, SMEs are divided into two types: Remain subcontractors; and be innovators based on knowledge-intensive industrialization that had been developed in the previous stages.

Thus, in recent decades, the differences between large companies and SMEs were reduced. Moreover, in the period of low economic growth, research and development and business innovation are required to respond to diverse demands, which is difficult for large companies because of the need for a drastic technological change.

Under these circumstances, various factors such as growth and maturation of the economy, diversified consumer demand, IT revolution and progress of globalization have diminished the importance of eliminating the difference between large companies and SMEs. The Japanese government, therefore, recognized the vital job of providing support to SMEs promoting their own efforts for “self-salvation” creating a new concept of SMEs. Therefore, a review and restructuring of policies to promote this sector was conducted in the SMEs Law of Japan of 1963²²⁾.

In 1999 the Law was amended and a new law for SMEs based on the new philosophy in order to achieve strong growth and independent development of SMEs was promulgated.

2 Legal framework of the SMEs Law of Japan of 1999

As mentioned in the previous section, the SMEs Law of Japan, which was promulgated in 1963 with the aim of promoting SMEs at the time, it required a reform due to socio-economic subsequent circumstances and the changed activities or roles of SMEs themselves. Therefore, the Law received the drastic change and the new law on SMEs was formed in 1999, which is the current law and contains 4 chapters with 30 provisions.

22) Kamezawa, *op. cit.*, p. 40.

Chapter One General disposition	Artículo 1-11
Chapter Two Basic Policies	Artículo 12-24
Chapter Three Administrative structure on Small and Medium Enterprises	Artículo 25
Chapter Four Council for political and decision-making for Small and Medium Enterprises	Artículo 26-30

2-1 Objectives of the SMEs Law of Japan of 1999

The Law in analysis sets its target in the policies for promoting SMEs through the art. 1, namely:

The purpose of this Law is to promote measures for SMEs comprehensively by establishing basic principles, the basic policies and other basic matters concerning the measures for SMEs and specifying responsibilities, etc. of State and local authorities, for the purpose of contributing to the healthy development of the national economy and improving the quality of human life.

Thus, the objective which the Law seeks to achieve is to promote the “basic principles”, fundamental policies and other matters relating to promoting SMEs. The ultimate goal of the law itself is the “development of the country” and “improving the quality of life”, which reflect the fundamental role of SMEs in the Japanese economy.

2-2 Enforcement authority

The enforcement authority of Japanese law in analysis is the State or the Government (arts. 4 and 9), and the authority has to establish policies to promote SMEs globally and execute them. Furthermore, the Ministry of Economy, Trade and Industry creates the “Commission of policy-making for SMEs” (art. 26), which is formed by professionals and / or academics appointed by the Minister of Economy, Trade and Industry and should not exceed 30 members (art. 28). The government, under the comments and views of the same commission, shall conduct the necessary investigation to verify the actual situation of SMEs and publish their results (art. 10).

Thus, the policies to support SMEs in Japan by the government (Ministry of Economy, Trade and Industry) and the Commission of policy-making for SMEs, and results will be reported to the Congress (art. 11).

2-3 Specific objectives to achieve the goal of the Law

As mentioned above, the difference in income between large companies and SMEs, for which the SMEs Law of Japan was established in 1963, has been reduced while the research and development, and the innovation management are required more than ever in the context of low economic growth.

For this reason, policies to promote SMEs now require accented support to promote “self-salvation” of SMEs that attempt to archive the greater business creation and innovation, offer various methods leading to direct financing and other conditions for competitiveness in order to improve the management of SMEs, and also provide for the “safety net” that establishes the support against emergencies such as disasters, dissolution and change of company objectives.

Therefore, the law of support to SMEs is drastically reformed, and the current SMEs Law of Japan of 1999 establishes as basic policies, the following objectives (arts. 12 to 24):

I. Promotion of management innovation and the creation of SMEs

Promotion of management innovation

Promotion of business creation

Promotion of creative business activities

II. Strengthening administrative bases of SMEs

Acquisition of business resources (equipment, technology, etc.)

Promotion of trade, partnership and business cooperation

Revitalization of industrial and commercial agglomeration

Policies for work resource

Optimization of transactions

Improved purchasing products and services of SMEs by the public sector

III. Facilitating adaptation to socio-economic changes

Administrative stabilization and business transformation in the socio-economic changes

Prevention of benefits infringement by third parties

Prevention for chain reaction bankruptcy

Establishing systems for rehabilitation and closure of businesses

IV. Facilitating access to finance and strengthening social capital

Facilitating access to financing

Strengthening social capital

As noted above, the change in the basic policies in the Law due to socio-economic change is observed. In the SMEs Law of Japan of 1999, a policy established by the previous law: Optimization of disadvantages of SMEs, was abolished. This is because the SMEs over the last 50 years have changed so that the problem of Productive Dual Structure that emerged in the 60's was dissolved, and therefore, the current law specifies the transition of social-paternalistic policies, that wanted to save the weak entities, leading to competition to promoting efforts towards "self-salvation" of their own SMEs.

2-4 Concepts of SMEs

The SMEs Law of Japan of 1999 determines the scope and concept of SMEs that are objects of support and encouragement. Based on present business activities, employment and even the tendency of capital stock, the definition of SMEs (frac. I of art. 2) was modified.

Unlike that of Mexico, the so-called quantitative criteria, by which SMEs are regarded as objects of the Law if they meet the capital stock or employee number requirements, is adopted.

Stratification of Small and Medium Enterprises

Sector	Capital (million yen)	Personnel
Manufacturing and other	300 or less	300 or less
Wholesale	100 or less	100 or less
Retail		50 or less
Service	50 or less	100 or less

Apart from the definition of SMEs, the current Law created another concept of “small scaled companies” that differs from the “small enterprises” that would correspond to “micro enterprises” (frac. V of art. 2):

Definition of Small scaled company

Sector	Personnel
Manufacturing and other	20 or less
Commerce and Service	5 or less

The aforementioned definition of SMEs is the “base” that determines the scope of the policies established by the SMEs Law of Japan, so that the policies can be varied according to other legislation and / or support programs: p. ex: .the SMEs having the capital in the amount less than one billion yen will be exempt from certain taxes in the Corporation Tax Law of Japan.

III. Comparison of the laws on SMEs of Mexico and Japan focusing the image of SMEs

Realizing an analysis on the situation of SMEs in Mexico in the contribution to employment and GDP and even their establishments, it is of utmost importance to establish policies to promote this sector. This was reflected most clearly in the creation of the Sub-secretary of the SME within the Secretariat of Economy and the promulgation of the SMEs Act of Mexico in 2002.

This SMEs Act of Mexico, which is the core of policies to support this sector,

is not the regulation that determines the structure and / or organization of SMEs, but delegates to the enforcement authority (Secretariat of Economy) privileges so that it may establish specific promotion policies. The same is true in Japan. Under this scheme, the authorities and related entities, implementing various programs or schemes aim to promote and strengthen the productivity and competitiveness of SMEs.

10 years after the SMEs Act of Mexico was enacted, at the end of 2012 the initiative for reform of the Act was proposed²³⁾. According to that, in the early years of the enactment, the high percentage of SMEs had not recognized promotion policies through the law itself, and also, although they acknowledged, few of them used it. The enforcement authority shall endeavor to make it more open (and perhaps lower requirements for access to support, etc.).

What is observed in the SMEs Act of Mexico is that the Act establishes support policies to encourage and promote SMEs, though, the next point is not clear: “What seeks to do with SMEs”. That is, does the Act intend to create production-competitive SMEs as potential independent organizations? Or make SMEs in larger companies enhancing their productivity and competitiveness (= size optimization)? Depending on this “vision” the establishment costs of policy will vary.

In this regard, there is no mention which would be the core of the fundamental principle or the conceptualization and image in the SMEs Act of Mexico. In general, the various literatures or information capture that “the SMEs are relatively weak entities compared with large companies, but are very important in the economy and therefore the supports should be given.”

Regarding this principle or conceptualization referred above, we can take as an example the concept or image of the organization called SME that stated in the National Development Plan 2007-2012, which refers to development policies to the SMEs in paragraph 6. Its overall objective is: “To promote the creation,

23) “*Que reforma y adiciona diversas disposiciones de la Ley para el Desarrollo de la Competitividad de la Micro, Pequeña y Mediana Empresa*”, by the dupty José Antonio Hurtado Gallegos, del Grupo Parlamentario de Movimiento Ciudadano, Gaceta Parlamentaria, Número 3648-III, martes 20 de noviembre de 2012: <http://diputadosenmovimiento.org/rtfdx/> (accessed August 30, 2013)

development and consolidation of micro, small and medium enterprises recognizing the difference in productivity (cost) between SMEs and large companies.” To achieve this objective, the following four specific strategies were listed:

- a) Encourage the increased productivity of SMEs and increase product development according to their needs
- b) Consolidate support schemes to SMEs in one instance
- c) Promote the development of suppliers, raising the percentage of integration of domestic inputs in products manufactured in Mexico and consolidating supply chains that allow for greater generation of value added in the production of goods traded internationally
- d) Review and adjust existing support programs to achieve an escalation of production to manufacturing and services with high added value

Among the identified strategies, b) and d) refer to the technical and institutional aspects, and the other two strategies deserve special attention: a) aims to improve the productivity of SMEs, which shows that these companies are relatively weak; c) mentions that growing SMEs as suppliers incorporating them into production chains. This, as intended by the Plan itself, may be interpreted that the SMEs in Mexico are “weak institutions and also are relatively isolated and / or fragmented.”²⁴⁾ Therefore, we can conclude that it is necessary to establish a series of measures such as “social policy” in order to save “fragile entities.”

Moreover, the SMEs are very important in the Japanese economy realizing their contribution to employment and occupation of establishments.

In Japan during the postwar period the industrial and economic policies were taken mainly to strengthen basic industries such as marine, steel and automotive and even heavy chemical under which the SMEs were acting as subcontractors. While

24) The similar problem is observed in other countries, for example, see: Romero Luna, Isidoro (2009) “Pymes y cadenas de valor globales. Implicaciones para la política industrial en las economías en desarrollo”, en *Análisis económico*, No. 57, Vol. 24: Universidad Autónoma de Metropolitana, Colombia.

the problem of the dual productive structure arose where there was the great disparity in productivity and other elements among large companies (basic and / or principal industries) and SMEs, and to solve and also to support this important sector, the SMEs Law of Japan was enacted in 1963 for the first time, whereby the systematic scheme of development policies for SMEs was established.

Such political and socio-economic changes (economic growth, globalization, etc.) altered both the industrial structure of Japan as SMEs own activities, which gave the opportunity to reform the related law introducing the new basic principles and fundamental policies after 36 years of its first enactment.

What is emerging from the reform of the law was, as mentioned above, the abolition of “optimization of disadvantages of SMEs” that was the policy established by the previous law. Thus, policies now promote SMEs that sought to modernize facilities and improve productivity and operating conditions in order to narrow the gap with large companies are replaced, from the 90’s mainly after the collapse of the bubble economy and the successive economic stagnation, by driving SMEs to promote the creation and spread of new companies in addition to the administrative innovation in order to revive the market.

In this regard, it should be emphasized that the SMEs Law of Japan of 1999, in its art. 3, mentions that the support is granted “... to promote the autonomous efforts of independent SMEs” That is, there was a transformation of policies that “intended to optimize the size of SMEs correcting the difference with big business” to which “grow SMEs as such promoting their autonomous efforts based on their operating characteristics (flexibility, etc.).”

Thus, SMEs in Japan are considered as “organizations with vitality and potential” and as showing their “figures” are very important companies like the big companies. Therefore, currently the policy and / or the legal basis are established under which accentuates policies conducive to competition in order to promote autonomous efforts leaving the paternalistic policies that aim to strengthen SMEs as weak entities.

Final considerations

Through the analysis developed in the preceding pages, the following points were observed:

- (1) In Mexico, SMEs are considered as relatively weak institutions and also to be isolated and / or fragmented. Therefore, the series of measures such as “social policy” in order to save “fragile entities” is established. On the other hand, the legal framework that emphasizes policies conducive to competition in order to promote the autonomous efforts of SMEs themselves, leaving the paternalistic for strengthening the SMEs as weak beings, is constituted in Japan.

In this regard, we note that there is a difference between Mexico and Japan on the maturity and progress of SMEs from which different forms of support in both countries derives.

In the case of the SMEs Act of Mexico, the guideline or the basic principle of development policies to SMEs is uncertain, at least in the legislation. While taking into consideration the strategies of the government, Mexico seeks, through the Act, to integrate them into production chains boosting its modernization. However, it may be wondered if this policy is reasonable or not taking into account the “economic globalization” and “Japanese experience”. That is, the integration of SMEs in supply chains may encourage its growth, however, we must keep in mind that excessive integration can cause the problem of Dual Productive Structure happened in Japan, where large companies and / or powerful companies, under which the SMEs integrate, exploit them.

In addition, it must be said that it will be difficult for SMEs themselves to integrate into industrial chain without any basic industries under which they could be incorporated. Rather, the same matrices industries and / or possible large companies should take the initiative. Therefore, parallel to this measure conducive to productive chains integration, the policy for the basic industries growth should be promoted.

The current SMEs Law of Japan, taking into consideration the historical

development and the potential of SMEs, as mentioned above, introduced policies conducive to competition in order to promote the autonomous efforts of them. However, this view, which emphasizes efficiency, has been criticized because it “does not establish the image of SMEs from multiple dimension incorporating the problems of this sector, but only focuses its potential.”²⁵⁾ In this sense, it can't be said that the policies of “social type” that Mexico implants are anachronistic, rather, should be said that this policy is transitional to the next stage or under current social circumstances.

- (2) Regarding the legal concept of SMEs that differs between Mexico and Japan. While the (traditional) quantitative criterion is adapted in Japan, the qualitative criterion was introduced into Mexico from 2009. It is natural that there are differences due to the lack of scientific conceptualization of what is SME worldwide, and, as referred above, countries have their own economic and social circumstances and therefore policies to promote the sector that needs.
- (3) Despite the theme of this study (policies to promote SMEs), the investigation was limited to the analysis of the legal framework of a law: It lacks the broader study of other legislation, such as corporate law, bankruptcy law, civil rehabilitation law, industrial property law and economic law in general (stock market law and tax law, etc.)

In addition, although the difference in the policies to promote SMEs on two related laws of Mexico and Japan were indicated, an analysis of the cost of these different systems was not performed. To obtain an objective result of the policies in question, it will be vital to exercise this kind of study which will be the theme of next inter-disciplinary research.

- (4) In the present study, the understanding on policies to promote SMEs in Mexico and Japan could be achieved, which can promote a possible cooperation²⁶⁾ and / or collaboration in this area in the future in the situation where, as discussed

25) Kurose, Naohiro (2006) *SME Policy*: Nihon-hyoron-sha, Japan, pp. 279-280.

26) In fact, at the administrative level of SMEs, Japan International Cooperation Agency (JICA) and the Secretariat of Economy have created the Program of Business Consulting SME-JICA, through an agreement, which entered into force from 2009 to provide technical consulting services to this sector of Mexico.

earlier, the Economic Partnership Agreement between Mexico and Japan institutionalize bilateral cooperation on SMEs, for which it is vital for both countries to become aware of the support policy scheme to this sector.

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