

The interplay of foreign multinational corporations and the state in environmental governance

Abstract: Many countries in the majority world, because of international pressure or for domestic reasons, are in the process of establishing and strengthening their environmental regulatory framework. At the same time, foreign capital continues to be invested exponentially in these same countries mostly through the operations of Multinational Corporations (MNCs) seeking to secure access to raw material, penetrate new markets, or relocate their productive assets. These large economic entities, mostly domiciled in the global North, are political actors in environmental governance. They influence policies at the global level but also at the national level within each of the countries where they operate. This paper is concerned by the latter and explores the mechanisms through which this phenomenon takes place.

Key words: voluntary environmental regulation, corporation, private authority, Mexico

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Introduction

Many countries in the majority world¹, because of international pressure or for domestic reasons, are in the process of establishing and strengthening their environmental regulatory framework. At the same time, private foreign capital continues to be invested exponentially in these same countries (UNCTAD 2010) through the operations of Multinational Corporations (MNCs) seeking to secure access to raw material, penetrate new markets, or relocate their productive assets. These large economic entities, domiciled mostly in the global North are participating as political actors in environmental governance. They influence policies at the global level (see Falkner 2008) but also at the national level within each of the countries where they operate. This paper is concerned by the latter.

In the past twenty years MNCs' self-regulatory endeavour has been recognised and encouraged by a range of other actors from Non-Governmental Organizations to states themselves (Harrison 1999; Pattberg 2004; Moon 2004). Theoretically, environmental regulations led by the private sector have actually been portrayed as an alternative susceptible to achieving better outcomes than more traditional state-imposed mechanisms of command-and-control (OECD 1999; Gunningham and Rees 1997; Rondinelli and Berry 2000; Storey, Boyd and Dowd, 1999). Alternatively, there are a number of studies (King and Lenox 2000; Jenkins 2001; Doane 2002) that have shown the limits and downsides of such approaches. Instead of dismissing self-regulation entirely, an argument was then made for a mixed system combining elements of public and private (self) regulations (see Eisner 2004); Voluntary regulations are part of increasingly mainstream and far-reaching but vague concepts such as Corporate Social Responsibility (CSR) and Sustainable Development and are therefore always present on the environmental regulatory agenda at most levels of governance.

If voluntary environmental regulation has received some attention in the literature on environmental governance in recent years, it has been largely focused on industrialized countries (see Braitwaite and Drahos 2000; Lyon and Maxwell 2008; Nash and Ehrenfeld 1996; Rondinelli and Berry 2000). However, it is particularly in countries of the majority

¹ The overwhelming majority of the world population live in poorer and less economically developed countries hence this terminology, however, terms such as developing countries, less developed countries, emerging markets, global South, or third-world countries – although all linguistically or geographically inappropriate or problematic – are also frequently used to label these countries.

world, where the state has often limited resources to ensure that business actors comply with existing environmental regulations, that the reach and effect of voluntary regulations need to be better assessed. In addition, it is in this context that foreign firms appear to be most prominently participating in designing new environmental dynamics with state actors. This paper will proceed to analyse these dynamics and to demonstrate the existence of a system of environmental governance actively involving foreign MNCs in the creation and implementation of regulatory mechanisms in their host state. In this model, the framework within which voluntary regulations take place is actually designed and shaped by the state but increasingly being operated and controlled by foreign private business actors.

This paper starts with a discussion of the relevance of concepts of private authority and corporate power in environmental politics and then moves on to discuss some motivations behind firms' voluntary involvement in the environmental domain in countries of the global South. Mexico will be introduced as a case study where these regulatory dynamics between foreign firms and the state are illustrated to support the broader argument of the paper. It will then progress to demonstrate how institutionally – through its legal framework – and practically – through a specific initiative: the Clean Industry Program (*el programa Industria Limpia*) –, the state in Mexico encourages and supports self-regulatory initiatives from economic actors in the environmental domain. Finally, the last section will review from a more global perspective the potential outcomes of this hybridization of environmental governance for countries of the majority world.

Voluntary environmental regulations by multinational corporations (MNCs)

The environmental self-regulatory endeavour of foreign MNCs is an expression of private authority² in global politics as well as in the political economy of individual nation-state. A targeted analysis of the environmental realm can provide an understanding not only of the ways in which foreign MNCs create and exert power but also of how the state, in particular contexts, manoeuvres and uses the private sector to try to achieve goals that it would otherwise not achieve. The way in which these different private and public actors interact in Mexico to achieve specific environmental outcomes reflects the hybridization of

² Private authority refers here to the definition developed in C Cutler, V Haufler & T Porter (eds) (1999), *Private Authority and International Affairs*, Albany, NY: State University of New York Press

the policy-making process and management of environmental policies which can also be observed elsewhere in Latin America.

Though not much study on voluntary regulations in countries of the majority world has occurred, emerging research (Blackman *et al.* 2010) indicates that these MNCs-driven regulations do not play the same role as in industrialized states. In the latter, the state has the capacity to enforce existing regulations and the institutional arrangements in place that by large ensure compliance is not a major issue. Firms may lobby government, and resist regulations, but the power relationship between corporate and state actors is not dramatically unequal and once environmental laws and regulations are in place, firms tend to generally abide by them. Institutional theory (See March and Olsen 1989) corroborates that in this context, economic actors respond to norms of behaviour, such as regulatory compliance, that they have accepted over time and that have become embedded in their identity. Institutions are strong and shape to an extent the behaviour of these actors.

Self-regulations then mainly exist to push firms to go beyond existing regulations (Lyon and Maxwell 2002) because state actors succeed in enforcing the latter. However, in a number of countries from the majority world, the situation is vastly different; institutions are often weak and the monitoring, control, and enforcement of existing regulations are problematic (Russell and Vaughan 2003). The failure of traditional regulatory mechanisms means that for the state, foreign MNCs self-regulation models therefore may represent a different tool to lead local and smaller firms to comply with the existing environmental norms and rules (Blackman 2008).

The reasons why foreign MNCs³ would voluntarily abide by certain environmental rules outside of their home state are several. Foreign firms, although being profit-seekers are not stateless (see Harrod 2006), instead they have been observed to behave according to an internal logic which depends, to an extent, on their institutional origin even when operating outside of their home state. For example, a subsidiary or branch of a firm whose history and headquarters is located in a state where laws and regulations are well-established and adhered to will tend to also comply with existing environmental legal requirements in its host state. Even if non-compliance would most probably not be noticed, the firm will see compliance with the regulations as the appropriate behaviour (see March and Olsen 1989) due to the

³ this research focuses on firms with headquarters located either in Western Europe or the United States and does not claim to analyse the behaviour of firms originating from outside the Triadic region

institutional framework within which it was established irrespective of the strength or weakness of the host state's own institutions. From a rational-choice perspective, as there are little or no adverse consequences for those who do not respect or adhere, the foreign MNC may appear economically disadvantage comparative to non compliant domestic companies; however, an institutional understanding of the firm explains why the foreign firm will still most probably abide by the rules.

In addition, MNCs operate according to global production processes with environmental standards generally more stringent than the ones commonly in use in countries of the majority world (Angel and Rock 2005). It is because these norms and standards meet the minimum legal environmental requirements of their country of origin that the company then follows them globally. It would in fact often represent an extra cost for the firm to change its environmental norms and processes and adjust to a less demanding regulatory environment (Garcia-Johnson 2000). What is then advertised as self-regulation by the firm operating outside of its home state is actually the standardized internally driven production process and its environmental component. In this case like in the previous one, the foreign firm is therefore interested in collaborating with the state in order to limit the disadvantages resulting from conforming to environmental regulations or of superseding them due to the weaknesses of institutions and enforcement procedures in the host country.

It is therefore in the interest of foreign firms to display their self-regulatory endeavours and associated resources because it increases their credibility as potential partners when the state is developing its environmental regulatory framework. Through implementing their own environmental codes and norms, foreign MNCs send a signal to the state and indicate that they are willing to not only respect existing regulations but also to go beyond them while domestic businesses disregard a state authority lacking coercive power. At a time when the state is working on creating or strengthening its own environmental institutions, the apparent commitment of foreign firms compared to the reticence of domestic economic actors is a factor in enabling the MNC to have greater influence. Foreign firms' economic power translates then into political power as they engage with the state and become part of not only the policy-making process but also of the implementation mechanisms. The case study presented below will further illustrate this phenomenon. In this instance, certain foreign firms ensure that their presence is indispensable by supporting state efforts to improve compliance with existing and future environmental regulations. MNCs can therefore increase their

legitimacy when they discuss future environmental norms and regulations with state actors as well as directly influence the shaping of these future environmental regulations.

MNCs, the state and environmental regulations in Mexico

Mexico presents an excellent case study of the process described so far as the hybridization of the environmental regulatory framework. This section provides some context to the contemporary Mexican political economy before introducing the legal mechanisms that confirm the increasing participation of foreign economic actors into their environmental regulatory frameworks.

For the majority of the 20th century, the Mexican state has been highly interventionist, attempting to restrict foreign investment, nationalizing large companies and implementing protectionist policies⁴. Although Mexico became noticeably more sensitive to environmental issues after the UN Conference on the Human Environment in 1972, from the 1970s to the mid-1990s, the Mexican government was still clearly reluctant to penalize businesses which were ignoring environmental regulatory requirements. In short, it considered that complying with existing regulations would disadvantage domestic firms and therefore hinder national economic development (Gallagher 2004). This illustrates the competing interests playing out within the state. On the one hand the state was establishing its first environmental regulatory framework and on the other hand it chose not to enforce environmental regulations to protect the interests of the Mexican industrial sector. Since its creation, the environmental institutional framework was therefore effectively weakened.

The liberalization of the Mexican economy since the early 1980s and throughout the 1990s, post-NAFTA⁵, resulted in freer markets (Dussell Peters 2000) and consequently increased the influence of foreign economic actors. The adoption of neo-liberal economic measures has been observed indeed in all Latin America, and the business sector, in particular foreign MNCs, has as a result grown in terms of its political influence and material power over the

⁴ This economic model, known as Import-Substitution Industrialization, was developed by economists such as R. Prebisch, H. Singer and C. Furtado, it represented an alternative to the Free Trade agenda and has been embraced by a number of developing countries in Latin America (and to some extent in Asia and Africa) from the 1930s to the 1980s

⁵ The North American Free Trade Agreement was signed and ratified in 1994 between Mexico, the United States and Canada

Mexican state. These foreign firms, in particular those in the manufacturing sector, play an important role in the Mexican economy because they represent an important share of investments, jobs, and revenues for the state (Pacheco-López 2005: 1157). However, their influence has extended beyond the economic sphere to reach as well the environmental domain.

Foreign firms are present in industry associations, chambers of commerce, and any instances at the domestic level which offer a political forum where private actors can express their interests and be consulted by the government (Cameron and Tomlin 2000). Along with opening up its economy to foreign investment, Mexico has also increasingly included business actors, such as industry associations, in its environmental regulatory endeavour and therefore provided foreign MNCs with the possibility to express their own vision of how to tackle environmental issues⁶. Instead of using the threat to exit the Mexican market, foreign firms adopt a different political strategy. They use existing formal institutions to influence the dominant approach to environmental regulations and reframe environmental issues along lines which coincide with and are limited to their existing environmental commitments. In doing so, and because they participate in some aspects of the policy-making process in the environmental arena, they are able to convince the state that the realization of their interests, coupled with their environmental commitments, carry benefits for the state and for society and should therefore be protected and enhanced.

It is not only the active involvement of foreign firms in environmental self-regulations which is the focus of this paper but more the way in which the state in developing countries may decide to take advantage of these foreign MNCs' environmental initiatives to integrate their commitments into the broader environmental regulatory framework that it is creating. Let us now therefore review the legal context through which the Mexican state is pro-actively supporting the self-regulatory approach favoured by foreign MNCs.

The meaning of Article 38

⁶ These organisations are examples of private associations, confederations, and industrial chambers with a consultative role: Confederación de Cámaras Industriales de los Estados Unidos Mexicanos; Comisión de Estudios del Sector Privado para el Desarrollo Sustentable; Unión Social de Empresarios de México, A. C; Alianza para la Responsabilidad Social; Centro Mexicano para la Filantropía

In 1988, the General Law on Ecological Balance and Environmental Protection (LGEEPA: *Ley General del Equilibrio Ecológico y la Protección al Ambiente*) was passed. It was Mexico's first comprehensive environmental law. The Law addresses a broad range of environmental matters such as protection of natural areas, exploitation of natural elements including land and water, and protection of the environment, including atmospheric contamination, water and soil contamination, hazardous activities and waste, nuclear energy and other forms of pollution. LGEEPA also sets forth control and safety measures, penalties for non compliance, guidelines for environmental impact statements and risk assessments (Gilbreath 2003). LGEEPA defines the framework for all environmental laws and regulations in Mexico.

In 1996, the Law was amended and changed its stated purpose to include for instance the concept of "sustainable development" (See Mumme 2007). The relevant new added elements established the sustainable use, preservation and remediation of soils, water and other natural resources in ways that make the obtaining of economic benefits and activities of society compatible with the preservation of the ecosystem. Economic considerations became clearly visible in the Law (see Section 3, Article 21, 22, 22BIS and 23 of LGEEPA). It also established mechanisms for coordination, inducement and cooperation among authorities, the public and private sectors (LGEEPA, Article 1(ix)). This amendment occurred in the post-NAFTA era and reflects the changing Mexican political economy resulting from economic liberalisation. Market mechanisms and voluntary regulations then became the preferred way to address environmental issues as it reflected the broader neo-liberal agenda embedded in NAFTA and adopted by Mexico.

A careful reading of this piece of legislation confirms that Mexico sought to achieve a hybridization of its environmental regulatory framework through the increased involvement of foreign firms in constructing such a framework. When for instance the Law emphasizes the participation of the "private sector" and of "persons" (LGEEPA, Article 1(vii)), it actually invites MNCs to participate actively in the implementation of the law and in the design of any further regulations flowing from it. The amendment more closely aligns the Law to one which supports and encourages market-based solutions to environmental problems by giving more room for action to economic actors and is therefore consistent with the environmental ideology found in NAFTA.

Article 38 of LGEEPA is of particular interest as it shows the willingness of the Mexican state to rely on economic actors to increase levels of compliance with environmental norms and regulations. The article clearly establishes the role that the Mexican legislator would like business actors – such as corporations – to play. It starts by saying that:

Producers, businesses or business organizations are entitled to develop voluntary processes of environmental self-regulation, through which they will improve their environmental performance, as long as they show respect for the legislation and regulatory framework; through these voluntary efforts, they will commit to surpass or to comply at greater levels, objectives and benefits in terms of environmental protection. (author's translation)

This is an acknowledgement that environmental policies and regulations emanating from the Mexican state are not the only option available to address environmental issues. The state establishes through Article 38 that private, business-oriented organizations are well placed and appropriately skilled and resourced to develop solutions for environmental problems. This introductory section of the Article stipulates that businesses are entitled to develop their own environmental standards and norms as long as they respect the existing environmental regulatory framework. This means that extra norms and standards regarding pollution, designed and implemented by private actors, outside of any formal state supervision, may be considered as suitable. The Mexican state seems to be calling on business actors to complement state action.

Through this legislation, the Mexican state is actually confirming and formalizing the political power of economic entities such as large foreign firms and enhancing their authority and legitimacy. It is predictable that only the largest and most powerful companies will dedicate the time and resources necessary to develop and implement their own environmental norms and standards for reasons previously mentioned. In the Mexican context, these firms are foreign MNCs and the majority of whom originate from the United States. Whilst large Mexican businesses are often only starting to add a Corporate Social Responsibility dimension to their business identity, these foreign firms are benefiting from almost twenty years of self-regulatory endeavours. In addition, the overwhelming majority of Mexican

businesses – more than 97% – are small or medium enterprises (Dussel Peters 2000) with little resources and no experience in environmental voluntary regulations. Article 38 is therefore important because – albeit non-explicitly – it is openly encouraging foreign firms through their self-regulatory endeavours to lead their business partners to follow the norms they enacted independently of state regulations but with the formal support of a legal article. Such process supports the claim that in Mexico private and public authorities are intertwined in the decision-making and enforcement aspect of environmental regulation.

In fact, the following extract is more specific and explains how private norms may become public regulations:

The Secretary [for the environment] at the federal level will induce or will arrange:

The compliance with voluntary regulations or technical specifications in environmental matter that will be stricter than the Mexican official norms or that refer to aspects not planned by those, which will be established through the consent of the individuals or associations or organizations that represent them. For such effect, the Secretary will be able to promote the establishment of Mexican regulations according to the process which applies in the Federal law on Metrology and Standardization (Article 38(ii), author's translation).

It means that the federal Secretary for the Environment (SEMARNAT: *Secretaría de medio ambiente y recursos naturales*) will be able to transform voluntary regulations or standards into formal regulations and ensure adherence by other business actors. The Secretary will then make use of the Law on Metrology and Standardization to let these industry-led regulations become official Mexican environmental norms.

This second aspect of Article 38 and its paragraph (ii) reveals further how the Mexican state plans to use regulations designed and implemented by private economic entities as draft public regulations. In short, when an industry or a group of producers or industries creates specific environmental standards and regulations, the state is then willing to incorporate these norms into its formal regulatory framework. This means that, to an extent, it is business – not any kind of business though, largely foreign [American] MNCs– which are in charge of creating environmental regulations that the state will then validate. If article 38 legitimizes the regulatory power of firms and industries by inviting them to issue environmental

standards and norms, it also allows them to push for their own environmental agenda by inscribing these new corporate-led rules into the Mexican legal system.

Finally, Article 38 BIS operationalises how the voluntary commitment of firms to environmental regulations will take place. It creates the institutional infrastructure necessary for this enterprise:

The responsible party for the operation of a business will be able to in a voluntary manner, through an environmental audit, carry out the methodological examination of their operations, regarding the pollution and risk that they generate, as well as their degree of compliance with the environmental regulatory framework and with the international parameters of good practices with the purpose of defining the necessary corrective and preventive measures to protect the environment (author's translation).

With Article 38, the state did not only include private economic actors as potential designers of environmental norms in its legal framework, it also created the space to allow further implication from the business sector in enhancing levels of compliance with existing environmental regulations. The National Environmental Auditing Program (PNAA: *Programa Nacional de Auditoria Ambiental*), commonly called the Clean Industry Program, comes out of this legal possibility given to businesses to self-regulate.

This section showed that the Mexican state recognized the voluntary environmental regulatory endeavours of businesses, and agreed on assisting these private actors in their initiatives through including them as potential “regulators” in its legal framework. This is an instance of hybridization of environmental regulations where the state remains in charge of the legal framework, but part of its content and application is left to the private sector. Implicitly, the state is relying mostly upon foreign MNCS to play this role though considering that they are the most environmentally aware private actors in Mexico due to their institutional background and global production model. Not only does the Mexican state inscribe in its legal framework the regulatory role that private actors can play, but it also creates institutional mechanisms to facilitate this evolution. The next section will now

explore what these mechanisms are and look at the Clean Industry Program to understand how the private authority of foreign MNCS is consolidated through this state-led but corporate-driven initiative.

The Clean Industry program

If the Mexican state has included in its legal framework the possibility for companies to self-regulate, it has also created more practical mechanisms to assist firms in their self-regulatory endeavour. The Clean Industry program reflects how the Mexican state is not only counting on foreign companies to become models of compliance with environmental regulations, but it also delegates to them part of the responsibility to ensure that smaller firms are complying with existing legislations. Understanding this process also gives us some insights into how foreign firms are able to use this program to advance their own environmentally tainted business agenda.

As mentioned earlier, the liberalization of the Mexican economy from the early 1990s onward changed drastically the economic model adopted by Mexico. Compliance with environmental laws and regulations became an area of scrutiny not only at the domestic level but also internationally, especially in the context of the negotiations and ratification of NAFTA (Gallagher 2004; Gilbreath 2003, Cameron and Tomlin 2000). The creation of the Clean Industry program in Mexico in 1997 came from the realization that in Mexico, public and private business actors were not following environmental norms and were disregarding the various existing environmental regulations and legislation.

The program represents indeed a clever political manoeuvre from the Mexican state to buy time in terms of evaluating its environmental commitments post-NAFTA and to avoid having either to close or at least heavily fine more than 95% of private and publicly-owned Mexican firms⁷. As mentioned earlier, Mexican businesses were not complying with the regulations, and the government was neither coercing them to do so nor punishing them for ignoring the law. The opening of the Mexican economy and the ratification of NAFTA however forced

⁷ Interview with a policy adviser at the “Instituto Nacional de Ecología” (National Institute for Ecology), 26th January 2010, Mexico City, Mexico

the state to ensure a satisfying level of compliance with environmental regulations due to pressure from the US Congress and concerns raised by American environmentalists, a relatively powerful lobby group in the US at that time (Gilbreath 2003; Cameron and Tomlin 2002). Congress worried that jobs would be lost as industry would move to Mexico where environmental regulations were more lax and environmentalist shared their concerns although not from an employment but from an environmental perspective, arguing that levels of pollution in Mexico would increase as a result of the Trade Agreement.

The Clean Industry program is run by the Attorney General's Office for the Protection of the Environment (PROFEPA: *Procuraduría Federal de Protección al Ambiente*). The PROFEPA is an organ of the state in charge of promoting the establishment and the control of environmental norms, regulations, laws, and technical criteria to improve the quality of the natural environment and to receive complaints about entities in breach of existing environmental laws and regulations (PROFEPA website, accessed 10th August 2010). In 1992, the PROFEPA launched the National Environmental Auditing Program. In 1997, the first Clean Industry certificates were issued to businesses that voluntarily invested and fixed the environmental irregularities detected during the audit. In fact, this approach is not dissimilar to what happened in the U.S. Early in the 1990s, the U.S. implemented a few programs – Green Lights, WasteWise, and 33/50 for instance (Videras and Alberini 2000) – based on similar dynamics. Mexico seems to have imported from the United States certain institutional mechanisms to increase the degree of compliance of industrial actors. In Mexico, the concept of an environmental audit is understood as a participatory, voluntary activity which involves an evaluation of the environmental results of particular industries and firms in terms of their environmental records and levels of compliance.

The program includes a detailed technical evaluation of regulated aspects of industrial activities such as control of sewage, air pollution, dangerous residues and noise. It is not only a corrective mechanism but also a preventive one as it considers aspects which are not yet regulated like the design of the installations, the processes of production, the maintenance of infrastructure, the training of the personnel, etc. Plants volunteering to join the program pay for an environmental audit by an accredited third-party private sector inspector (Blackman *et al.* 2010: 183). Companies are responsible for financing the auditor, engaging technical specialists their sector, and have the responsibility to provide the auditor with the necessary material support for the completion of the environmental audits, such as equipment for

analysis, computation and any other necessary supports to conduct the audit. All these costs are the sole responsibility of the organisation.

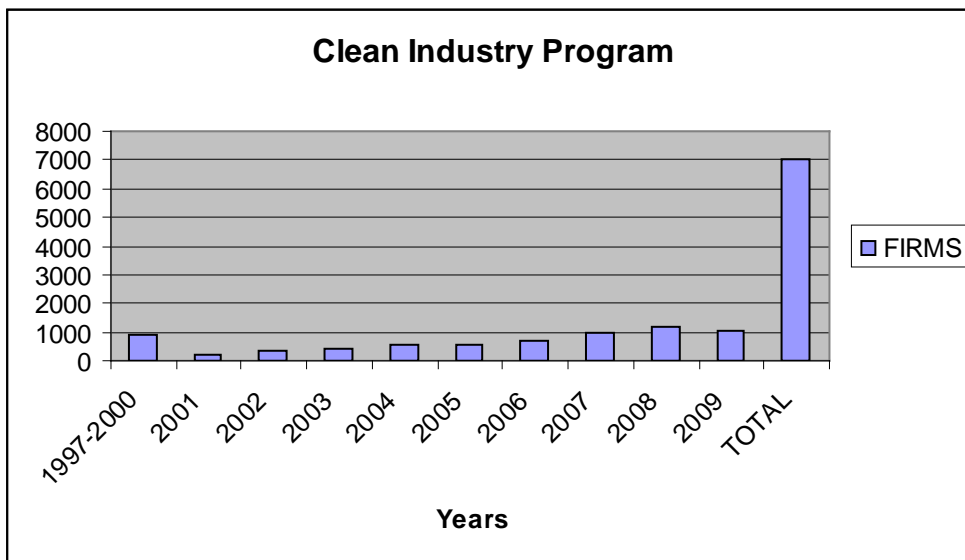
When the company agrees to correct all violations to existing environmental norms and regulations, the state, in return, agrees not to penalize it during the time deemed necessary to fix these violations. Once that date has passed and if the firm is now complying with existing regulations or go beyond them, the state delivers the “Clean Industry” certificate and the plant will not be controlled for an agreed period of time (usually 2 years).

The preventive aspect of the program is where foreign firms have some latitude to act and push for standards and self-regulations which would reflect their own identity and their understanding of their environmental duties and responsibilities. It gives them a window to influence further regulations in these areas. As it has been mentioned earlier, when corporate environmental standards are judged satisfactory as a result of the auditing process, the state can validate them through the Law on Metrology and Normalization and turn them into official Mexican Regulations. This suggests that private foreign actors shape environmental norms and the state legitimizes them. The hybrid nature of the environmental regulatory framework in Mexico is then quite transparent.

Only a few recent studies measure the effectiveness of the Mexican PNAA (see Blackman *et al* 2007; Foster and Gutierrez 2009; Gallagher and Zarsky 2007) and these are partial and region or industry specific results. However, according to official data from the Mexican state, in 2000, 1,614 installations, whose production represented more than 70% of the GDP of Mexico, were part of the program (SEMARNAT 2008). 1,085 plans for action were signed, including all the installations from the para-state sector and the major big private groups, foreign and domestic. Some information released by the National Institute for Ecology (INE: *Instituto Nacional de Ecologia*) suggests that the Clean Industry program has had positive results. From 1995 to 2000, atmospheric emission from the participating firms decreased by 22.5%, the release of residual waters decreased by 41.2% and the Bio-chemical demand for Oxygen decreased by 15.76%.

More broadly, from 1997 until 2009, more than 7,000 plants have entered the program (Graph 1) and more than 2,700 firms received the Clean Industry certification (Foster *et al.* 2009; Alvarez-Larrauri and Fogel 2008). According to a PROFEPA official, large domestic

firms and foreign MNCs are the most represented but increasingly, middle-size companies are joining the Clean Industry program as well. Participating firms, particularly foreign MNCs tend to enter the program first and then require their business partners to participate in the Clean Industry program⁸.



Graph 1: Source: PROFEPA 2010

Overall, it seems that the program has economic advantages for the participating firms. Between 1995 and 2000, the INE reports that 70% of the firms surveyed confirmed important economic benefits, an estimated 283 million de pesos (approximately US \$25 million) broken down in the following way: insurance premium costs went down 60%, energy consumption efficiency saved them 22% of their regular energy bill, and they decrease their payment on water use and water pollution by 14.5%. At the same time they declared that these actions have favoured financial gain resulting from the implicit savings that are generated upon establishing plans, programs and procedures for the recycling, optimal use of supplies, by-products, residues and economic, natural, and human resources.

At the international level, the Clean Industry program has received recognition on a number of scales. In fact, a parallel environmental agreement to NAFTA, the North America

⁸ Interview conducted at the PROFEPA on 29th January 2010, Mexico City, Mexico

Cooperation Agreement, established in its article V, that the Mexican environmental audit program was a form of compliance with the environmental legislation in Mexico as defined in the treaty. The Organization for Economic Cooperation and Development (OECD), of which Mexico has been a member since 1994, acknowledged in its 1998 report on the environmental situation in Mexico that the Clean Industry program has supported serious improvements in terms of environmental protection. In the rest of the Latin American continent, a number of workshops and training sessions have been organized to publicize the mechanisms and results of the Clean Industry program. The path chosen by the Mexican state to develop mechanisms of environmental governance was actually validated by all the economic actors, institutional and private, as it was considered as a way to reconcile economic growth and environmental considerations whilst minimizing the involvement of the state. In other words, this program accommodated well the neo-liberal approach favoured by international institutions and followed by the Mexican state.

Discussion and conclusion

The Clean Industry program shows how, in the Mexican context, the state relies on private actors and their voluntary commitments to increase the general level of compliance with existing environmental regulations. In itself, the program supposedly represents an alternative to traditional control and enforcement mechanisms. If the state has established the institutional framework through which self-regulation can take place, foreign MNCs, drive this initiative according to their own agenda. Still, the head of the auditing department of the PROFEPA confirmed that foreign firms were the most represented and that their environmental records were better than national companies⁹. The interviewee also indicated that attracting foreign MNCs into the program was one of the goals of the PROFEPA because of the “pull” effect that it represented on other businesses. So not only do foreign firms influence and shape the path taken by the state to design some aspects of its regulatory framework, but they also place themselves in a position which ensures that the state will see their presence positively not just for economic reasons but also for their environmental initiatives.

⁹ Interviewed on 20th February 2010, PROFEPA, Mexico City, Mexico

Viewed from the state, a hybrid system of environmental audit is a procedure that combines the advantages of private certification with those of the oversight from governmental authorities. On the one hand, the elaboration of the audit itself is realized by private consultants with businesses internalizing the cost of the audit and at the same time, businesses are responsible towards governmental authorities which award the Clean Industry Certificate. The state therefore does not have to use its own resources to measure the level of non-compliance or to control the firm once it is a participant in the program. In the context of a country with little financial resources available to monitor and enforce the Law, this mechanism is easily perceived as a successful alternative to traditional forms of governance.

From a business perspective, foreign MNCs participating voluntarily in such a program gain as well in terms of the credibility of their environmental efforts. It enables their products to be sold in global or regional markets with a label validated by a state entity regarding the respect of environmental norms and standards in their processes of production. When most environmental labelling is operated by private organizations, it is a comparative advantage to display a label backed-up by the state (Gilbreath 2003). At the same time, the cost to participate is relatively low because these foreign firms often already comply with the existing regulations of their host state due to their national origins, global production standards and to their commitment to appear as champions of sustainable development for marketing purposes. It is different for domestic firms which tend to have “dirtier” productive processes and therefore must invest to become part of a state-sponsored voluntary regulatory program. Through this arrangement between the state and foreign firms, domestic firms therefore find themselves in a disadvantaged position that strengthens the economic domination of foreign MNCs which remain more competitive.

If the structural power of foreign firms appears reinforced by the hybridization of environmental governance in countries of the majority world, this phenomenon also enables foreign firms to enhance their direct authority over domestic small and medium firms. While the Mexican state seems unable to coerce these small and medium businesses and does not have the financial resources to conduct thorough controls over them, foreign MNCs can play this role and are encouraged to do so. In a sense, the state is surrounding its capacity to enforce regulations to private foreign actors through market mechanisms. Large foreign firms are therefore provided with additional leverage in their negotiations with domestic suppliers and business partners. These smaller domestic firms may be forced to carry the cost of environmental norms and standards imposed by foreign firms in an authoritative way,

irrespective of the consequences for their financial situation and the sustainability of their commercial activity.

The Clean Industry program does not only aim at increasing compliance but it also has a preventive dimension. Firms that already comply with environmental regulations, as is the case with most foreign MNCs, can influence future state regulations through the extra norms and standards they have established and intend to spread. The call for self-regulations from the state is echoed by the foreign firms but on their own terms. With the possibility of validating corporate-led norms and standards established by the private sector through the Law of Metrology and Standardization in the case of Mexico, foreign firms can shape future formal norms applicable to other economic actors. This means that the source of environmental regulations is to be found in the private sector, dominated by foreign actors, more than in the public sector – although the legitimizing role of the latter is still required. It is not that the state capacity to regulate is truly undermined but the way it regulates has changed.

At the societal level, the fact that foreign MNCs, responsible first and foremost to their shareholders, become increasingly involved in setting-up the environmental agenda and in doing so frame a particular kind of response to the ecological crisis is highly problematic. If this process weakens the autonomy and independence of the state to regulate, it also affects the democratic dynamic in any society. In spite of a chaotic Mexican political sphere, national and local governments are accountable to the Mexican society which is entitled to validate or dismiss their actions through the voting process. The political power gained by foreign firms is outside of this democratic process. Foreign MNCs are not accountable or responsible to the Mexican society but to their headquarters and shareholders, geographically and culturally disconnected from the Mexican society. The transfer from a public to private form of environmental governance is therefore accompanied by the removal of the possibility for citizens to express their satisfaction or disagreement with the outcomes of such a new model of environmental governance (see Jenkins 2001).

The advent of a hybrid system of environmental governance results in the Mexican society being even more subjugated to the power of foreign economic actors. In terms of authoritative decisions, the reach of these profit-driven entities has now spread to non-economic aspects of society such as the environmental domain. Not only do MNCs have

increasing material power over the Mexican society because they are sources of employment and they provide the goods and services available to society, but they also progressively determine the way in which the natural environment ought to be preserved and protected. This process, potentially resulting in positive short-term environmental benefits, increases the concentration of power in the hands of economic entities with interests and preferences dictated by the profit motive and with the authority to directly influence the development of the environmental agenda. The spread of foreign direct investment in the majority world and the ideological strength of corporate social responsibility are not limited to Mexico. The expansion of MNCs and their CSR rhetoric often presented as a panacea susceptible to efficiently tackle environmental issues where state institutions are still relatively weak suggest that similar dynamics are occurring elsewhere. More work is needed to assess whether or not other countries are witnessing a similar phenomenon.

This paper has explained and analysed an instance of environmental governance in which both public and private forms of authority are involved and shows the evolution of regulatory mechanisms of environmental governance. It is particularly in countries of the majority world that such a model can flourish as it builds on the difficulty of traditional institutional actors to play their regulatory and enforcement role. At the same time, this phenomenon occurs through a legal framework originating from the state and which provides the institutional infrastructure necessary for private actors such as foreign MNCs to push for their (self-) regulatory agenda. However, the pragmatism of the Mexican state has problematic consequences for its own capacity to further regulate these actors autonomously. Most importantly, it affects the Mexican society which is faced with a system of governance, in the environmental realm, over which it has little control or possibility to participate, dominated by actors with whom it cannot engage or hold responsible and accountable.

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