

## Petróleos Mexicanos vs. the English Language

Incorporating the new vocabulary of the 2014 Energy Reform

IN MEXICO, THE LAW, administrative structure and nomenclature of government borrows deeply from French, Spanish and Roman sources; but today Mexico's principal trading partners are from common-law traditions of English origin. In the global energy industry, English is the universal language. Today, English and Spanish have thousands of words with common etymologies, but many of which today diverge in their meanings.<sup>i</sup>

The use of Latin and French legal concepts, coupled with Spanish terms that have cognates in English, makes for difficult translations: Consider *“órgano desconcentrado”* and *“ley orgánica.”* In English, “organ” generally refers to human or animal body parts, while “organic” is seen mainly in connection with food products and their preparation.

Another cause of difficulty for the international visitor is the use in Mexico of euphemisms, circumlocutions and Latinate expressions that are widely found in the documentation and speech patterns not only of the Euro-Mexican ruling class but also of the general population. This cultural trait,

which has both colonial and pre-Hispanic origins, has had an unanticipated, collateral effect in the terminology of public administration: for the purposes of commerce and diplomacy many of the legal and political terms defy easy translation, even when there appear to be readily available cognates.<sup>ii</sup> Consider *“asignación,”* which would incorrectly be translated as “assignation.”

In this expanded report, we review the nomenclature of the administrative structure of the federal branch of government in Mexico, and offer suggestions for standard translations. Entries that correspond to the Energy Reform of 2014 are marked in blue.

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### INTRODUCTION

As a much-loved song from the American musical *The Sound of Music* urges, “let’s start at the very beginning”<sup>iii</sup>: Article 90 of the Mexican Constitution divides public administration of the Executive Branch into two parts: 1) the “**centralized**” ministries and 2) the **decentralized agencies** (called “**paraestatal**”). The dark complexities associated with each part pose challenges for English translation; of the two, the decentralized elements of government offer the most difficulties.

Government agencies that belong to the centralized moiety, or half, divide again into 1) **dependencias** (as are cabinet ministries) and 2) **órganos desconcentrados**, including, prior to the Energy Reform of 2014, the CRE and CNH as energy regulatory agencies).<sup>iv</sup>

Government agencies of the decentralized half are not, philosophically speaking, government agencies, as they do not perform acts of government. These are **paraestatales**, also known as **organismos descentralizados**. Today, the term “paraestatal” may refer to three, quite different, agencies (a complete list is published annually<sup>v</sup>):

- 1) An organization whose ownership, at present, is 100% in government hands<sup>vi</sup>;
- 2) An organization whose ownership is at least 51% in government hands; and
- 3) A public trust fund, called a **fideicomiso público**.

### DISCUSSION

AS RECENTLY AS DECEMBER 19, 2013, a business visitor at the Energy Ministry (SENER) may have an appointment in the morning, first, with someone who works directly for a **dependencia**; but a second appointment at CRE or CNH will be with someone who is an official at an **órgano desconcentrado**. In the afternoon, an appointment at Pemex or CFE will be with someone employed by an **entidad paraestatal**. If at COMESA or PMI Comercio Internacional, SA de CV, the appointment will be with a manager of an **empresa de participación estatal mayoritaria**.

As of the decree of December 20, 2013, much of this terminology changed:

- 1) Pemex and CFE are now **Empresas Productivas del Estado** (State Enterprises)
- 2) CRE and CNH are now **Organos Reguladores Coordinados en Materia de Energía**.

Such distinctions are likely to be invisible to the visitor—but at his or her risk.

Article 14 of the Public Enterprise Act of 1986<sup>vii</sup> divides **organismos descentralizados** not by type (as mentioned above), but by purpose:

1. Activities designated as “strategic” (meaning private equity is excluded) are specified in the 4<sup>th</sup> paragraph of Article 28 of the Constitution, and include oil and electricity. The 5<sup>th</sup> paragraph introduces the legal figure of “priority area,” which allows for private equity. Most, but not all, of the commercial activities undertaken by Pemex and CFE are of “strategic,” as thus defined.<sup>viii</sup> In the energy sector, PEMEX, IMP (Petroleum Institute), CFE and the IEE (Electrical Research) are government agencies of this strategic type.
2. Providing public or social services: IMSS (Social Security Agency) and IFAI (Freedom of Information), among many others.
3. Obtaining or applying resources for social security: National Lottery, among others.

This type of agency must be distinguished from an “**organismo autónomo**,” which enjoys administrative self-governance. Examples are the IFE (Elections Board), Banco de México (Central Bank) and INEGI (Statistics Institute) and CNDH (Human Rights).

In relation to Pemex, the restructuring of 1992 created five independent legal entities, each of which is an “**organismo descentralizado**.” The headquarters group is an “*organismo descentralizado*,” as is each of its four primary business units: Pemex E&P, Pemex Refining, Pemex Gas<sup>ix</sup> and Pemex Chemicals. In the Pemex Law (Art. 3) “*Petróleos Mexicanos*” is described as a government agency with the attribute of the “strategic direction” of the state petroleum company, but the term “*corporativo*” does not appear in the law.<sup>x</sup>

Finally, there are more than 20 state-majority-owned companies affiliated with one or another of the Pemex companies. Many of these companies are part of the so-called PMI GROUP (not a legal term). PMI companies carry out responsibilities for trading, portfolio-management, market research and financing. One of these, **P.M.I.**

**Comercio Internacional, S.A. de C.V.**, is the only *paraestatal* in the group.

Even “Pemex” is a  
confusing term.

## TRANSLATION PROPOSALS FOR STANDARD USAGE

“PEMEX”

The complexity of this administrative structure is compounded by the formal name of Pemex: PETROLEOS MEXICANOS, SUS ORGANISMOS SUBSIDIARIOS Y COMPAÑIAS SUBSIDIARIAS<sup>xi</sup>.

- a. There are two problems here: “Petróleos Mexicanos” is the specific name of just one of the five government agencies of the type “organismo descentralizado”; its nickname, “Pemex,” however, is commonly used to refer a) any one of the five agencies or b) all of the five agencies collectively.
- b. Thus, in referring to PEMEX—an acronym to be used alone only informally (given its loaded meaning)—one translation is needed for the operating companies, another for the headquarters unit (Pemex “*Corporativo*”<sup>xii</sup>). We propose PEMEX OPERATING SUBSIDIARY and PEMEX HEADQUARTERS COMPANY.

The second problem is the use of the term “organismos subsidiaries” implying some sort of subordination of four of the five agencies in relation the fifth. This concept of *subsidiaridad* (“subsidiarity”) does not exist elsewhere in Mexican jurisprudence.<sup>xiii</sup> To refer to the Pemex companies collectively, we propose “The Pemex Group of Companies.”<sup>xiv</sup>

For Pemex as a whole (but excluding joint ventures, as, for example, the one with Schlumberger (COMESA), we propose: the COMPANY for most contexts, keeping the context clearly in mind.<sup>xv</sup>

#### “ACTIVIDAD SUSTANTIVA DE CARÁCTER PRODUCTIVO”

This is the key concept of the Energy Reform of 2008; unfortunately, it lacks a solid foundation in the law and Pemex procurement protocols. We propose MISSION-CRITICAL ACTIVITY or CORE ACTIVITY. This term will fall out of use with the implementation of the Energy Reform of 2014.

#### “ASIGNACION”

The best translation is “allotment,” meaning to distribute something to an individual. The reference here is to the production blocks and exploration areas that were allotted to Pemex by the Hydrocarbon Commission in the 2014 distribution. While “assignment” is a word in English, its most common usage is associated with a romantic tryst, hence, inappropriate for a legal application. “Entitlement” and “assignment” have been offered as an alternate translation; but the use of this word would suggest that Pemex was “entitled” or “assigned” to certain blocks (such as Cantarell and Perdido), and, in this sense, the terms contain some political truth.

#### “CFE”

The term “commission” is an inappropriate translation of “Comisión” in the name of the **Comisión Federal de Electricidad**. Better choices are the STATE ELECTRIC UTILITY or FEDERAL POWER COMPANY.

#### “CONTRATO INTEGRADO DE EXPLORACION Y PRODUCTION”

“Full-cycle contract” which would cover all phases from exploration to well abandonment. Alternatively, “farm-out” refers to a legal agreement by which the operator of a block sub-leases a portion of the acreage in exchange for a legal interest in the revenue stream. By this definition, the Pemex contracts of 2011-12 are “farm-outs” from the perspective of Pemex, but “farm-ins” from the perspective of the winner of a given block.<sup>1</sup>

#### “CONVENIENTE”

It is seldom that “conveniente” may be correctly translated as “convenient.” More likely translations include the following: advantageous, appropriate, cost-effective, or suitable.

#### “EMPRESA PRODUCTIVA DEL ESTADO”

This is a term introduced in the 2014 energy reform to refer to a new legal figure that would apply to Pemex and CFE, and that would be distinct from the traditional legal figure of the *organismo*

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<sup>1</sup> See MEI Market Note 111. PEMEX’S FARM-OUT PROGRAM (Issued Feb. 2, 2012), the title page of which is appended in the present report.

*decentralizado*. The general sense is that, where before, these companies were *agencies* of the State, in the future they will be the *property* of the State. “*Productiva*” need not be translated.

The full legal ramifications of this new figure are not yet known, beyond reorganizing the corporate board by expanding the membership on the board, restricting (eliminating in the case of Pemex) union participation, creating the figure of an independent member who would serve on a part-time basis.

As the company is 100% owned by the State, “State Enterprise” is a suitable translation. (The inclusion of “productive” is redundant.)

#### “ESTATUTO ORGANICO”

The OECD usefully suggests “Company Charter.”

#### “FARM-OUT”

The use of this term in Mexico in relation to the conversion (see “*migración*”) of Pemex’s allotments (see “*asignación*”) illustrates the observation by Javier Zenteno (below) that distinct legal systems that are contiguous will borrow both content and language from each other.

This term is used in the oil industry to refer to the situation in which one party that owns mineral rights, either as the director owner or lease-holder, sub-contracts with an operating company to develop all, or a portion, of the area (or acreage) at his expense in return for a percentage of the oil or revenue. The first party retains either an over-ride interest in the production or revenue, or he may retain the option to back into a working interest in the wells (such as, paying a given percentage of the current capital costs and assuming responsibility for future contributions to expenses (and liabilities) in proportion to his share.

It is imaginable, for example, that Pemex, with allotted blocks (see “*asignación*”) in the Mexican Perdido area near the U.S.-Mexico maritime border, will seek a farm-out agreement with one or more of the partners of the Great White production platform in the adjacent US Perdido area. In Round Zero, Pemex will be able to opine about the suitability of prospective partners; but it will be the Hydrocarbon Commission that will make the final choice.

#### “INCONVENIENTE”

See “*conveniente*.”

#### “INSISO” and “FRACCION”

Enumerated by lower-case letters, “*inciso*” may be translated as SECTION, and “*fraccion*,” enumerated by capitalized Roman numerals, as SUB-SECTION. When spoken aloud, “*Fracción IV*” (for example) would be referred to as “*fracción cuatro romano*.”

#### “LEY DE PETROLEOS MEXICANOS”

“Pemex Administration Act of 2008 (hereinafter, Pemex Law)”

#### “LICENCIA”

Mexican commentators have shrewdly remarked that “*licencia*” is the new, 21st euphemism for “*concession*,” a legal figure in relation to hydrocarbons that continues to be prohibited in Constitutional Article 27. In relation to the Energy Reform of 2014, a “*licencia*” is one of the

contractual forms by which the licensee (contractor) takes title to oil production after having paid appropriate royalties and taxes. There is some uncertainty about how this arrangement will work, given the government's wish for an independent oil marketer.

#### **"LICENCIATARIO"**

In the *Transborder Hydrocarbon Treaty of 2012* the operator of a block was referred to as by a Mexican neologism, *licenciatario*, which, in English, may be rendered easily as "licensee" or "leaseholder." In the 2014 hydrocarbon legislation, the term adopted was "contratista," an ideologically-driven choice that introduces three meanings that must be distinguished:

- 1) The everyday, for-hire contractor should continue to be referred to as a *contractor*: *un contratista de Pemex (Pemex contractor)*.
- 2) Should Pemex enter into a farm-out agreement, the company that is "farming in" is known in the U.S. as a "farmer."
- 3) The oil company that is awarded a contract by the State (via the Hydrocarbon Commission) should be identified as a licensee or leaseholder. It would introduce needless confusion to refer to such companies as "contractors" (of the State?).

#### **"MIGRACION"**

In contract law, the correct translation is "*novación*" (novation), but for the general public the sense would be conveyed by "contract conversion," from one contractual framework (of the period 2003-12) to the new contractual forms created by the Energy Reform of 2014.

#### **"ORGANISMO DESCENTRALIZADO"**

The translation options are PUBLIC AGENCY<sup>xvi</sup> and PUBLIC ENTERPRISE, depending on the context. This awkward term will fall out of use in the lexicon of the energy sector thanks to the Energy Reform of 2014.

#### **"ORGANO DESCONCENTRADO"**

The universal term used inside the U.S. Government for any organization that is defined by law is an "agency," and it could be modified to refer to "*órgano desconcentrado*": MINISTERIAL AGENCY.

#### **"ORGANOS REGULADORES COORDINADOS EN MATERIA DE ENERGÍA"**

By the Energy Reform of 2014, the Energy Regulatory Commission (CRE) and the National Hydrocarbon Commission) were redefined, legally, to be new entities under the law. One distinction is that they report directly to the Office of the President, and are no longer "Ministerial Agencies" subordinate to the Energy Ministry (SENER).

The legally restructured agencies are meant to articulate regulations and make awards in public tenders in accordance with national energy policy. How such responsibilities differ from the current arrangement remains to be seen.

As a citation to the law, we suggest Energy Regulatory Agency Act of 2014.

## “NACIONAL”

In most contexts, the term “nacional” need not be translated, as in the Comisión Nacional de Hidrocarburos, which may be rendered as Hydrocarbon Commission.

## “PARESTATAL”

Mexican legal theory explains that “para” refers to the parallel existence of something in relation to the State.<sup>xvii</sup> The term *paraestatal* is used both as a noun and as an adjective. Pemex is a *paraestatal*, and Pemex is also an **entidad paraestatal**; so too are PMI Comercio Internacional, SA de CV and COMESA.<sup>xviii</sup> The term could be treated only as an adjective meaning “state-owned.” As a noun, translation options include STATE COMPANY, STATE-OWNED COMPANY and PUBLIC ENTERPRISE.

## “VARIABLE DE ADJUDICACION”

The bidding variable variables in a public tender, which, by the Hydrocarbon Revenue Act (LISH, Art. 26), should be of an economic nature for E&P contracts. Hopefully, by “economic nature,” the government and the CNH will understand the law as requiring the qualitative evaluation of the work program (mainly drilling) of a bidder

## OBSERVATIONS

Hay que considerar las diferencias de sistemas jurídicos. Muchas de las instituciones que caracterizan a uno y otro sistema, en ocasiones, no son trasladables ni equiparables. El lenguaje es una expresión de cultura, al igual que el derecho. Por ello, se encuentran diferencias notorias.

En efecto, los diversos sistemas jurídicos, además de reflejar y proteger valores que son consubstanciales a los hombres como el de la libertad; la vida; la integridad física, etc., se van incorporando otros valores, a veces secundarios. Por las diferencias históricas y culturales, los sistemas jurídicos y sus instituciones van cambiando de unos a otros, con influencias entre sí cuando existe comunicación entre ellas.

También debe considerarse que en todos los sistemas jurídicos las instituciones al igual que el conocimiento y la cultura van evolucionando. Este fenómeno se intensifica en los sistemas jurídicos como el nuestro, en el que a expresiones iguales o semejantes, conforme a la época, se le dan contenidos y alcances diferentes. (Por ejemplo la interpretación original del 27 Constitucional a finales de la década de los 30’s contra la del 1958-59)



Consider the differences in legal systems. Many of the institutions that characterize the two systems sometimes are not transferable or comparable. Language is an expression of culture, like the law. Therefore, there are notable differences.

Indeed, the various legal systems, and reflect and protect values that are inherent to men as those of freedom; life; physical integrity, etc., develop by incorporating other values, sometimes secondary ones. For historical and cultural differences, legal systems and institutions are changing each other, influenced each other when there is communication between them.

It should also be noted that in all legal systems, institutions, as with knowledge and culture, evolve. This phenomenon is intensified in legal systems like ours, in which the same or similar expressions, according to the time, you are given content and different scopes. (For example, the original interpretation of Article 27 of the Constitution at the end of the decade of the ‘30s against the 1958-1959).

Lic. Javier Zenteno, observations  
regarding Rev. 5 of March 26, 2010.

## CONCLUSIONS

- 1) The Energy Reform of 2014 brings with it a new vocabulary and will result in the falling out of use of many of the neologisms of the Energy Reform of 2008. The present report is only an initial step toward building a lexicon in English that bridges two legal and political systems.
- 2) It's easy to get tripped up in seeking English translations for Mexican legal and political terms. Thanks to the historical accident of sharing a common alphabet, many terms in Spanish are brought into English without any attempt at translation, as seen in the names of Mexico's main political parties which are referred to by their initials in Spanish (as if these were terms in English).
- 3) The frequency of false and misleading cognates in the terminology of the political and legal systems misrepresents realities on both sides of the linguistic border, as in the term "asignación," the introduction of which has led to discussion inside and outside Mexico as to its most appropriate translation. Following the advice of the *Diccionario de terminología jurídica Mexicana y norteamericana* (2nd ed., 2011), we find "allotment" as the best translation.
- 4) In a yet-unpublished report, we examine those terms that have no apparent cognate translation, "plurinomial," for example. The adjective refers to the incumbent or aspiring member of the Mexican congress who was (or will be) elected not by direct, popular vote, but by an arcane formula by which a given party gets a percentage of the seats in the lower or upper house based on that party's showing in a national election. To be nominated as a candidate in this category is, virtually, to be appointed to the congress, as there is no campaigning involved. (The candidates of a given party are ranked, so the top few on the list are guaranteed to be inducted in the next session of congress.)

What's important about these members of congress is that they are the party's power-brokers, spokesmen and committee chairmen—all *unelected* (that is, in the sense commonly understood in other democratic countries).

George Baker  
Publisher

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## NOTES

- <sup>i</sup> We are preparing an English-Spanish dictionary of cognate word-pairs, a project now more than ten years in the making. The goal is to identify several hundred word-pairs in everyday language that have a common etymology but which either offer different meanings or have different usage patterns. Consider “cotidiano,” an everyday word in Spanish that means ordinary, usual or routine; there is a cognate in English, “quotidian,” which has the identical meanings but which is a word whose very existence most English speakers are unaware.
- <sup>ii</sup> U.S. citizens are “Unitedstatesians” (*Estadounidenses*), while the United States as a country is “North America.” The author of an academic paper prepared at the **Colegio de México** in the early 1990s exploited the double meaning of this last term: “The North American Proposal for a North American Free Trade Agreement.” As for domestic politics, the two houses of congress are run by veteran politicians who are elected on the basis of a “voto plurinominal,” the complex formula for which is known, in detail, by perhaps 500 voters in the Mexican electorate of millions.
- <sup>iii</sup> The very beginning, however, is more likely found in Spanish colonial law, in turn, adapted from Roman law, and combined with pre-European legal practices.
- <sup>iv</sup> Others include CFC (Competition Commission), PROFECO (Consumer Protection Agency) and COFEMER (Regulatory Improvement). An agency of this type has no assets and liabilities of its own, as it depends, financially, on the budget of its parent government ministry. A troubling ambiguity with this arrangement concerns the freedom of officials from this type of agency to make “technical” decisions that are not echoes of ministry policy.
- <sup>v</sup> <http://normateca.inecol.edu.mx/normateca/documentos/0414.pdf>
- <sup>vi</sup> A public agency that is created with its own assets and liabilities and with (a measure of) financial autonomy, and whose principal officials are named by the President of Mexico.
- <sup>vii</sup> Enumerated in Art. 14 of the *Ley Federal de Entidades Paraestatales* (LFEP).
- <sup>viii</sup> In some areas that are “priority” Pemex operates as if they were “strategic,” such as natural gas transportation and trade.
- <sup>ix</sup> The full name of which includes the phrase “and Basic Petrochemicals,” even though from a scientific or industrial perspective there are no such things as “basic petrochemicals”; in addition, the named “chemicals” are not chemicals at all but petroleum gas liquids.
- <sup>x</sup> Javier Zenteno, a former Pemex chief counsel, observes that “corporativo” applies to mercantile law.
- <sup>xi</sup> In Pemex’s own publications for internal and external distribution, the terms “*la Institución*,” and “*la industria*” are often used as synonyms.
- <sup>xii</sup> “Pemex Corporativo,” is therefore a nickname, not the legal name of the headquarters group. As former Pemex Chief Legal Counsel Javier Zenteno observes, the term “corporate” itself is applicable only to mercantile law.
- <sup>xiii</sup> Our source is a Mexican lawyer who was involved in the drafting of the Pemex Administration Act of 1992.
- <sup>xiv</sup> Our general conclusion is that “Pemex” should be used as an adjective, not as a noun.
- <sup>xv</sup> The *compañías subsidiarias* are governed by mercantile law, so “the company” would work for any one of the mercantile corporations or to the Pemex government companies, as a group, or to any one of these.
- <sup>xvi</sup> Ismael Gómez Gordillo, in a paper presented at a UN forum, “La experiencia Mexicana,” uses the term “*agencia descentralizada*” <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan021588.pdf>
- <sup>xvii</sup> While these government agencies are of, and created by, the State; their activities themselves, as mentioned, are not acts of government, rather ones associated with commercial and social objectives.
- <sup>xviii</sup> As mentioned, public trust fund is also a paraestatal, but this term need not be used, as “public trust fund” will suffice.



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