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FOREWORD

TOWARD FREER TRADE AND MORE COMMERCE BETWEEN THE UNITED STATES AND MEXICO

BARBARA BADER ALDAVE*

Even as I write these words, President George Bush of the United States and President Carlos Salinas de Gortari of Mexico are meeting in Monterrey, Nuevo Leon.¹ One of the principal topics that the two leaders are discussing is a prospective free-trade pact between the United States and Mexico. In an interview published just a few days ago, President Bush emphasized that the United States has “made a commitment to a free-trade agreement with Mexico,”² and announced that our government wishes to enter into such an agreement “as soon as possible.”³

During the last eight years, the economy of Mexico has been transformed. Many businesses that previously were owned by the state now are in private hands. The Salinas administration has adopted

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1. I am writing on Tuesday, November 27, 1990.

2. *San Antonio Light*, Nov. 23, 1990, at A19, col. 1.

3. *Id.*

new regulations to encourage foreign investment, and has launched a major effort to strengthen the protection of rights in intellectual property. Perhaps most significantly, Mexico's tariffs have been drastically reduced. The nation to our south is moving toward a free market much more quickly than are the nations of Eastern Europe.⁴

Regardless of the outcome of the forthcoming trade talks between the United States and Mexico, it is likely that an ever-increasing volume of business will be done across the 2,000-mile border that separates the two countries. At the present time, Mexico is the United States' third-largest trading partner, ranking behind only Canada and Japan.⁵ Trade between the United States and Mexico currently amounts to \$60 billion per year. That figure is expected to rise rapidly, possibly to \$120 billion, if and when the two nations enter into an agreement that eliminates most tariffs and other barriers to trade.⁶ Should Canada join the United States and Mexico to form a North American free-trade zone, the resulting market will be the largest in the world.⁷

In recognition of the reality that a growing number of United States enterprises are establishing operations and engaging in commerce south of the border, the members of the editorial board of the *St. Mary's Law Journal* have chosen to devote this year's symposium issue to "The Legal Aspects of Doing Business with Mexico." This special issue begins with the testimony that United States Trade Representative Carla A. Hills delivered to a congressional subcommittee on June 14, 1990, three days after Presidents Bush and Salinas originally agreed to support the negotiation of a comprehensive free-trade pact. Ambassador Hills' statement reviews recent trade and investment reforms in Mexico, and expresses the hope that a bilateral free-trade agreement "will create a stable, prosperous economic environment, laying the foundation for a vigorous trade and investment partnership for the 21st century."⁸

4. Geyer, *Political Decay Mexico's Last Obstacle to Improvement*, San Antonio Light, Nov. 18, 1990, at L4, col. 1.

5. San Antonio Light, Nov. 25, 1990, at A2, col. 3.

6. Trevino, *Texas' success will hinge on Mexico trade agreement*, San Antonio Light, Nov. 18, 1990, at L3 col. 2.

7. San Antonio Light, Nov. 25, 1990, at E5, col. 1.

8. Testimony of Ambassador Carla A. Hills, United States Trade Representative, Before the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, June 14, 1990, reprinted in 22 St. Mary's L.J. 583, 587 (1991).

Ambassador Hills' testimony is followed by an article in which Dr. Matilde K. Stephenson analyzes the opportunities and problems presented by the burgeoning growth of *maquiladoras* — assembly or manufacturing plants owned by United States companies, but operating on Mexican soil. Among the problems identified by Dr. Stephenson are the inadequacy of roads, bridges, and utilities near the United States-Mexican border, where most *maquiladoras* are located, and the threat of pollution and other environmental hazards from *maquiladora* operations. Despite the difficulties caused by the *maquiladora* boom, Dr. Stephenson concludes that “*maquiladoras* are extremely desirable for labor-intensive industries that can use them without putting company secrets at risk.”⁹

Some of the themes introduced by Dr. Stephenson are developed more fully by other authors. Daniel I. Basurto Gonzalez and Elaine Flud Rodriguez, two attorneys who are based on opposite sides of the border, have collaborated to produce an article entitled “Environmental Aspects of *Maquiladora* Operations: A Note of Caution for U.S. Parent Corporations.” And Rodolfo Villalobos, the President of the United States-Mexico Fund for Development, has contributed an article that emphasizes the need for cooperative public and private efforts to improve the “social infrastructure” in border communities.

Also included in this symposium is a second paper co-authored by attorneys from the United States and Mexico. Mark O’C. O’Brien (a Dallas practitioner whom one suspects to be of Irish descent) and Carlos Muggenburg R.V. (a member of a law firm in Mexico City) have worked jointly to produce “*Salinastroika: Recent Developments in Technology Transfer Law in Mexico.*” In another article, Rona R. Mears thoroughly and thoughtfully discusses the ethical issues that may confront United States lawyers who provide services and counsel to clients doing business in Mexico. Still another paper, contributed by Hope Camp of San Antonio, defends the thesis that “binding arbitration offers the best alternative for the resolution of commercial disputes that arise from or in connection with private commercial relationships between Mexican and U.S. business[es].”¹⁰

Rounding out this symposium issue are a pair of articles in which

9. Stephenson, *Mexico's Maquiladora Program: Challenges and Prospects*, 22 St. Mary's L.J. 589, 589 (1991).

10. Camp, *Binding Arbitration: A Preferred Alternative for Resolving Commercial Disputes Between Mexican and U.S. Businessmen*, 22 St. Mary's L.J. 717, 718 (1991).

two Houston lawyers engage in a lively debate about United States patent laws. Ned L. Conley argues in favor of the retention of the "first-to-invent" patent system that is currently in effect in this country, while Bernarr R. Pravel insists that the present system should be replaced by the alternative "first-to-file" system that has won acceptance in most of the rest of the world. You are invited to read both articles and to reach your own conclusions.

In fact, of course, you are invited to read all the articles in this symposium issue of the *St. Mary's Law Journal*. The aim of the authors is to improve your understanding of, and your ability to deal with, the changes that are taking place in the commercial world to which both Mexico and the United States belong. Whether or not the leaders and trade representatives of the two nations succeed in negotiating a free-trade agreement, the coming years are certain to bring a continuing increase in commerce across our southern border. It is time for us who are lawyers in the United States to learn how to conduct business with our counterparts in Mexico, in the hope that our joint efforts will contribute to the economic progress of our countries and our peoples.