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## Maquiladoras: Will the Program Continue.

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## MAQUILADORAS: WILL THE PROGRAM CONTINUE?

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## I. MAQUILADORA INDUSTRY: PRESENT AND FUTURE

In the late seventies and early eighties, Mexico was plunged into an economic crisis brought on in part by its almost exclusive dependence on oil exports. The extreme drop in the international oil market forced the country to restructure its economy with a greater emphasis on manufacturing for export.

The maquiladora program has played a key role in this aspect of Mexico's economic recovery. While the maquiladora industry has not been the panacea for Mexico's ailing economy, a review of the policy which gave rise to the industry's growth demonstrates its significance as a precursor to the industrial integration being contemplated in the negotiation of the North American Free Trade Agreement (NAFTA).

This article will discuss the industry and relevant aspects of the legal framework which has evolved into the modern maquiladora operation. It will also analyze the possible impact of the ongoing NAFTA negotiations on the Mexican maquiladora industry.

## II. THE MAQUILADORA SECTOR

The maquiladora program is one of several "duty drawback" programs<sup>1</sup> in Mexico. The term "duty drawback" traditionally refers to a refund of customs duties paid on the importation of raw materials or intermediate goods imported exclusively for incorporation into products which are subsequently exported.<sup>2</sup> Such programs have been widely implemented to encourage manufacturing by assuring that goods destined for export are not subject to duty twice.<sup>3</sup>

The program facilitates the temporary duty-free importation of raw materials and intermediate products for processing or assembly in Mexico.<sup>4</sup> The maquiladora company guarantees the eventual export of the finished products. The finished product is usually exported to

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1. The Pitex, by Presidential Decree, D.O., May 3, 1990, and the Altex, D.O., April 30, 1990, Programs are the other Mexican in-bond programs. The programs are distinguished by the benefits each provides the exporter whose qualification for a given program is determined by the percentage of total sales exported.

2. Duty drawback in its broadest sense also refers to customs programs whereby goods are imported under bond for transportation and exportation to a third country. Such goods never enter into commerce in the country of transshipment.

3. DEBRA P. STEGER, *A CONCISE GUIDE TO THE CANADA-UNITED STATES FREE TRADE AGREEMENT* 11 (1988).

4. The Maquiladora Program is established in the presidential decree published in the Official Gazette on December 20, 1989. 1989 Decree, D.O., December 20.

the United States, where most of the parts and components originate, and is subject to duty only on the value added in Mexico.<sup>5</sup>

Because of the close linkage between the Mexican assembly plant and the U.S. parent, the maquiladora plants are most commonly located along the border, although law permits the establishment of maquila plants in the interior of Mexico as well.<sup>6</sup> In many cases, the U.S.-based company establishes a "twin" plant on the American side of the border which engages in a complementary productive process.

### III. MAQUILADORA: DESCRIPTION OF AN INDUSTRY

In the past ten years, the maquiladora industry has become a formidable force in the Mexican economy. Between 1986 and 1988, the number of plants doubled and output rose by over thirty-six percent.<sup>7</sup> As of spring 1991, there were 1,871 maquiladora plants in existence.<sup>8</sup> In 1990, maquila exports accounted for almost a quarter of Mexico's total exports,<sup>9</sup> while the net exports' value added were valued at 3.6 billion dollars.<sup>10</sup> In each of the last seven years, the industry recorded expansion and increased revenues of nineteen percent per year.<sup>11</sup>

The maquiladora industry employs well over four hundred thousand workers and constitutes over fifteen percent of the total labor

5. The finished products are dutiable only on the value added upon reexport to the United States under the Harmonized System of Tariff Classification 9801.00. Value added in Mexico has consisted traditionally of labor, rent, utilities, and raw materials. ELLWYN R. STODDARD, *MAQUILA, ASSEMBLY PLANTS IN NORTHERN MEXICO* 17-18 (1987).

Since the overwhelming majority of maquiladora plants are subsidiaries of U.S.-based parents, the program is commonly associated with the 9801 tariff classification. However, the Maquiladora Program is not restricted to manufacturing for reexport to the United States. Around twenty-five percent of the maquiladora companies are owned by non-U.S. companies, including Mexican-owned companies, which export to third countries. Further, as a result of the general liberalizing trend in Latin American economies, U.S.-based maquiladora companies are seeking to use Mexico as a platform for exports to South America.

6. Only ten percent of all maquiladora plants have been located in the interior of Mexico as of June 1990. INSTITUTO NACIONAL DE ESTADÍSTICAS Y GEOGRAFÍA, *SEGUMEX: MAQUILADORA INDUSTRY ANNUAL REVIEW S-3* (1990).

7. See BANCO DE MÉXICO, *THE MEXICAN ECONOMY* 1991 at 138 (1990).

8. These figures are taken from the report for the period of January-May 1991 of the Secretary of Commerce and Industrial Development (hereinafter SECOFI), Dirección General de la Industria Mediana y Pegueña y de Desarrollo Regional. SECOFI, *Dirección General de la Industria Mediana y Pegueña y de Desarrollo Regional*, January-May 1991.

9. *Id.*

10. See BANCO DE MÉXICO, *THE MEXICAN ECONOMY* 1991 at 130 (1990).

11. See *id.* at 138.

force in the manufacturing sector.<sup>12</sup> In 1990, employment in the maquiladora industry grew by over seven percent, while employment growth in the manufacturing sector as a whole crept up only just over one percent.<sup>13</sup>

In spite of the past years of dramatic expansion, growth in new registrations of maquiladora companies for 1991 has been close to zero.<sup>14</sup> The secretary of commerce argues that interest in the program is still high but attributes the drop in activity to consolidations among maquiladoras having the same parent.<sup>15</sup> It is also, however, probably related to the extended recession in the United States.

#### IV. EVOLUTION OF GOVERNMENT POLICY

The original maquiladora program was designed to cure the ills of Mexico's northern border, which, during that period, was a region characterized by high unemployment and extreme underdevelopment. The idea was adapted through observation of the Pacific Rim countries where foreign-owned assembly operations were already beginning to thrive.<sup>16</sup>

The program was intended to encourage regional industrialization, to generate employment, and attract new technology for eventual integration into the Mexican industrial base. The program's architects expected the achievement of the program objectives to bring about an expansion of the region's economy which, in turn, would stimulate demand for Mexican products and services.<sup>17</sup>

The original statement of policy objectives contained an ambitious

12. *See id.*; *see also* SECOFI, *Dirección General de la Industria Mediana y Pequeña y de Desarrollo Regional* (quoting the employment figures).

13. BANCO DE MEXICO, *THE MEXICAN ECONOMY* 1991 at 10 (1990).

14. The National Statistic Institute reported that not only was there zero growth, the number of plants shrunk from 2,033 to 1,858 plants in the first quarter of 1991. *See* Ricardo Castillo, *Maquiladoras*, *THE MEXICO CITY NEWS*, September 7, 1991, at 23. Confirmed in: Interview with Gloria Montesinos, *Dirección General de Industria Mediana y Pequeña*, SECOFI (October 24, 1991) (Ms. Montesinos attributed the shrinkage to the trend toward consolidation among U.S. parent companies).

15. Interview with Gloria Montesinos; SECOFI, *Dirección General de Industria Mediana y Pequeña* (October 24, 1991).

16. The example of Korea, a maquiladora beneficiary turned entrepreneur, is evoked by government officials in defense of the program's shortcomings. The issue for Mexico is how to domesticate the technology brought by maquiladora plants.

17. *See* REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 25 (1986) (citing unpublished communications of the secretary of commerce which set forth the policy objectives of the original program).

agenda. In addition to the basic goals, the agenda included expansion of the tax base and the elimination of prejudice against Mexican workers.<sup>18</sup> The increase of foreign currency reserves has also always been an underlying objective of the program and was included in the original agenda, but this objective did not become critical until later.<sup>19</sup> These basic policy objectives have served as the banner of each of the several presidential decrees successively governing the program. Although Mexico continues to strive to meet its goals, the success of the program in terms of the basic objectives—job creation and development of the border economy—is undeniable.

## V. LEGAL CHARACTERISTICS OF THE PROGRAM

### A. *The Original Program*

The Maquiladora Program is a creature of presidential decree. The presidential decree is similar to a regulation and, therefore, subject to change with the administration every six years.<sup>20</sup> The original program was created in 1965 in a series of circulars issued by the secretaries of commerce and treasury interpreting an already existing provision of the Customs Code.<sup>21</sup>

18. *See id.*

19. During the sixties and, in particular, the seventies when the price of oil reached recorded heights, Mexico had an oil-driven economy. Its major source of foreign revenue was oil until the bust in the late seventies. Mexico spent the next decade diversifying its sources of foreign currency and has come to depend on the manufacturing sector for export revenue. *See generally* SYDNEY WEINTRAUB, *U.S.-MEXICAN INDUSTRIAL INTEGRATION* (1991).

20. The various maquiladora decrees have been issued under article 89(I) of the Political Constitution of the United Mexican States which grants the executive a broad power to promulgate and execute laws. The legislation which is cited as the basis of the current decree is contained in articles 63, 75 to 81, 84 to 89, 110, and 116 of the customs law. The pertinent sections of the Customs Law provide for temporary importation of goods. Articles 84 through 87 specifically regulate payment or exemption of duties for the temporary importation of goods under the Maquiladora Program. Articles 110 and 116 provide for the permanent importation of goods processed under the Maquiladora Program. CONST. arts. 63, 75-81, 84-89, 110, 116 (Mexico).

It is clear that the executive's exercise of rulemaking authority in respect to the maquila decrees has been based upon related legislation and thus legitimately exercised. However, this does not impede each administration from issuing its own decree. In fact, a different decree has been issued under each new administration since 1965. However, even during the administration of President Echevarria, who sponsored the restrictive law to promote Mexican investment and regulate foreign investment, the decree was liberalized or at least maintained the status quo.

21. Tercero Párrafo de Artículo 321 del Código Aduanero, D.O., October 27, 1977 (providing for the temporary imports). The original program was also known as the "Mexican

The 1965 program focused specifically on border development. Under the program, maquiladora facilities were required to be located in specific border areas. The program also required a Mexican company to be formed to operate the facility, but permitted full ownership of the Mexican corporation by foreigners. The program contemplated that all of the raw material imports would be exported and a bond would be posted to guarantee the return of the temporarily imported materials and machinery.<sup>22</sup>

The provision for one hundred percent foreign ownership was intended to encourage foreign investment, although the Foreign Investment Law, which generally prohibits majority foreign participation in Mexican companies, was not enacted until 1973.<sup>23</sup> Prior to enactment of the 1973 law, foreign investment was restricted under article 27 of the Mexican Constitution.<sup>24</sup> Furthermore, additional restrictions were imposed by the different administrations.<sup>25</sup>

#### B. *The 1972 Decree*

The Maquiladora Program remained largely unchanged until 1972 when new regulations, issued by President Echeverría, made several changes which significantly expanded the program.<sup>26</sup> The 1972 regu-

Border Industrialization Program." REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 26 (1986).

22. 1977 Decree, D.O., October 27.

23. *Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, D.O., March 19, 1973 [*hereinafter* Foreign Investment Law]. The Foreign Investment Law was inspired in part by the philosophy of then president, Luis Echeverría Alvarez, of a new economic order created by the efforts of the "Third World." The legislation was also consistent with foreign investment regimes which other Latin American countries were adopting during that period. JAIME ALVAREZ SOBERANIS, *EL RÉGIMEN JURÍDICO Y LA POLÍTICA EN MATERIA DE INVERSIONES EXTRANJERAS EN MÉXICO* 124-25 (1990). However, Mexico is considered the leader in institutionalizing this idealistic notion of restricting foreign investment.

24. Article 27 designates the sectors reserved exclusively to the state and those reserved to exclusive ownership and control by Mexican nationals in which foreign capital cannot take part. Article 27 also contains the famous Calvo Clause which restricts all foreign investors to the remedies available under local law and prohibits any form of recourse to the respective foreign government. The requirement that all foreigners must obtain a permit from the secretary of foreign relations to form a Mexican company also arises from the Calvo Clause. *See CONST.* art. 27 (Mexico).

25. Post-revolutionary governments followed a "mexicanizante" policy which on a discretionary ad hoc basis sought to impose limitations or requirements on foreign investment in order to develop Mexican-owned and controlled industry.

26. *Reglamento del Párrafo Tercero de Artículo 321 de Código Aduanero de los Estados Unidos Mexicanos para la Industria Maquiladora*, D.O., October 31, 1972.

lation eliminated the program's geographic limitation restricting facilities to specific border areas.<sup>27</sup> Maquiladora facilities could now locate anywhere outside certain restricted urban areas. Also, a new development allowed a pure maquiladora to seek authorization to sell a portion of its production on the domestic market so long as such products substituted imports. This aspect of the 1972 regulations set the stage for subsequent programs of increasing importance permitting domestic sales.<sup>28</sup>

### C. *The 1977 Decree*

New regulations for the maquiladora program were issued in 1977.<sup>29</sup> While the 1977 decree preserved many of the program's characteristics contained in prior versions, the program's application was expanded to use idle capacity in existing plants. Thus, existing plants, which demonstrated that production for export had at least twenty percent national content, could take advantage of the duty-free export regime.<sup>30</sup>

### D. *The 1983 Decree*

The 1983 program was instituted after a period of extreme turmoil in the Mexican economy. The administration of de la Madrid, which began its term on December 1, 1982, undertook the difficult task of getting the economy back on its feet. Of course, the process of reform and restructuring continues today. But it was De La Madrid who began repairing an indebted and damaged economy.

The 1983 decree<sup>31</sup> adopted all of the provisions of the previous de-

27. *Id.* at art. 3.

28. *Id.* at art. 15.

29. 1977 Reglamento del Párrafo Tercero del Artículo 321 del Código Aduanero, D.O., October 27.

30. *Id.* at art. 1, § I, art. 3.

31. Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación, D.O., August 15, 1983. The 1983 decree was issued after the abrogation of the Customs Code on July 1, 1982, (enacted on December 30, 1951), and was the first decree which stood on its own and sought to institutionalize government cooperation to promote the industry while at the same time encouraging investments in high technology and worker training programs and a greater integration of national content. *Id.* at art. 16. A Consultative Intersectorial Committee was formed to facilitate inter-governmental cooperation between the various agencies involved in regulating the industry. *Id.* at art. 34.



cree without significant change.<sup>32</sup> However, in tone, it encouraged a greater integration of the maquiladora in the national economy. This new push signified the growing importance of the industry.<sup>33</sup> Mexico could no longer depend on oil exports as its principal source of foreign currency. The manufacture of exports was the key to economic security and stability.<sup>34</sup>

The 1983 decree eliminated the requirement that Mexican-owned maquiladora projects achieve integration of twenty percent national content in the products manufactured for export.<sup>35</sup> This innovation put national companies on a more equal footing with their foreign counterparts.

## VI. THE CURRENT PROGRAM

Between 1982 and 1989 great strides were made, first to stabilize and then, to open the economy. Mexico's re-stated industrial policy reflected in the preamble to the 1989 decree, to some extent, echoed the objectives set forth twenty-five years earlier.<sup>36</sup> However, the new direction present in the 1983 decree is abundantly evident in the current decree.

To accomplish the clear goal of achieving integration of the maquiladora with national industry, the 1989 decree facilitated the development of a domestic supplier and subcontractor network. Maquiladoras can transfer machinery and equipment to subcontractors who can manufacture a part to be integrated into the finished product by the maquiladora or carry out the production and export on behalf of the maquiladora.<sup>37</sup>

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32. See REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 199 (1986).

33. The industry had grown significantly in conjunction with the peso devaluations. In fact, the real growth in the industry did not take place until the early eighties.

34. The new emphasis was also perhaps a hint of a new outlook on the Maquiladora Program as a known mechanism to encourage badly needed foreign investment while avoiding the conflict of seeking to change the restrictive foreign investment law.

35. 1983 Decree, D.O., August 15, art. 3.

36. The 1989 decree is currently in effect. The underlying objectives of the program continue to be generation of employment and foreign currency. Other goals expressed in the decree are fostering regional development and industrial decentralization, and facilitating the transfer and development of technology. Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación, D.O., December 20, 1989.

37. The transfer of machinery and tools is provided for in the present decree. *Id.* at arts. 25-28. The provision for subcontracting is meant to encourage the development of vertical integration with Mexican companies. The subcontractor or submaquila is engaged for inter-

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The current decree is distinguished by its implementation of a simplified system, under which the program is administered.<sup>38</sup> The new system decentralizes the application process, and regional offices now handle every aspect of the program. The requirement to renew the program every two years was also eliminated. Programs are now indefinite.<sup>39</sup>

A new procedure for "single window" processing was instituted to expedite the multiple steps a company must undertake to obtain authorization to operate as a maquiladora.<sup>40</sup> The single window procedure allows the applicant to obtain approval and registration of the maquiladora program from four separate agencies, including tax and social security registrations, in one step.<sup>41</sup> A simplified customs procedure is also now available.<sup>42</sup>

The value of a decentralized and streamlined procedure to obtain governmental authorizations cannot be overstated. One of the most meaningful measures of the new maquila program is the innovative manner for handling registrations and customs processing.

#### A. *Use of Shelter Contracts*

A "shelter" operation involves the use of an existing facility contracted out to a manufacturer. Either the manufacturer or the shelter facility may have a registered maquiladora program.<sup>43</sup> A manufacturing concern is thus able to contract for production without the need to make a substantial investment in, or assume the responsibility for, a manufacturing facility.<sup>44</sup> Under a shelter contract, the foreign manufacturer will usually provide technology, technical assistance, and ma-

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mediate processing or manufacture of components which are then integrated into the final product by the maquiladora. *Id.* at art. 28.

38. *Id.* at arts. 1. The effort to reduce bureaucracy is consistent with national policy to streamline government to promote and assist industry. Alfredo V. Gaxiola, *Simplified Procedures*, in *IN-BOND INDUSTRY III* 44 (1990).

39. 1989 Decree, D.O., December 20, art. 7.

40. *Id.* at art. 3; Alfredo V. Gaxiola, *Simplified Procedures*, in *IN-BOND INDUSTRY III* 44 (1990).

41. 1989 Decree, D.O., December 20, art. 3, § VIII.

42. *Id.* at art. 4.

43. The 1989 decree specifically provides that the maquiladora will get credit for the exportation of the finished products by a third party. The indirect exporter is not required to have a registered program. *See* 1989 Decree, D.O., December 20, arts. 13, 25. Frequently, an industrial park will offer shelter services under a global registration.

44. *Id.* at art. 13; Stanislaw W. Kowarzyk, *El Establecimiento y La Operación de las Maquiladoras en México*, in *MAQUILADORAS—SU ESTRUCTURA Y OPERACIÓN* 57 (1986).

chinery to the shelter operator.<sup>45</sup>

## VII. DOMESTIC SALES UNDER THE MAQUILA PROGRAM

The "*apertura*" or economic opening in Mexico is evidenced by sweeping legal reforms such as the liberalized interpretation of the foreign investment law<sup>46</sup> and the amendments of other commercial laws, which previously limited foreign investment.<sup>47</sup> Additionally, the GATT provides for across-the-board reduction of trade barriers. The restructuring of the Mexican economy has led to growth and increasing demand.

As a result of the legal opening, maquila companies, which have manufactured exclusively for export, are turning their sights toward the growing Mexican market. The interest in production for the Mexican market opens an entirely new perspective on manufacturing in Mexico. The maquiladora program has its limitations for aggressive companies, though. It is intended to facilitate the existence of companies manufacturing for export, although authorization for limited domestic sales may be sought.<sup>48</sup>

The maquiladora program allows for the sale of a percentage of total sales on the Mexican market.<sup>49</sup> The ability to make domestic sales has always been tied to assured participation by national suppliers in such a way to achieve "true integration and interdependence between the maquiladora and national industry."<sup>50</sup>

A request for domestic sales under the 1972, 1977, and 1983 decrees was granted only if national production was insufficient and no program to foster national manufacturing of the product was in

45. Ricardo Castillo, *Introduction to Basic Aspects of the In-Bond Industry*, in IN-BOND INDUSTRY III 110-11 (1990).

46. Regulations liberalizing Foreign Investment Law were issued in May, 1989. Foreign Investment Law, D.O., May 15, 1989.

47. There are several examples of liberalizing amendments to the commercial laws. One prominent example is the amendment of the intellectual property law in 1991. Ley de Fomento y Protección Industrial, D.O., June 27, 1991.

48. Authorization for sales in the domestic market is provided for under articles 19 to 24 of the Maquiladora Decree. 1989 Decree, D.O., December 20, arts. 19-24.

49. *Id.* The ability to make such sales is not automatic. The decree requires that authorization be requested, and the decision to grant such authorization is discretionary. In practice, such authorization has been generally considered very difficult to obtain. *Id.*

50. See REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 248 (1986) (quoting Miquel Angel Rivera, then former director of SECOFI Office of Machinery and Capital Goods).

place.<sup>51</sup> This condition was discarded in the current decree.<sup>52</sup>

The 1983 decree limited such sales to twenty percent of total production. A maquiladora was permitted to sell more in exceptional cases if the Secretary of Commerce and Industrial Development (SECOFI) determined that such additional sales would not alter the company's character as an exporter.<sup>53</sup>

Under the current decree, a maquiladora may request authorization to sell up to fifty percent of the value of the previous year's export sales in the domestic market, provided certain conditions are met.<sup>54</sup>

The current formula incorporates the earlier imperative that the domestic sales not alter the company's character as an exporter and must not replace the maquiladora's exports. Thus, the fifty percent value must be in addition to the previous year's export sales and represent an increase in total production. The maquiladora previously producing one hundred widgets for export must produce one hundred and fifty to sell fifty on the domestic market. Therefore, the maximum value of possible domestic sales effectively represents one third of total sales.

The condition imposed under the 1983 decree requiring the maquiladora to maintain a balanced foreign currency account was retained under the current decree.<sup>55</sup> The balanced foreign currency account is defined as the positive difference between foreign currency earned from export sales and foreign currency expended for the products authorized for permanent export.<sup>56</sup>

The obligation to maintain a positive balance is intended to provide

51. Decreto Para el Fomento y Operación de la Industria Maquiladora, D.O., August 15, 1983, art. 12.

52. The policy of import substitution promotes the substitution of imports with national production and vice versa, allowing importation of products only to the extent national production will not be displaced.

53. See 1983 Decree, D.O., August 15; see also REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 247 (1986).

54. 1989 Decree, D.O., December 20, art. 20.

55. *Id.* A balanced foreign currency may have been a condition which would have been imposed in the authorization for domestic sales prior to its formal inclusion in the current decree. REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 247 (1986).

56. The foreign currency balance takes into account only those earnings on export sales attributable to value added in Mexico. Thus, the equation would be the amount earned on export (value added) sales during the prior year *minus* amounts expended on foreign parts for sale in the domestic market, i.e., the importation into Mexico. The program requires there to be a positive balance. 1989 Decree, D.O., December 20, art. 20.

a strong incentive for the maquiladora to integrate higher national content.<sup>57</sup> If the maquiladora making domestic sales is importing all the raw materials and parts and only adding value in labor and overhead expense in Mexico, the foreign currency balance could be difficult to achieve.<sup>58</sup>

Another incentive to promote vertical integration for domestic sales links the Mexican tariff rate on the foreign value in the finished product to the percentage of national content present in the manufacturing process.<sup>59</sup> If the maquiladora can demonstrate that a minimum percentage of national content has been achieved, the foreign content in the finished product will be subject to duty at the tariff rate applicable to the parts and components rather than that applicable to the finished product.<sup>60</sup>

Mexico's policy permitting sales on the domestic market under the Maquiladora Program uses the proverbial carrot and stick strategy in its efforts to marry the maquiladora and national industry. The program has developed successfully but must expand and evolve to integrate greater domestic content in order to achieve its original objectives. The transition to production for the national market heralds the decline of the pure maquiladora.

#### VIII. A COMPARISON WITH THE PITEX PROGRAM

The Pitex Program was instituted in response to the success of the maquiladoras. Pitex was designed to extend the same benefits enjoyed by the predominantly foreign-owned maquiladoras to Mexican com-

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57. The abysmal level of integration of Mexican content in maquila processing is considered one of the failures of the program. The average level of Mexican content integration is 1.7 percent. The very nature of the maquiladora process is blamed for the low level of Mexican content integration which has been achieved. "Until now, it has been impossible to increase domestic content, largely because purchasing decisions are centered mainly in parent companies abroad. In addition, there are significant problems of quality, volume, price, and timely delivery among domestic producers." Fernando Sanchez Ugarte, *The Program of Domestic Suppliers for the Maquiladora Industry*, in SEGUMEX: MAQUILADORA INDUSTRY ANNUAL REVIEW 9 (1990).

58. This policy reflects the current emphasis on attracting foreign reserves to cover the current account or trade balance deficit.

59. 1989 Decree, D.O., December 20, art. 22.

60. The national content requirement is not as stringent as the flat twenty percent imposed in the 1972 decree. The lower tariff rate is applicable if two percent of the parts and components are of Mexican origin for the first year, three percent for the second year, and four percent for the third and subsequent years.

panies.<sup>61</sup> Under Pitex, a company which manufactures for sale in the Mexican market could benefit from a duty-free regime for production designated for export.<sup>62</sup>

The Pitex Program differs from the maquiladora program in that a Pitex company may sell substantially all of its production on the domestic market. The company must export a minimum of five hundred thousand dollars or at least ten percent of total sales.<sup>63</sup> Therefore, the company may sell up to ninety percent of its production on the domestic market and still utilize the duty-free regime for export production.

Once a Pitex project has been approved, there is no further authorization required to carry out domestic sales. This is logical because the decree presumes that the Pitex company is already selling substantially all of its production in the domestic market. The absence of the requirement for additional authorization under the Pitex Program distinguishes it significantly from the Maquiladora Program.<sup>64</sup>

Because of the keen advantage of the Pitex Program with respect to domestic sales, the Pitex Program may become the desired structure for a foreign company which expects to export a portion of its production, but which also plans to sell on the domestic market. Thus, a company may take advantage of the duty-free regime for exports while producing for the Mexican market.<sup>65</sup>

61. The preamble to the decree sets forth the policy objectives sought by its implementation: to encourage industry to become internationally competitive and to facilitate exports with a duty-free program. Decreto Que Establece Programas de Importación Temporal Para Producir Artículos de Exportación, D.O., May 3, 1990 [*hereinafter* Pitex Decree].

62. *Id.*

63. *Id.* at art. 6, § I. The minimum export obligation enables a company to import raw materials, parts and components, packaging materials, and containers as well as fuels and other materials consumed in the production process under the duty-free regime. *Id.* at art. 5, §§ I-III, art. 6. If the company exceeds the minimum export requirements and exports at least thirty percent of total production, machinery and equipment intended for use in the productive process may be imported temporarily under the duty-free regime. *Id.* at art. 5, §§ IV-V, art. 6. Under the Maquiladora Program, raw materials, parts and components as well as machinery and equipment may be imported temporarily under the duty-free regime.

64. The requisites for domestic sales under the Maquiladora Program will be examined in detail in the following section.

65. There are very few companies currently operating under a Pitex Program. The Maquiladora Program is specifically exempt from the two percent minimum tax on assets which may explain the reluctance of companies to convert to the Pitex Program.

### IX. THE EFFECT OF THE FOREIGN INVESTMENT LAW ON EXPORT MANUFACTURING COMPANIES

When the regulations to the foreign investment law were promulgated in May 1989, the implementation of the Mexican foreign investment regime was radically liberalized.<sup>66</sup> Prior to the promulgation of the regulations, the Foreign Investment Law limited foreign participation in the Mexican economy to forty-nine percent except for those cases which the Foreign Investment Commission, in its discretion, gave approval.<sup>67</sup>

The impact of the law and regulations on Mexican foreign investment should be fully understood to appreciate the development and utility of the Maquiladora and Pitex Programs. Prior to the promulgation of the regulations in 1989, foreign participation in a Mexican company engaged in unrestricted activities was limited to forty-nine percent unless authorization for ownership of a greater interest was specifically granted by the Foreign Investment Commission.<sup>68</sup>

The Maquiladora Program, which had expressly permitted one hundred percent foreign ownership since its inception, was exempt from the obligation to obtain prior authorization for a foreign majority participation.<sup>69</sup> This opening under the Maquiladora Program

66. The foreign investment law was enacted in 1973. Foreign Investment Law, D.O., March 9, 1973.

67. Article 11 of the foreign investment law created a commission composed of seven cabinet members. *Id.* at art. 11. The commission is empowered to coordinate investment by foreigners and Mexican nationals. In addition to its authority to consider specific applications for foreign investment in Mexico, the commission issues general resolutions which are of an interpretive nature, generally, but on occasion establishes specific rules similar to regulations. JORGE BARRERA GRAF, *LA REGULACIÓN JURÍDICA DE LAS INVERSIONES EXTRANJERAS EN MÉXICO* 155-75 (1981). Since the 1973 enactment of the foreign investment laws, no formal regulations were issued prior to 1989.

68. Commercial activities related to petroleum, basic petrochemicals, mining, electric or nuclear energy generation, railroad, and communications were reserved to the state under Article Four of the Law. Commercial activities related to radio, television, land, air, and marine transportation, lumber, and natural gas distribution were reserved to Mexican nationals. In other industries, including most notably, the automobile parts industry, foreign participation was permitted up to forty percent. Otherwise, the general rule was forty-nine/fifty-one. Foreign Investment Law, D.O., March 9, 1973, art. 5.

69. The first two general resolutions issued in the second session of the commission on June 7, 1973, provided for one hundred percent foreign capital in companies operating under the maquiladora regime without prior authorization from the commission. The provision was modified and subsequently incorporated in article 6 of the regulations. The current General Resolution 2, Rule 1, clarifies that the exemption from the foreign investment regime includes Pitex and other companies operating under a special export regime as well as the maquiladora.

represented a valuable alternative for foreign investors who wished to avoid the application for authorization from the commission, yet maintain a majority interest in a Mexican company.<sup>70</sup>

The 1989 regulations turned the foreign investment law on its head by opening investment in unrestricted activities to one hundred percent foreign participation and eliminating the Foreign Investment Commission authorization requirement. The liberalized regime imposed certain obligations on the investor under article 5 of the regulations.<sup>71</sup>

The legal opening accorded by the foreign investment regulations mitigated the clear-cut advantage enjoyed by companies operating under the Maquiladora Program. Although the pure maquiladora<sup>72</sup> remains exempt from the obligations imposed on article 5 companies, maquiladora companies selling in the domestic market are required to maintain a positive foreign currency balance with respect to the value of production sold on the Mexican market.<sup>73</sup>

Interestingly, there is no such requirement for Pitex companies. A company operating under a Pitex decree may export a minimum of five hundred thousand dollars or ten percent of its production and avoid all the article 5 obligations, including that of the balanced foreign currency flow. This exemption represents a valuable advantage for a foreign-owned company importing parts and components for export production, but selling the majority of its output on the domestic market.

Resolución General Numero 2, D.O., June 21, 1989. Any reference to the Maquiladora Program in this section should be taken to mean the Pitex Program also.

70. Obviously, the maquiladora option was only viable for companies who were engaged in manufacturing for export and otherwise qualified for program approval.

71. Foreign Investment Law, D.O., June 7, 1973, art. 5. Article 5 of the foreign investment regulations contains the following conditions:

- (1) Invest in fixed assets during the pre-operative period; such investment cannot exceed approximately eighty-three million U.S. dollars.
- (2) Obtain such capital financing from sources outside of Mexico.
- (3) Pay in corporate capital in an amount no less than twenty percent of the investment in fixed assets.
- (4) Locate industrial establishments outside Mexico City, Monterrey, or Guadalajara.
- (5) Maintain an accumulated foreign currency balance during the first three years of operation.
- (6) Generate employment and adhere to the environmental legislation.

72. The pure maquiladora manufactures exclusively for export.

73. Refer back to section VI, Domestic Sales, for discussion of the positive foreign currency balance.



If NAFTA brings about a liberalization or abrogation of the current foreign investment regime, and in particular, the article 5 requirements, the comparative benefit of this aspect of the Maquiladora/Pitex Programs would be diminished just as an across-the-board phase-out of tariffs under NAFTA would outmode the benefit of the current duty-free regime.

#### X. TAX INCENTIVES

The minimum two percent tax on assets was instituted in 1989 to assure that commercial establishments paid, at least, a minimum tax on business activities. The tax is payable only to the extent that it exceeds the regular income tax.<sup>74</sup>

The inventory of the maquiladora is specifically excluded from asset tax coverage because the assets of the maquiladora are considered only temporarily imported.<sup>75</sup> Because the great majority of maquiladoras are cost centers with practically no profit, the exemption from the asset tax effectively gives the companies tax-free status. The institution of the asset tax and the corresponding exemption heralds the first formal tax break accorded under the program since its inception.<sup>76</sup>

The inventory of a Pitex project is not given the same exemption from the asset tax despite the fact that machinery or equipment used by the Pitex Program may also be only temporarily imported.<sup>77</sup> The disparate tax treatment may provide an incentive for plants manufacturing principally for export to continue to operate under a Maquiladora Program.

#### XI. EXCHANGE CONTROL

In an effort to encourage maquiladora and export operations, the government completely eliminated the exchange control law on November 10, 1991.<sup>78</sup> Under the exchange control legislation, a maqui-

74. See Resolución Miscelanea, Impuesto al Activo, D.O., Mar. 15, 1991.

75. This is not consistent with other applications of the asset tax which do not distinguish between assets in Mexico or abroad. A Mexican legal entity or permanent establishment is obligated to include the value of all assets attributable to its Mexican establishment to calculate the tax on assets. *Id.*

76. See REGINALD L. DAVIS, *INDUSTRIA MAQUILADORA Y SUBSIDIARIAS DE CO-INVERSIÓN* 62 (1986).

77. See Resolución Miscelanea, Impuesto al Activo, D.O., March 15, 1991.

78. Exchange control had been strictly enacted in April 1982 and later significantly liber-

ladora was required to convert into pesos, all foreign currency transferred to maquila operations to cover necessary expenses, i.e., payroll and rental, etc., at the controlled rate of exchange. Although the difference between the controlled and free rates of exchange has become nominal since the economy stabilized, the cost of buying pesos at the controlled rate, accumulated over time, came to represent a meaningful operational expense for maquiladoras. Plants operating with Pitex projects were also required to exchange all export earnings at the controlled rate.<sup>79</sup>

The elimination of exchange control is a further indication that the Mexican government is, first of all, confident in the foreign reserves it has accumulated, and second, enthusiastic about providing incentives to strengthen the in-bond and export industries.

## XII. THE IMPACT OF A NORTH AMERICAN FREE TRADE AGREEMENT

The principal object of a free trade agreement is the elimination of tariffs. Tariff elimination under NAFTA is expected to occur in stages. Tariffs on a designated group of goods will be eliminated immediately, and the remaining tariffs will be phased out gradually over a period of years.

Since the cornerstone of the maquiladora industry is the duty exemption, the obvious impact of a free trade agreement, i.e., the elimination of tariffs, would supercede the program as far as bilateral trade between Mexico and the United States is concerned.<sup>80</sup>

Industry observers uniformly consider that the likely impact of NAFTA will be to expand the industry as more companies elect to move productive facilities to Mexico.<sup>81</sup> In fact, Mexican commentators have frequently expressed concern that under NAFTA, Mexico will become one giant maquiladora, and these commentators lament

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alized in a presidential decree issued on December 13, 1982, which remained intact until the November 1991 decree. The early exchange control measures were blamed in part for the debilitating capital flight which began in early 1982. Decreto Por El Que Se Abroga El Decreto de Control De Cambios, D.O., November 10, 1991.

79. *Id.*

80. Around ninety-five percent of the raw materials, parts, and components imported under the Maquiladora Program originated in the United States. Telephone Interview with Fred Quintana, National Maquiladora Association (December 16, 1991).

81. Telephone Interview with Fred Quintana, National Maquiladora Association (December 16, 1991).

that the vertical integration sought from the program's inception will never be achieved.<sup>82</sup>

Even given the ease with which the industry is expected to adapt to a free trade regime, concern is mounting that the favored treatment currently enjoyed by the industry will be eliminated without carving out an exception to extend its coverage until the NAFTA provisions are entirely phased-in.

Further, maquila manufacturers sourcing outside of the United States, in Asia for example, are lobbying for permissive rules of origin similar to the rule now applicable under the General System of Preferences (GSP).<sup>83</sup>

Advancement in the NAFTA negotiations has brought about heightened scrutiny of the industry, focused in particular on the lack of infrastructure and inadequate enforcement of environmental regulations on both sides of the border. This public discussion may well play a part in restructuring the industry.

### XIII. SPECIFIC EFFECTS ON THE MAQUILADORA INDUSTRY

#### A. *Timing the Tariff Reduction*

Under the U.S./Canada Free Trade Agreement, the first group of tariffs was eliminated immediately, a second group was designated to be reduced by twenty percent annually over a five-year period, and the final group was scheduled to be reduced by ten percent annually over a ten-year period.<sup>84</sup>

Goods which are scheduled for the immediate elimination of tariffs are those considered least sensitive to competition from imports. Conversely, industries most sensitive to import competition are protected with a gradual tariff phase-out.

The treatment under the U.S./Canada agreement of the various sectors is a reasonable guideline for judging which goods will be subject to long-term or intermediate-term duty phase-out under NAFTA. Tariffs on automotive parts, vehicles, appliances, textiles, and apparel are subject to phase-out over a ten year period; tariffs on furniture are

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82. See generally, James P. Womack, *A Positive Solution: Free Trade in the North American Motor Vehicle Sector*, BUSINESS MEXICO, November 1991.

83. Thirty-five percent added value.

84. United States—Canada Free Trade Agreement, art. 401, January 2, 1988.

scheduled to be reduced over a five year period.<sup>85</sup>

The same industries which were singled out as import sensitive in the United States under the U.S./Canada agreement are precisely those which are most highly concentrated in the maquiladora sector. Automotive parts and electronics constitute about one half of the value added in the maquiladora industry.<sup>86</sup> Textiles and furniture follow in value added as well as in the value of raw materials, parts, and components.

Using the U.S./Canada agreement as a guideline, the most important sectors in the maquiladora industries are likely to be those most likely to be subject to the gradual phase-out of duties.<sup>87</sup> Therefore, it is quite reasonable to expect the Maquiladora and Pitex Programs to remain important for several years to come.<sup>88</sup>

Further, Mexico is pushing for a much longer phase-out period, perhaps up to twenty years, for sensitive industries. Although it is unlikely that manufactured goods will fall into this category, reduction of tariffs for Mexican goods under NAFTA will not mirror those of the United States and Canada, especially given the relative advanced state of their trade relationship.<sup>89</sup> Additionally, in the unlikely event that NAFTA accords Mexico asymmetrical treatment whereby

85. *Id.*

86. BANCO DE MÉXICO, *THE MEXICAN ECONOMY 1991* at 138 (1990); see also SECOFI, *Dirección General de la Industria Mediana y Pequeña y de Desarrollo Regional* (Statistics on Maquiladora Companies, January-May 1991).

87. BANCO DE MÉXICO, *THE MEXICAN ECONOMY 1991* at 138 (1990); see also SECOFI, *Dirección General de la Industria Mediana y Pequeña y de Desarrollo Regional* (Statistics on Maquiladora Companies, January-May 1991).

88. Members of the business advisory board to the Mexican negotiating team (COECE) as well as government sources have discussed the idea of an asymmetrical agreement according Mexico more protection over a longer period. Under an asymmetrical scheme, the United States and Canadian tariffs would be phased-out faster than Mexico's. It is also possible that such asymmetrical treatment would allow for the continuation of the in-bond industry as is.

It has been reported that Mexico has proposed that twenty-five percent of its tariffs be eliminated immediately, ten percent over an intermediate period, and sixty-five over a longer period. The exact length of the periods for phase-out has not yet been agreed to. In public statements, negotiators for the United States have indicated that an asymmetrical agreement is unlikely, but that more lengthy phase-out periods would be possible.

89. Around seventy-five percent of all tariffs on goods traded between Canada and the United States had been eliminated even before entering into the agreement. Furthermore, Canada and the United States have elected, in response to prodding from the private sector, to accelerate the tariff reductions on more than four hundred items under the U.S./Canada agreement. Kristin A. Moody, *Accelerated Tariff Reduction: One of the CFTA's Great Successes*, *BUSINESS AMERICA*, April 8, 1991, at 16.

Mexican tariffs are not reduced as rapidly as those of the other parties, the maquiladora program will remain very important for much longer, until the tariffs are completely phased-out.

#### B. *Elimination of the Maquiladora Program Under NAFTA*

Although it is commonly believed that the maquiladora program in its current form will eventually die a natural death as it is superseded by the provisions of NAFTA, there is a dispute arising over how and when NAFTA will provide for the mandatory elimination of the program.

Under the U.S./Canada Free Trade Agreement, duty drawbacks on bilateral trade will be eliminated by January 1, 1994.<sup>90</sup> Elimination of bilateral duty drawbacks does not preclude the institution of such a program for export to a third country. Further, duty drawbacks for third country transshipment to the other country will be permitted to continue.<sup>91</sup> Once the duty drawback programs are eliminated, the rules of origin will be applied to determine whether goods exported to one of the countries within the free trade area will be given preferential treatment.<sup>92</sup> If goods exported to Canada or the United States do not meet the rules of origin, the most-favored-nation tariff will be applied.

As the great majority of maquiladora plants obtain raw materials, parts, and components from the United States,<sup>93</sup> the NAFTA rules of

90. United States-Canada Free Trade Agreement, art. 404, January 2, 1988.

91. United States-Canada Free Trade Agreement, art. 404, para. 4, January 2, 1988. Special exception was also made for imported citrus products and for imported fabrics made into apparel that "is subject to the most-favored-nation tariff when exported to the territory of the other party." *Id.* at art. 404, para. 8.

92. The rules of origin dictate whether a product can be classified as originating in either of the parties to the free trade agreement and thus, be accorded preferential tariff treatment. Such rules generally require that at least a certain percentage of product input have originated in the territory.

Under the U.S./Canada agreement, there is not a single rule for determining origin. An extensive system linked to a change of tariff classification under the harmonized system is applied to the distinct goods. In addition, certain goods are subject to a "value standard" under which origin is determined if at least fifty percent of the "direct cost" of materials originate in the territory of either county. United States-Canada Free Trade Agreement, ch. 3. Rules of origin for NAFTA are a much discussed item and represent perhaps the most complex aspect of the negotiation. The United States and Canada are seeking very restrictive rules while Mexico is advocating for a "value standard" equivalent to the thirty-five percent applied under the Generalized System of Preferences. 19 U.S.C. § 2461 *et seq.* (includes the Generalized System of Preferences).

93. Interview with Gloria Montesinos, Analyst in the maquiladora office (Oct. 24, 1991).

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origin will have no effect on the operating procedures for maquiladora plants.<sup>94</sup>

Another current advantage under the maquiladora program is the distinct treatment of textiles and garments, which, when exported to the United States, are normally subject to a system of quantitative quotas.<sup>95</sup> Textiles and garments exported to the United States by a maquiladora company are now exempt from the quota restrictions.<sup>96</sup>

Under the U.S./Canada Free Trade Agreement, a special provision was made to accord preferential treatment to limited quantities of apparel made from offshore fabrics. Therefore, the treatment currently given textiles and garments will likely continue under a similar provision under NAFTA.

Given the favor with which the Maquiladora Program is viewed by both the Mexican and American governments, it is reasonable to ex-

At least seventy-five percent of the maquiladora industry is owned by United States-based companies. Most of the companies owned by non-U.S. companies have suppliers in the United States. An insignificant amount of maquiladora raw materials comes from third countries.

94. The U.S. automobile industry has transferred almost all of its harness manufacturing and seat covers. However, this point is hotly contested by representatives of the electronics industry for which most of the raw material originates in Asia. An example of current practices is the following: Materials are shipped to a central port in the United States. 1) Duty is paid on the part which remains in the United States. The remainder is shipped to Mexico under bond (no duty paid). 2) The materials are imported temporarily into Mexico under the Maquiladora Program and are transformed there into finished goods. 3) The finished goods are reexported to the United States where duty is paid on the non-U.S. value for those goods which will be consumed in the United States. 4) A certain portion is shipped through the United States under bond to a third country where duty will be paid.

Under NAFTA, the rules of origin may result in these goods being subject to most-favored-nation duty two or three times within the North American free trade area. For instance, if there is no exception for transshipment under NAFTA, duty will be paid at step one, on the portion shipped to México. Duty would be imposed again, at step three, when the goods are shipped to the United States. If the goods are reexported from the United States to Canada, the same goods could be dutiable again. Conference with Thomas Stroh, General Electric de México, S.A. de C.V.

95. Textiles and apparel exported to the United States from Mexico are covered under the Bilateral Textile Agreement entered into on February 13, 1988. The special regime accords special quotas for Mexican products assembled from U.S.-formed and cut fabric. To qualify for the special regime, the products must be eligible for entry to the United States under the harmonized system item number 9802.00.8010 (Maquiladora).

96. Before the current preferential system was implemented, Mexican textile and apparel manufacturers opposed the use of maquiladora plants for manufacture of textiles and apparel because the plants used up scarce quota allocations. The maquilas imported cut cloth to assemble garments or yarn to weave textiles from the United States, which was imposing the quota. As the sewing and weaving added very little value, it was wasteful to allow the import quota to be used up by what was largely a U.S. manufacturing operation.

pect a phase-out period which will match the period for corresponding tariff reductions.<sup>97</sup> However, areas of the industry which, because of dependence on third-country parts and components, will be unable to meet a stringent rule of origin should begin developing a supply base in Mexico or opt to pay the most-favored-nation's tariff.<sup>98</sup>

The already low tariff structure accorded Mexico by the United States is not considered an insurmountable obstacle when other countervailing factors, such as proximity to market and cheap labor exist.<sup>99</sup> But, it has also been argued that absent low tariffs, the advantage gained from cheap labor in Mexico would have been nullified.<sup>100</sup>

#### XIV. CONCLUSION

It is hoped that the industry transformed under NAFTA will depend less on materials sourced outside of Mexico. As preferential tariff treatment is extended to Mexican materials,<sup>101</sup> there will be less incentive to import duty-free components from the United States.

Presumably, under these conditions, manufacturers will elect to source in Mexico because of proximity to the manufacturing process.

97. FTA Newsmaker, *Interview: Herminio Blanco*, FREE TRADE ADVISORY, September 10, 1991, at 5.

The maquila has been a very, very successful industry for Mexico and for the U.S. in terms of jobs. . . . So you can imagine what position the Mexican government has taken—we will not put those half million jobs at risk. We must be very careful to make sure that the maquila does not lose its great capacity to make Mexico and the U.S. competitive. . . .

It will be an issue that we'll discuss, but we will reach some agreement that will keep the maquila in some form as the useful instrument it has proven for the U.S. and for Mexico.

*Id.*

98. It is highly unlikely that the United States Congress will approve NAFTA without a stringent rule of origin or a system of rules of origin, such as exists under the U.S./Canada agreement. The electronics industry is arguing in favor of preserving the GSP program for Mexico with GSP imports being held to the same thirty-five percent rule of origin.

But, Benito Bucay of Grupo DESC commented that the rules of origin would not be a major impediment to third country auto manufacturers when the tariff on auto parts and vehicles was only three percent. Remarks given at a conference sponsored by El Colegio de México, El Area de Libre Comercio de America del Norte: El Proceso de Negociacion, May 27, 1991; see generally MICHAEL HART, A NORTH AMERICAN FREE TRADE AGREEMENT (1990) (eighty-two percent of Mexico's exports to Canada in 1989 were duty-free).

99. Mexico has been granted most-favored-nation status and in many cases benefits from the reduced tariffs accorded under the GSP. 19 U.S.C. §§ 2102-2495 (1974).

100. See Sydney Weintraub, *Industrial Integration Policy: U.S. Perspective*, in U.S.-MEXICAN INDUSTRIAL INTEGRATION, THE ROAD TO FREE TRADE 54 (1991).

101. Mexican materials integrated into finished products for re-export under the Maquiladora Program are currently calculated as dutiable value-added.

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Of course, the decision to use parts and components of Mexican origin is conditioned upon the ability of Mexican firms to produce competitive products.

Though the maquiladora industry has been much maligned for its short-comings, it serves as an important example to gauge how the economies will adapt and integrate under the optimum trade conditions hoped for with NAFTA. Greater direct foreign investment and growth of the Mexican economy would equalize the distribution of production throughout North America, but Mexico's strength for many years to come will continue to be production for export.