

# United States - Mexico Law Journal

Volume 6 *Presentations at the Sixth Annual Conference*


Article 13

3-1-1998

## How to Use Maquiladoras in Mexico Today

Carlos Angulo Parra

Follow this and additional works at: <https://digitalrepository.unm.edu/usmexlj>

 Part of the [International Law Commons](#), [International Trade Law Commons](#), and the [Jurisprudence Commons](#)

### Recommended Citation

Carlos A. Parra, *How to Use Maquiladoras in Mexico Today*, 6 U.S.-Mex. L.J. 111 (1998).  
Available at: <https://digitalrepository.unm.edu/usmexlj/vol6/iss1/13>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in United States - Mexico Law Journal by an authorized editor of UNM Digital Repository. For more information, please contact [disc@unm.edu](mailto:disc@unm.edu).

# HOW TO USE MAQUILADORAS IN MEXICO TODAY

LIC. CARLOS ANGULO PARRA\*

The word "Maquila" originally meant "wheat" in very old Spain. Then the millers of the wheat started to charge for milling part of the wheat that was milled. The word "Maquiladora" came to mean the part of the wheat that the maquilero, the person that milled the wheat, took as consideration. As time passed, the words "maquila" and "maquiladora" acquired an industrial sense, the meaning of the overall industrial process.

From a legal standpoint today, a Maquiladora is not wheat, is not consideration because of milling of wheat; and is not anything related to a partial or total production process. The Maquiladora is a Mexican customs law regime regulated in detail through a customs decree.<sup>1</sup>

The decree permits a Mexican entity or an individual to import into Mexico raw material or equipment on a temporary basis to carry out industrial activities or services.

Although the Maquiladora regime is similar to a foreign trade zone, there are important differences. When you bring some item or merchandise into a United States foreign trade zone, the item does not enter the customs territory of the United States. On the other hand, when a Maquiladora imports an item, the item does enter into the customs territory of Mexico on a temporary basis. It usually must be exported from Mexico, not necessarily into the United States. It can go any place in the world.

In some circumstances, an entity may be entitled to the benefits of the Maquiladora regime although it does not export anything. That is, if the Mexican entity renders a service to another export industry, it may import whatever items it needs in order to provide that service, and thus be within the Maquiladora regime. To give an example, a company that maintains the machinery and equipment for another maquiladora or certain other exporting companies like a PITEX Company would be able to import whatever tools, machinery, and equipment are necessary to maintain the equipment of the exporting industry.<sup>2</sup> The importing industry itself would not be exporting anything.

Also, it is possible to imagine a lawyer who renders legal services exclusively to Maquiladoras and export companies. That lawyer would be able to import all his office equipment, switchboards, telecommunications, and faxes on a temporary basis, because the equipment is used in providing a service to Maquiladoras.

The Maquiladora really is a customs regime that permits free trade between Mexico and any other country. It is not dependent on the existence of a free trade agreement with those other countries. A free trade agreement is an agreement between two or more nations with the main objective of eliminating non-tariff barriers and tariff barriers in the trade between those particular countries.

A Maquiladora doesn't pay any duties. Temporary importations into Mexico are duty-free, and are free from VAT (Value Added Tax). In other words, a Maquiladora

---

\* Baker & McKenzie, Ciudad Juarez, Mexico

1. Maquiladora Decree, D.O., 22 Dec. 1989, as amended, D.O., 24 Dec. 1993 and D.O., 23 Oct. 1996.

2. PITEX - Programas de Importación Temporal para Producir Artículos de Exportación. A program by which a company may temporarily import free of duties, raw materials, parts, components, machinery and equipment, for the production of export products, subject to certain requirements.

permits freer trade, less restricted trade even than the North American Free Trade Agreement (NAFTA). Under NAFTA, a Mexican entity may import goods at a reduced tariff rate, but it must pay VAT. The entity subject to the Maquiladora regime does not. In a sense, a Maquiladora goes beyond NAFTA because it does not pay any Value Added Taxes as does an entity outside the Maquiladora regime importing goods from the United States.

Today, a Maquiladora can import from Taiwan, Singapore, Malaysia, or anywhere else any component that is needed for manufacturing. For example, a company manufacturing televisions in Mexico under the Maquiladora regime would not pay any import duties or Value Added Tax upon those components coming from the Far East. It could then manufacture a television set in Mexico. If the entity utilized sufficient goods originating in the U.S., Mexico or Canada to comply with the NAFTA rules of origin, the television would be a NAFTA-origin television set. The manufacturer would be able to export the television set out of Mexico to Canada or the United States and that television set would be eligible for whatever are the applicable NAFTA preferences. If that NAFTA preference applied a zero tariff, there would be no duties imposed all the way from Malaysia to Chicago.

After the year 2001, this will change. There are a series of NAFTA provisions that provide for changes. Using the same example, assume that the television set is exported to a NAFTA country. The duties will be applied to the non-NAFTA components that were not imposed upon entering Mexico. They will be collected by the Mexican government upon export to a NAFTA country. Because the manufacture of this television set would have complied with the NAFTA rules of origin, the Mexican entity would not pay any U.S. duty upon export from Mexico to the United States. Thus, it would only have paid Mexican import duties on the non-NAFTA components.

There is a significant difference if the manufacture of the final product in question did not meet the rules of origin. In that case, the Mexican entity would pay the Mexican duty for the non-NAFTA components, export the item into Canada or the United States, and then would have to pay the applicable import duty because the television set is not a NAFTA origin item. Then the lower duty may be deducted from the higher duty. Normally, the lower duty would be applied by Canada or the United States. The company then would go back with its tax receipt to Mexico, and would get a rebate or refund on the duty already paid to the government of Mexico.

This is the overall concept. The Mexican government and Canada and the U.S. may further regulate these matters to simplify the procedures. For instance, by declaring the import and putting up a bond for payment of the duty later, or by agreeing to pay the applicable duty after a stated period of time (perhaps 60 days) the Mexican entity could comply with the applicable regulations.

An understanding of the Maquiladora in Mexico requires some understanding of the political background. The Secretaría del Comercio y Fomento Industrial (SECOFI) is the Department of Commerce and Industrial Development of Mexico. This Secretariat organizes and controls foreign trade in Mexico, and thus controls export programs of Maquiladoras or PITEX programs.

Before the PITEX regime even existed, there was an office of SECOFI that controlled the issuance of import permits. This office used to be known as the Controller of Foreign Trade and was very powerful, one of the most powerful of SECOFI. Why? Because it had the power of life and death over an industry in

Mexico. If a business could not import its raw materials, machinery and equipment, it would not be able to survive.

In 1996, President de la Madrid made the move for Mexico to join the General Agreement on Tariffs and Trade (GATT), now the World Trade Organization. This was one of the first steps in modifying the old protectionist systems of Mexican import licenses. Thus, this important and powerful department from one day to the other was losing practically all its power and significance. Maquiladoras existed but nobody really had considered them important. Nevertheless, they began to generate exports by selling manufactured goods of non-petroleum origin from Mexico. The people from the Office of the Controller of Foreign Trade invented the PITEEX program. Thus SECOFI designed the PITEEX.

The PITEEX is no more nor less than a caricature of a Maquiladora program, invented by bureaucrats that had one thing in their mind, "No, no, no, no. I will not issue an import license." It was a complicated program, and to some extent generated for the benefit of bureaucrats. The problem here is that they promoted this program focusing on Mexican industries. In order to be a Maquiladora with no problems whatsoever, they had to be a PITEEX. And with the ignorance that existed in Mexico, and still exists in Mexico in many respects related to the Maquiladora industry, the government generated this big PITEEX program.

The PITEEX program had one significant advantage over Maquiladoras. This special characteristic of the PITEEX program vis-a-vis Maquiladoras was within the world of the Mexican automotive industry. This is the only industry that still remains, even under NAFTA, subject to protectionist provisions and a protectionist regime. The PITEEX program companies had access to the automotive protectionist program with a preferential basis over Maquiladoras. Therefore, several Maquiladoras of the automotive industry, like those affiliated with United Technologies and General Motors, had to convert themselves into PITEEX. Why? Because that was the only way they would be able to participate on a competitive basis within the protectionist environment of the automotive industry.

Nonetheless, during NAFTA negotiations, the U.S. negotiators, with a little bit of back-up of good lawyers that were involved in these types of issues, objected that Maquiladoras did not share the type of preferences that PITEEX programs had. This appeared to be discriminatory, taking into consideration that most foreign investments that were established in Mexico for export purposes were Maquiladoras. Therefore, what happened was that Maquiladoras and PITEEX, with respect to the automotive decree, were homogenized. This made Maquiladoras even closer to PITEEX.

All of the changes that have occurred within the PITEEX program have made the PITEEX program almost identical to the Maquiladora program. Nevertheless, it is still more expensive to work under a PITEEX program than under a Maquiladora program. This is basically because customs brokers charge more to handle PITEEX programs than Maquiladora importations. They do this because the PITEEX program is somewhat more complicated.

This leads to one very, very important conclusion. If a client wants to establish a business manufacturing in Mexico and the main objective is exportation, the best bet by far is to establish a Maquiladora entity in Mexico. The benefits of a Maquiladora far outweigh those of the PITEEX.

The Maquiladora regime has had some drawbacks. There are two articles in the newly amended Maquiladora decree that are completely outrageous. These sections of the new Maquiladora decree say that if any Mexican non-Maquiladora industry objects before SECOFI that they are affected adversely by the performance of a Maquiladora industry, that program may be canceled. If a company is in the process of application to be subject to the Maquiladora regime, the program may be refused. However, the good news is that this may disappear. The National Council on Maquiladoras was one of the organizations that objected very severely to this proposed provision. The Council proposed a full repeal of these two sections. Although they are completely legal under NAFTA, they are unconstitutional and are in violation of the Mexican laws regulating unfair competition and monopolies.

The conclusion would be that if your clients are exporting companies, they should operate through the Maquiladora regime. Your clients who want to work in the Mexican market also should be careful about what business structures they use.

Finally, Maquiladoras have come of age in many respects in Mexico, and are now subject to the full impact of the Mexican income tax law, including transfer pricing. The transfer pricing world for Maquiladoras is basically the same as in the United States. In practice, they have provisions like safe harbors which are a bit removed from the concept of transfer pricing. There will be a transition period so that such provisions may disappear within one or two years.

### QUESTIONS & COMMENTS

**HURTADO:** I understand that another advantage for PITEX is that you can have a PITEX program in your company without being a Maquiladora, while if you are a Maquiladora, you have to comply with the Maquiladora requirements as a company, as a whole. Is it possible to have a regular company that for certain specific products has a PITEX program, without being a Maquiladora?

**PARRA:** To clarify a little bit the concepts, you can have a Mexican entity, a Mexican corporation without any type of customs regime. They also can be partially subject to a customs regime, being a PITEX or a Maquiladora. It is not accurate to say that a company, once it becomes a Maquiladora is a full Maquiladora. It is a Maquiladora to the degree that it uses the Maquiladora advantages to import items and it is not a Maquiladora to the degree that it does not use those provisions for importations.

So you have to visualize the concept. Let's say that this room is an entity, and we decide to convert the whole room into a Maquiladora. That does not mean that automatically everything is Maquiladora. If we do not import anything for ten years, although we may be a Maquiladora theoretically, we are not using the Maquiladora regime. But let's say I import this microphone, then this microphone is subject to the Maquiladora decree; this desk, if imported, is subject to the Maquiladora decree. The advantage that the Maquiladoras have over PITEX is that to maintain a PITEX program, you have to have a minimum amount of exportations. A Maquiladora does not require that minimum. You can export one peso a year if you wish and still maintain your Maquiladora status.

**GIL:** What is going to happen after the year 2001? Will Maquiladora companies be considered like other normal companies, or do you think that the government is still going to support certain types of special programs for them?

PARRA: A Maquiladora is not a special company; a Maquiladora does not have any distinction from any other type of company, at all. When the former foreign investment law was in place, there was a huge difference. Just by the fact that you were a Maquiladora, you were permitted to do a bunch of things without the intervention of the foreign investment authorities. But on the contrary, if you were performing something that went one millimeter out of the Maquiladora structure (and that is part of the original question), then that was prohibited because you were in violation of your Maquiladora status, vis-a-vis foreign investment provisions. That is no longer true.

After the year 2001, what will happen to the Maquiladora is that the importation of items of non-NAFTA origin that are exported into a NAFTA country will have to pay duties going out. That is the only effect.

With respect to imports and exports, on the other hand, Maquiladoras will be permitted to sell up to 100% of their production in the Mexican market without any performance requirement. What does this mean? It is not a big issue in reality. Let me give you an example. If you are importing into Mexico under the Maquiladora regime in, let's say, the year 2002, something that you are going to use for exportation, and then you decide that you do not have any market any more to export that product, you can sell into the Mexican market provided that you pay the import duties, period. Today, it is a little bit more complicated because there is some degree of performance requirement. You would be able to sell into Mexico up to 70% of the value of your exportations of the previous year. That is the performance requirement. That performance requirement will disappear in the year 2001. That is the only magic that will occur.

MITCHELL: Could you just say something about the type of monitoring that the Mexican customs authorities do to determine whether the quantities imported are actually used for export purposes. What kind of audits do they do?

PARRA: Again, Maquiladoras will not have any special status or structure in this regard. Everybody is subject to the same monitoring policy. The government has several stages to monitor that situation. The first one is upon importation. You may get a red light or a green light. If you get a red light, you are subject to full inspection. And after the inspection is done, you are subject to a second inspection. That is the first stage.

Once the first inspection is done, you are subject to any type of inspection at any moment. From an administrative point of view, the structure of the Mexican government has been divided into administraciones, fiscales, regionales, like the U.S. Internal Revenue Service offices throughout Mexico. And those offices review not only income taxes and Value Added Taxes and all that type of thing, but they also review taxes related to foreign trade. So they may come in and make an audit until the statutes of limitation run out, practically. So you are subject to scrutiny at any moment like any other citizen or company is subject to scrutiny by the tax authorities. If they find out that you have imported raw materials into Mexico that have been in Mexico for more than two years, then you are subject to duty payments, and penalties including confiscation of merchandise. You may even be subject to criminal penalties if some elements of bad faith exist.

