

United States - Mexico Law Journal

Volume 12 *Presentations at the Twelfth Annual Conference*

Article 19

3-1-2004


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Recommended Citation

Adrian Vazquez, Nashielly Escobedo & Alejandro G. Seimandi, *Panel Discussion: Mexico's Preferential Customs Programs*, 12 U.S.-Mex. L.J. 129 (2004).

Available at: <https://digitalrepository.unm.edu/usmexlj/vol12/iss1/19>

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PANEL DISCUSSION: MEXICO'S PREFERENTIAL CUSTOMS PROGRAMS*

MODERATOR: ADRIÁN VÁZQUEZ**

PANELISTS: NASHIELLY ESCOBEDO AND
ALEJANDRO GARCÍA SEIMANDI

RICHARD M. KRUMBEIN:¹ This question is for Nashielly Escobedo. If a company has established a PITEX or *maquiladora*² program at a particular site and wants to go under the *Recinto Fiscalizado Estratégico* (RFE),³ does that mean they are going to have to relocate the operation into an approved RFE or a customs facility?

NASHIELLY ESCOBEDO: We have two situations. The first is that the company will have to locate themselves at another facility. We are open to analyzing the possibility of locating companies at industrial parks that have, for example, a strategic location that would justify locating a RFE at that location. Additionally, the Mexican Customs Authority must be able to provide the required customs services at that facility, and the industrial park must have the necessary infrastructure to support a RFE facility.

DAVID HURTADO BADIOLA:⁴ This question is for Alejandro. I do not think I agree with your conclusion that *maquiladora* and PITEX systems no longer make sense with the changes in Mexican law. I believe that *maquiladoras* are still useful since they can sell practically all their production in Mexico, provided that they comply with minimum requirements of U.S. \$500,000 of exports or 10% of their production exported. So with that scenario, does it not make sense to have a *maquiladora* program just to temporarily import duty-free goods in order to take advantage of financial benefits and then export or sell domestically whatever is remaining of their production?

ALEJANDRO GARCÍA SEIMANDI: The problem is not a financial issue because if you temporarily import products and you then decide to sell those products in Mexico, you have to change the customs program and pay the corresponding import duties, and on top of that, you have to adjust for inflation. But the answer to this question depends on how much is being exported, how much is being sold in the Mexican domestic market, and how difficult it is for companies to

* The views expressed here are those of the panelists and should not be taken to represent the views of their employers or other organizations with whom they may be affiliated.

** A summary of the panelists' background appears on the last page of the panel discussion.

1. Richard Krumbein is a partner in the firm of Snell & Wilmer, L.L.P. in Denver, Colorado.

2. A *maquiladora* is a Mexican corporation that operates under a *maquila* program approved by the Mexican Secretary of Economy (SE). Mexican corporations operating under this program are entitled to foreign investment participation in capital and management. Additionally, these corporations are entitled to special customs preferences that allow duty-free importation of machinery, equipment, parts and materials, and administrative equipment such as computers and communications devices, which are subject only to posting a bond guaranteeing that such goods will not remain in Mexico permanently. Normally *maquiladora* products are exported either directly or indirectly through sale to another *maquiladora* or exporter. Aureliano González Baz, *What is a Maquiladora?*, at <http://www.udel.edu/leipzig/texts2/vox128.htm> (February 7, 2004) (last visited April 7, 2004).

3. Customs regulations issued by the Mexican presidency. *Mexican Laws In English*, at http://www.mexicanlaws.com/customs_regulation_index.htm (last visited April 7, 2004).

4. David Hurtado Badiola is a partner in the firm of Jáuregui Navarrete Nader y Rojas, S.C. in Mexico City.

control their inventories. If everything is imported under a temporary import program and just a small percentage of the goods leave the country, the company will pay the same amount of import duties coupled with a large administrative burden, and would be required to be registered under a *maquiladora* program. Does it make sense to import everything permanently in order to avoid heavy administrative burdens, and if you export a small percentage of your production, then claim drawbacks? The *maquiladora* program is shifting to a case-by-case basis. If a company imports from Asia to supply Guatemala, then NAFTA is not a problem and the *maquiladora* program still works perfectly because the company is fully exempt from import duties.

HURTADO: So why does it make sense to still have *maquiladoras* in Mexico?

GARCÍA: It does not make sense to totally ban them. You cannot just eliminate the *maquiladora* program because there is a high volume of machinery that is still temporarily imported into Mexico and if you cancelled all the *maquiladoras*, you would have to import all goods as if they were to be permanently imported into Mexico. This would require companies to pay import duties and value-added tax on all imported goods. Therefore, it does not make sense to completely eliminate the *maquiladora* program. They are just slowly becoming obsolete while they are overlapping with the new programs.

HURTADO: This question is for Nashielly Escobedo. Obviously the most criticized aspect of these new certified companies are the threshold requirements. Many people think that the volume of sales requirements to qualify for becoming a certified company is too high. So far only 165 companies have been granted that benefit. Are there any new rules forthcoming related to the lowering of the volume requirement? I pose this question because many companies that are as reliable as the certified companies claim that it is unfair to base certification only on the volume of exports.

ESCOBEDO: An alternative to the import-volume requirement is the fulfillment-level requirement. Companies that do not reach the volume requirement can submit an application to qualify as a certified company under the fulfillment-level requirement and then be evaluated on this separate basis. The first stage is to certify the *maquiladoras* based strictly on the fulfillment-level requirement. We will evaluate each *maquiladora* company that applies, by making visits to the company in order to evaluate their policies, their capacity to implement the import program, and other issues, in order to determine if they are suitable to qualify for the registry. However, there will be no requirement that the *maquiladora* company meet the import-volume requirement. Later the same fulfillment-level requirements will be applied to the remaining companies, even if they do not meet the import-volume amount.

JIMMIE REYNA:⁵ This question is for Nashielly Escobedo. It seems to me that one of the significant benefits under this new program that you are describing is still

5. Jimmie Reyna is a trade attorney and partner in the firm of Williams Mullen in Washington, D.C.

duty deferral. Is it true that under Article 303 of NAFTA you are not going to be able to defer those duties for NAFTA-traded goods?

ESCOBEDO: No. We cannot leave out NAFTA's Article 303, but as long as the goods do not enter into the rest of the country, we are going to maintain the exemption. It is similar to the United States' free trade zones. If the goods are imported on a permanent or temporary basis, they have to fulfill the normal importation requirements under Article 303. We cannot violate any treaty regulations.

GARCÍA: Let me just add something. The Customs Authority expressly refers to that point and says that import duty exemptions under this program are limited by international treaties.

ADRIÁN VÁZQUEZ: This question is for Alejandro García. What is the reason behind having different decrees for the PITEX companies and for *maquiladora* companies? In the end, it seems to me that *maquiladora* and PITEX companies operate under the temporary import and entries requirements, so therefore why not have only one body of legislation or regulations that encompasses both programs?

GARCÍA: The reason why the *maquiladora* and PITEX programs are treated separately is purely historical. The *maquiladoras* began operating under a decree aimed at Mexican companies that imported production services goods and then exported manufactured goods. *Maquiladora* companies never owned the goods. They were really service manufacturers. This is the true essence of the *maquiladora*, but all the Mexican producers started complaining that they needed a program similar to the *maquiladora* program because they were purchasing goods and imports while not rendering services, then selling their product. Historically, these individuals fell within the scope of the PITEX program. The point is that the *maquiladoras* association has achieved real, important political power and they are very protective of their backyard. They are not willing to let PITEX companies come in. So what we see is that in the past ten years the *maquiladora* and PITEX programs have become the same. The PITEX and *maquiladora* decrees are like mirrors, so that is why they are categorized together but have separate legislation and regulations.

VÁZQUEZ: This next question is for Nashielly Escobedo. Do you agree with Alejandro García that *maquiladoras* are becoming obsolete? Perhaps we could see a shift in the *maquiladoras* in several years and eventually have them operate under the *Recintos Fiscalizados Estratégicos* (RFE).

ESCOBEDO: Whether the *maquiladora* program should be maintained depends mostly on the evolution of the new programs. One limitation is the location of RFE companies. There is not enough space for all the *maquiladoras* to relocate at these new facilities. It will also depend upon whether Mexican customs decides to open the gate to the *maquiladoras* or whether Mexican customs decides to shut the *maquiladoras* out of the customs facilities.

JOHN ROGERS:⁶ As you described it, the *maquiladora* industry, or many of the *maquiladoras*, are becoming extinct and maybe many more of these companies will go out of business. Much of the machinery and equipment that was imported temporarily is now no longer usable. To what extent can that machinery and equipment be sold for scrap value in Mexico, rather than at its original *pedimento*-established invoice value at the time it was imported many years earlier?

GARCÍA: Mexican customs law provides that you can reduce the value of the equipment and machinery yearly in accordance with the depreciation term set by the income tax law. So machinery and equipment that has been temporarily imported for more than ten years are most likely subject to a customs value of zero when changing their status to a permanent import. Companies will still have to pay whatever the customs value is before selling it as scrap.

BIOGRAPHICAL SUMMARIES

Lic. Adrián B. Vázquez specializes in international trade and customs matters and has practiced in this area since 1987. He has advised and represented a number of national and multinational companies, as well as foreign governments in trade and custom issues. Lic. Vázquez frequently appears before the Federal Trade Court, Federal Courts of Appeals and NAFTA Bi-national Panels. He was appointed by the former Minister of the Mexican Department of Commerce to appear in the Roster of Mexican Panelists authorized to solve NAFTA's Chapter 19 trade disputes. He is the author of the book "*Sistema Anti-Dumping Mexicano*." Lic. Vázquez is a member of the Evaluation Committee of the National Export Award, International Associate of the American Bar Association, honorary member of the Center for International Legal Studies, member of the International Bar Association, and he is a member of the Institute of Mexican Executives on Foreign Trade. He is the treasurer and founding member of the International Trade Practices Advisors Association and member of the Foreign Trade Commission of the Mexican Institute of Public Accountants. Lic. Vazquez received his *Licenciatura en Derecho* from the *Universidad Nacional Autónoma de México*.

Lic. Alejandro García Seimandi is a partner in the firm Ramírez Abogados, S.C., who specializes in trade and custom issues. He began his professional practice at the Ministry of Finance and Public Credit, first as a supervisor of legal procedures in the Mexican Customs Service and later as a legal consultant in the central administration of Customs and Foreign Trade. He is an active member of the International Trade and Customs Committee of the Mexican Bar Association (*Barra Mexicana*), of the Foreign Trade Committee of the Mexican College of Public Accountants, and of the International Trade Commission of the Mexican Institute of Public Accountants. Lic. García received his *Licenciatura en Derecho* from the *Escuela Libre de Derecho*.

Lic. Nashielly Escobedo graduated from the *Universidad Tecnológica de México*. She later graduated from the *Universidad Panamericana* in trade and international

6. John Rogers is a partner in the firm of Strasburger & Price, L.L.P. in Mexico City.

law. She has worked for the Customs office since 1994 and was recently appointed as *Administradora de los Recintos Fiscalizados*. She is fluent in both English and German.

