

THE MEXICAN MAQUILADORA INDUSTRY: LEGAL FRAMEWORK OF THE 1990S

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The cornerstone of Mexico's export manufacturing capability is the maquiladora industry. "Maquiladora," "in-bond" or "maquila" operation refers to an assembly plant, of Mexican or foreign ownership, that imports foreign materials and components in-bond or temporarily duty-free, and assembles them into a finished product for re-export.

Under this arrangement, high labor skills and technology from industrialized nations for the development and manufacture of goods are combined with lower production costs offered in Mexico, to make the resulting products more competitive in world markets, especially in the United States. Additionally, substantial economic benefits can be derived from lower duties resulting from the import of assembled goods instead of components.

The maquila concept is possible due to the Mexican government's policy of promoting the development of plants for the assembly, processing or finishing of foreign raw materials and components in order to attract foreign investment and reduce unemployment. This policy was instituted twenty-five years ago in the northern border states of Mexico. It is backed by federal law which allows for the temporary import of equipment, machinery, materials and parts necessary for production, with the provision that most finished goods be exported.

This procedure is also possible due to sections 806 and 807 of the U.S. Tariff Schedule¹ that permit U.S. products assembled abroad with U.S. components to return to the U.S. with duty paid only on the value added in foreign processing (normally labor and overhead), at the rate for the specific product that is brought back.

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1. 19 U.S.C. § 1202, Tariff Schedules of the United States, Schedule 8, Part 1(B), item numbers 806.20, 806.30, and 807 (as amended Nov. 1986).

Historical facts and socioeconomic necessity justified the creation of the maquiladora industry. The following series of events triggered the utilization of Mexican labor in the northern border cities of Mexico.

During World War II, Mexican laborers were admitted into the United States to help satisfy the demands for farm labor imposed by the war. In 1951, entry into the United States by Mexican nationals was formally sanctioned by the Bracero Program. In the following years, the population of Mexico's northern frontier grew rapidly. Shortages of housing and municipal services soon appeared. Meanwhile, in the United States, under pressure from organized labor, the Bracero Program was terminated. By 1964, the year the Bracero Program ended, approximately 185,000 Mexicans were employed in the United States as braceros. The resulting unemployment levels, "already high in the border cities, became much higher with the end of the [Bracero] program."²

Mexican officials, discomfited by the potentially explosive consequences of thousands of unemployed braceros along the northern border, followed the example set by Asian countries in securing assembly and process work for U.S. firms. The maquiladora program of Mexico thus grew out of the demise of the Bracero Program.³ The border industrialization program of Mexico was initiated in 1965 as a means of meeting the employment objectives of the Mexican government.⁴ Provisions in the United States Tariff Code (Items 806.30 and 807), combined with the concept of a "bonded manufacturing zone," set in motion a program whereby non-Mexican companies are allowed to import materials for assembly or processing.⁵ The companies are thus able to take advantage of low-cost labor in locations relatively close to U.S. markets.

The maquiladoras have grown substantially in recent years. Between 1978 and 1989, the total number of maquiladoras in Mexico has doubled.⁶

2. D. BAERRESEN, *THE BORDER INDUSTRIALIZATION PROGRAM OF MEXICO* 2-3 (1971) [hereinafter D. BAERRESEN].

3. Maquiladoras are also known as "twin plants," "maquila shops" and "in-bond assembly plants."

4. D. BAERRESEN, *supra* note 2, at 3.

5. Comment, *Mexico's Maquiladoras Examined: Are In-bond Production Plants the Wave of the Future?* 13 *PEPPERDINE L. REV.* 357, 373 (1986).

6. Instituto Nacional de Estadística e Información, *The Maquiladora Industry in Mexico* 1 (1986).

I. THE OUTLOOK FOR THE 1990s: TOTAL SUPPORT OF THE INDUSTRY

As the Salinas de Gortari federal administration begins its second year,⁷ many legislative and other governmental changes have been enacted which represent a substantial departure from Mexican presidential trends during the 1970s and 1980s.

The measures taken to date have seldom been abrupt, but they share a common purpose towards change. The idea of open capitalism is still stymied, given Mexico's internal social, cultural and economic conditions. Such a notion is not, and historically has not been, a goal of the Mexican nation. There are many legislative parallels between the U.S. and Mexican constitutions, but the differences, like our peoples' histories, give us very distinct social legacies.

Legislative and administrative reforms have attacked the inadequacies and shortcomings of certain economic measures taken in previous administrations. A brief review of any current presidential decree or act in the economic field reveals the government's acknowledgement of certain past deficiencies (the statistical proof of which is painfully familiar) and the intention to seek a coherent, harmonious solution.

The maquiladora or in-bond import system has survived for over twenty years, and changes have not marred its basic simplicity; but, rather, have consolidated its integrity.

On December 22, 1989, a Presidential Decree appeared in the Federal Gazette (*Diario Oficial*): "Decreto para el fomento y operación de la Industria Maquiladora de Exportación" (Decree for the Maquiladora Export Industry's Promotion and Operation).⁸ It represents one component of the Salinas Administration's attempt towards what has been referred to as "moderated capitalism," versus the concept of "moderated statism" which prevailed during the previous two decades.

II. THE NEW ADMINISTRATIVE FACILITIES

The 1989 Decree includes both governmental and private sector experience in the operation of the maquiladora industry. Former

7. Carlos Salinas de Gortari became the President of Mexico on December 1, 1989.

8. Decree for the Development and Operation of the Maquiladora Exportation Industry, Federal Gazette (*Diario Oficial*), Dec. 22, 1989 [hereinafter Decree for Development]. A copy of this decree is on file at the California Western International Law Journal.

areas of regulation have been assigned to other legislative bodies (such as the customs field) and additional benefits have been created. However, few of the new processing mechanisms have been fully tested to date, and this section's purpose is merely to point to their official adoption.

A. The Unitary Filing Window or "Ventanilla Unica"

Previous maquiladora regulations stated that generally the Ministry of Commerce,⁹ through its central or regional offices, would be in charge of all licensing and amendments to same. However, the process was not unified. The applicant had no single source of information as to the procedural requirements which would affect its standing (since a maquiladora company is regulated in the same way as all Mexican corporations).

The unitary filing window has been vested with the powers to: authorize maquiladora programs for individual applicants; process all information with respect to the National Registry of Foreign Investors; process applications before the National Commission on Foreign Investments, where required; process corporate registration before the Federal Internal Revenue (Hacienda) authorities; process corporate registration before the Federal Worker's Housing Fund; and also to provide the appropriate guidelines for corporate registry before the Mexican Social Security Institute.¹⁰

One item which must be restated is that, under previous regulations, the applicant for maquiladora licensing could not be a foreign individual or corporation, but rather, was required to be a Mexican national or a Mexican corporate entity. Often such Mexican corporations are wholly owned by foreign investors. However, the intent of this legislation is that the applicant become a stable contributor to the local community, who is legally capable of carrying out business within the Mexican environment (labor, commercial, tax and customs responsibilities are ever present factors).

It is not uncommon to find that maquiladora projects begin without the initial assistance of accountants, lawyers and maquiladora consultants. If one also considers that no duties are charged by the government for issuing a license (other than, when necessary, a customs bond), the licensing process is still one that the willing foreign

9. Decree for the Promotion and Operation of the Maquiladora Exportation Industry, Federal Gazette (Diario Oficial), Aug. 9, 1983 [hereinafter Decree for Promotion].

10. Regulations of the Foreign Investment, Federal Gazette (Diario Oficial), May 16, 1987.

investor may take upon itself. The authors' experience is that many investors in maquiladora projects rely on the Commerce Ministry's advice about how to proceed. The establishment of a unitary filing window will no doubt add a greater degree of certainty to the administrative process.

B. Indefinite License Duration

The importation of foreign machinery and raw materials in Mexico which, under normal circumstances, were not available to the local market, had always been a concern to Mexican customs officials.

This became an important issue due to a central governmental goal during the 1970s and 1980s of creating a favorable trade balance by fostering exports while controlling imports. All imports, to some degree, would be considered suspect. Temporary imports, namely those which at some point would be returned abroad subject to their use in any number of processes, were not dutiable, but foreign investors were required to post a bond equivalent to a pre-authorized percentage of import duties and possible fines in the event of non-compliance with such "temporary" status.

This generated a system applicable to maquiladora licensees whereby their activity programs were limited to periods of two years, and where the presence of raw materials was closely scrutinized and authorized on the basis of the nature of said materials (perishable, non-perishable, assembly cycle duration, etc.).

It is now increasingly possible to change the status of certain raw materials from a "temporary" to a "definite import" situation, and in some cases a licensee may apply for and obtain a waiver of the "import duty" bond described above. The presence of these materials as well as that of temporarily imported machinery within the Mexican market continues to be a definite concern of Mexican authorities, given their justifiable need to support local industries.

Since Mexico's inclusion in the General Agreement on Tariffs and Trade in 1986,¹¹ many positive steps have been taken to curtail the standing bias against imports in general. At this time, imports into Mexico are on the increase, supplying new products and services to the local marketplace which were previously unavailable. These imports are obviously in a position to compete with Mexican

11. General Agreement on Tariffs and Trade (GATT), *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

suppliers.

The basic license limitation of two years has now been replaced with "indefinite approval"¹² which is not subject to periodic review, other than normal compliance with the assigned export cycle. Goods which come into Mexico on a temporary basis must at some point be exported. Many alternatives are now legally in place to work within the status of these goods and to make them available to the local market, but any change in status must be monitored and sanctioned by both Commerce and Customs authorities. The ongoing maquiladora licensee will find that this new measure will reduce its amount of periodic processing, and will also relieve the authorities of a very burdensome task.

Established companies, upon expiration of their two-year license, make one final reapplication, which, if issued, becomes indefinite. All other projects being currently considered for first time licenses by the Commerce authorities will receive indefinite licensing upon approval.

C. New Items Approved for Temporary Importation

As indicated above, a departure from protective attitudes towards imports is expected during the present decade. From experience, it can be expected that the changes will not be immediate. However, a good indicator of this departure is found in the 1989 Maquiladora Decree, with respect to items which may now be included for temporary importation that were formerly barred. In addition to the components which the government has traditionally assumed are to be imported as a part of a maquiladora process (raw and auxiliary materials, packaging materials, tools, machinery, etc.), the new items that have been added include: (1) products associated with worker's hygiene, product sanitation and environmental control (as it refers to the production or assembly site); (2) computer and telecommunication equipment (for data and voice line usages); and (3) freight containers.

Raw materials may be present in the country for a maximum period of one year, based on two six-month authorizations (the time considered to be reasonable for a standard maquiladora assembly and storage process). Freight containers may be present within the country for individual periods of three months. All other importation items may be present in the country for an indefinite period as

12. Decree for Development, *supra* note 8, at 4.

long as the maquiladora license is in force.

D. Support for Existing Ventures

In order to follow through on the goal of administrative simplification, in addition to the benefits described above, the interaction between the federal government and the industry's regular constituents has produced the following support mechanisms:

1. "Shelter" operators are acknowledged as being entitled to all administrative prerogatives under the new Decree.¹³ A shelter program, as defined by the Decree, is one whereby exports are carried out on behalf of a foreign corporation which provides technical know-how and materials, but does not directly participate in the scheme.

2. Subject to applicable federal, state and specific municipal development programs, all areas within the country which are zoned for industrial development may be utilized by the maquiladora system.¹⁴

3. Upon approval of the applicant's indefinite authorization, the sanctioned percentages for waste and refuse (the level will fluctuate in accordance with the nature of the product), may be automatically deducted toward such material's destruction or charitable donation.¹⁵

4. All authorized maquiladora companies will function under the Simplified Customs Procedures Program, involving random electronic verification of customs pediments, which has been proven to greatly expedite customhouse procedures.¹⁶

5. Agroindustrial, mining, forestry and fishery projects will necessarily involve the federal government's plans in corresponding fields, along with standard ecological and environmental tests, but if the Commerce authority requires another branch of government to provide an opinion, a reply must take place within ten working days.¹⁷

6. Subcontracting with third party manufacturers within Mexico (performed by non-licensed subcontractors) is approved, subject to administrative review and notice to the customs authority. This alternative, which through the years has achieved great acceptance,

13. *Id.* at art. 13.

14. *Id.* at art. 6.

15. *Id.* at art. 15.

16. *Id.* at art. 4.

17. *Id.* at art. 14.

was formerly a complex enterprise. The current simplified framework provides for a yearly license, as long as the applicant maquiladora is current with regard to its hard currency sales obligations, and the specific petition does not involve textiles.¹⁸

7. The Commerce Ministry (and not Mexican Customs) may now authorize the final export of products originally imported into the country by a third party. The authorization is granted for yearly periods and is renewable.¹⁹

8. The potential for a maquiladora company to sell a portion of its production within the local market had been acknowledged since the 1983 Maquiladora Decree. In practice, the application for such a prerogative has been a complex endeavor, encompassing statistical information with respect to the proposed product's existing availability in the market, and the ability of national manufacturers (the applicant's competitors) to comply with local needs.

Prior to the enactment of the 1989 Decree, a proposal for sales in Mexico had to (a) demonstrate product characteristics that local competitors were in no position to provide, (b) represent the existence of a grave necessity to a local manufacturer with a sizable share of a local market, or (c) generally fill an important void in a basic-need (versus luxury) market, due to its technical composition or its urgency (luxury items were regularly dismissed as undesirable).

Given the technical market information required by this kind of application, the usage of this ability in practice was hampered by both the specifications necessary for the product and the applicant's willingness to invest in the experiment.

The new Decree appears to have taken this into consideration. While basic requirements have not been waived (the need to conserve a favorable company currency balance; production to be over and above existing levels, etc.), the language suggests that the local Commerce Delegations will have a great degree of authority with respect to final approval. Now a license for sales in Mexico with a two-year duration empowers the applicant to offer its products within the entire country, and the amount of products offered may be up to an additional fifty percent of already achieved production levels. The product must not be of restricted nature from a customs standpoint, and optional tariff systems are available upon the increase of Mexican content within the product. Quality control must

18. *Id.* at art. 28.

19. *Id.* at art. 25.

apply equally to the product in the local market, in relation to company exports. Also, Mexico-side transfer of the product to a third party is available.²⁰

III. NEW AREAS OF REGULATION

A. *Environmental Factors*

The beginning of modern Mexico's manufacturing industries can be traced to the late 1930s, particularly in the 1940s and 1950s. As would be expected, development was centered on the country's three major cities; Monterrey, Guadalajara and the Mexico City area. This period was also characterized by the arrival of modern-day food, pharmaceutical and mechanical manufacturers from abroad (the vast majority continue to conduct business in Mexico today), who continuously strove to integrate their products into the mainstream of local consumer patterns.

Environmental regulation was irregular at best, until the needs of highly industrialized areas, and the social problems they engendered, brought about not only legislation but the creation during the early 1970s of an Underministry for Environmental Improvement.

Thereafter, the Federal Ministry of Health attempted to enlarge the scope of its activities in the environmental field, although its efforts sometimes fell victim to the severe budgetary and austerity measures adopted by the federal government as a whole. The maquiladora system was somewhat unregulated in this area, and restrictions were placed on a majority of industrial imports whose use was considered hazardous worldwide. President Miguel de la Madrid, faced with mounting concern about the lack of intervention and resulting negative impact, allowed the Ministry of Urban Development and Ecology (SEDUE) to consult with the United States Environmental Protection Agency. The latter provided Mexico with regulatory information which has proven useful for both countries, especially along their common border. Manufacturers involved in projects which were sensitive from an environmental standpoint were faced with either (1) "unreasonable" production expenses in their original site due to health or environmental regulations, or (2) the eventual cancellation of their licensing due to the same concerns. These manufacturers looked upon Mexico's border areas as a

20. *Id.* at arts. 19-24.

likely alternative, and transferred their production processes accordingly.

The government's attitude has been quite reasonable and demonstrates an understanding of current industrial needs. It is also safe to say that SEDUE has progressively become more knowledgeable in the environmental field, and the present Maquiladora Decree accurately provides evidence of this fact.

Article 18²¹ specifically reads: "all maquiladora programs shall comply with environmental and ecological requirements, pursuant to the appropriate regulations." The new Maquiladora Decree is by no means a comprehensive source of environmental regulation for the industry. However, care is taken within its text that the Commerce and Customs authorities will be reasonably satisfied that SEDUE is aware of and is regulating the applicant as required by law. Areas of special concern involve industrial waste and refuse disposal, workers' exposure to hazardous materials, and consequences to the local community. An applicant or already-established maquiladora venture must address the environmental aspect of this work, where applicable, as a regular factor in doing business.

B. Increased Authority to Regional Commerce Agencies

In a strong effort to acknowledge the benefits derived from "immediate" scrutiny of the maquiladora process, and also in coordination with similar regulations, the power to exercise governmental authority is now shared between the Commerce Ministry and its regional agencies with respect to the following: (1) regular approval and registry of maquiladora programs; (2) waste and refuse allowances, and means of legal disposal; (3) maquiladora percentages of sales within the Mexican market; (4) product transfers within the country to a third party exporter; (5) Mexican subcontractor agreements for delivery of services to the maquiladora applicant; (6) maquiladora license cancellation or termination; and (7) administrative fines due to legal non-compliance with industry regulations.

This is a step in a positive direction, which will no doubt strengthen both the government's and the applicant's appreciation for each other's viewpoints.

21. *Id.* at art. 18.

C. *The Maquiladora Industry Task Force*

Mirroring the 1983 Decree,²² a governmental coordination entity called the Maquiladora Export Industry Task Force is substituted for the Interministry Commission for the Maquiladora Industry (established in 1983), and the parties who are to take part in this agency are unrelated to those of the Interministry Commission.

Instead of the 1983 general member designation (“the Minister of Internal Revenue, the Minister of the Interior, etc.”), the Task Force will be formed by specific bureau heads within various governmental agencies that come in contact with the maquiladora industry on a regular basis. The membership will now comprise not only Commerce, Immigration, Statistical, Environmental, and Transportation Directors, but also officials from the President’s Staff on Foreign Policy, the Banco de Mexico, the Mexican Foreign Commerce Bank, and other officials. The Task Force’s chief objectives are in the field of political, administrative, promotional and infrastructure support for the industry.

The 1983 Decree²³ also created the Maquiladora Industry’s Consulting Committee, originally formed by various cabinet officials; the National Maquiladora Industry Council; and local maquiladora associations. The overall composition of this Committee has been amended to include all members of the Task Force, and, upon the Consulting Committee’s invitation, representatives of both the National Maquiladora Industrial Council and local maquiladora associations.²⁴

CONCLUSION

In addition to the trend toward diminished governmental intervention in the economic field, the present federal administration has recognized the “globalization” of the international marketplace. Hand in hand with other regulations that deal with foreign investment in Mexico, a very strong effort has been made to provide a legal framework that will prove competitive and attractive to foreign capital. The latest maquiladora decree effectively represents this industry’s “coming of age”: no longer a suspect and temporary solution to some of Mexico’s economic difficulties, but an important and respected national industry.

22. Decree for Promotion, *supra* note 9, at 7.

23. *Id.* at 3.

24. Decree for Development, *supra* note 8, at art. 37.

