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Mexico’s Maquiladoras Examined: Are In-Bond Production Plants the Wave Of the Future?*

I. INTRODUCTION

For years the headlines have proclaimed “The Maquila Boom,” but there has been little published of general circulation to explain the intriguing foreign investment possibilities available through Mexico’s in-bond industries called “Maquiladoras.” How does the Maquila system really work? What are its advantages and disadvantages? Why does the system exist, and can it be expected to continue in the future? These are questions that many businessmen and legal practitioners have been asking and which will be considered in the following pages.

In short, the Maquila system is a facet of the foreign investment law of Mexico which allows for the creation of Mexican companies

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3. The term “Maquiladora” stems from the Spanish word “maquila,” which refers to the toll of grain or flour paid to the miller or lord of a manor for the grinding of grain. SIMON AND SCHUSTER’S INTERNATIONAL DICTIONARY: ENGLISH/SPANISH 1337 (1973). In its more current usage, the term “Maquila” refers to the labor and services provided, and the term “Maquiladora” refers to the actual production plant. AMERICAN CHAMBER OF COMMERCE OF MEXICO, MEXICO’S MAQUILADORA IN-BOND INDUSTRY HANDBOOK § I, at 1 (1985) [hereinafter cited as AMERICAN CHAMBER HANDBOOK].

Numerous synonyms have been used to refer to the Maquiladoras, and they will be used throughout this comment. Included among these synonyms are: “In-bond Plant,” which refers to the fact that the goods entering Mexico must be bonded to ensure that they will be re-exported; “Twin Plant,” which refers to the common practice of having a second production plant located on the American side of the border; and “Off-shore Production Facility,” which refers to the general definition of such production-sharing arrangements.

4. General Resolution No. 2 of the National Foreign Investment Commission, Diario Oficial [D.O.], Aug. 30, 1984, provides the legal framework of the Maquiladora
that import component parts or other materials into Mexico for assembly or processing with Mexican labor. The finished products must then be exported. These companies are an exception to the general foreign investment law of Mexico that restricts foreign equity participation to 49%.5 A Maquila company may have up to 100% foreign ownership. Generally, there are no import duties imposed by Mexico and only the value added by Mexican labor is subject to import duties by the United States.6 As such, a form of symbiotic relationship is created whereby Mexico benefits from increased employment and foreign currency exchange, while the United States receives the benefits of the lower labor costs available in Mexico.

The purpose of this Comment is to provide the reader with a comprehensive understanding of Mexico's Maquiladora industries. The history of the laws creating the Maquiladora system and the law as it currently stands will be discussed in detail, along with the advantages and disadvantages that a United States company can expect to encounter upon entering Mexico by way of a Maquiladora. This Comment also covers numerous factors which must be considered before starting a Maquiladora, such as location, structure, management, and importance of local counsel. This study will answer the questions raised above and provide some important guidelines to consider before establishing a Maquiladora.

II. HISTORY

The roots of the Maquila program stem from the underdeveloped economic conditions that existed along Mexico's northern border in the 1960's. Thousands of Mexicans were leaving the interior regions of the country and moving to the border towns in an effort to meet the transition of the Mexican economy from one that was predominantly agrarian to one with an emerging industrial base.7 Mexicans were especially attracted to the northern border towns by the United States Bracero Program, which allowed Mexican workers into American fields on a seasonal basis to help with the harvests.8 But when


6. To avoid confusion, the United States of Mexico will be referred to as “Mexico” and the United States of America will be referred to as the “United States.”

7. Comment, supra note 2, at 89-90.

8. Id. at 90. The Bracero program, formalized in 1951 by a bilateral agreement between Mexico and the United States, attracted a vast number of Mexican workers, estimated at one time to number between 185,000 and 450,000. Id. at 90 n.8 (citing D.
the United States cancelled the Bracero program in 1964, the northern border towns soon became flooded with jobless workers. In reaction to these conditions, the Mexican government began studying the possibilities of allowing greater foreign investment in Mexico. In his May, 1965, Report to the Nation, the President of Mexico announced the first border industrialization program.

The legal framework of the law remained somewhat sketchy for a number of years. By 1971, however, its provisions and procedures were codified as part of the Mexican Customs Code. In 1972, the program was expanded to allow for the development of Maquiladoras throughout most of Mexico's interior. In 1977, the Customs Code was modified to clarify the program and to provide for expedited operating procedures. On August 15, 1983, the Presidential Decree for the Promotion and Operation of the Maquiladora Export Industry was issued and published in the Official Gazette of Mexico. This decree consolidated the various regulations and guidelines that have over the years been applied to Maquiladoras, and generally represents the Mexican law presently applied to the Maquiladoras.

III. LEGAL STRUCTURE OF THE MAQUILADORA PROGRAM

A number of crucial factors must be examined to determine whether a Maquila operation will be profitable for the foreign investor. These factors result from the relevant laws of both Mexico and the United States, and include: (A) ownership; (B) type of Maquiladora; (C) labor resources; (D) location; (E) exchange controls;
(F) access to supplies and machinery; (G) sales within Mexico; (H) technology transfer; and (I) United States tariffs.

A. Ownership

One highly attractive feature of the Maquiladora program is the availability of 100% foreign ownership. The Foreign Investment Law ("FIL") of Mexico\(^\text{17}\) permits foreign investors\(^\text{18}\) to hold no more than 49% of the capital of a Mexican business enterprise, provided they are "not empowered, by any title, to determine the management of the business enterprise."\(^\text{19}\) The Maquiladora program, however, is a direct exception to this rule and specifically provides that "[c]ompanies that are incorporated in order to carry out operations under the legal regime of Maquiladora companies, or those that are presently operating in Mexico under such regime, can do so with 100% foreign capital."\(^\text{20}\)

The program also provides for considerable ownership flexibility. In particular, the National Foreign Investment Commission (the "Commission") has recently established that duly registered Maquiladoras do not require prior authorization from the Commission for the following activities:

(a) transfer between foreign investors of shares of stock or fixed assets;

(b) the acquisition by foreign investors of shares of stock which are the property of Mexican investors, provided that, prior to such acquisition, foreign participation in the capital stock of the issuer represents 75% as a minimum;\(^\text{21}\)

(c) the opening or relocation of new establishments;

\(^{17}\) Foreign Investment Law, supra note 5.

\(^{18}\) The term "foreign investor" is broadly interpreted under the Foreign Investment Law and includes:

I. Foreign corporate bodies;

II. Foreign physical persons;

III. Foreign economic entities without legal personality; and

IV. Mexican business enterprises with majority foreign capital or in which foreigners are empowered, by any title, to determine the management of the business enterprise.

\(^{19}\) Id. art. 2.

\(^{20}\) Id. art. 5. See generally Pitts, American Investment in Mexico, 2 HOUS. J. INT'L L. 261 (1980).

\(^{21}\) Purchasing shares of a Mexican investor where foreign equity participation does not exceed 75% requires Commission approval. However, because it is one of the fundamental goals of the Foreign Investment Commission to encourage the participation of as much Mexican capital as possible, acquiring this approval as a practical matter can be very difficult. For this reason, it is often easier to start up a new foreign-owned Maquiladora than it is to purchase an existing Mexican-owned one. Interview with Lic. Gonzalo Gomez-Mont U., Attorney with Bryan, Gonzalez Vargas y González Bas, Tijuana, B.C., Mexico (Nov. 5, 1985) [hereinafter cited as Gomez-Mont Interview].
(d) the manufacture of new product lines.22

The products and services that Maquiladoras may produce is virtually unlimited. The main exception to this rule is that Maquiladoras may not participate in the textile industry if doing so would adversely affect the quota of allowable Mexican exports into a given importing country.23 It should also be noted that while the Foreign Investment Law reserves certain sectors of the Mexican economy for the Mexican government and Mexican corporations in which foreigners cannot participate,24 these sectors generally do not involve manufacturing or services that are capable of export.

The ownership provisions for Maquiladoras may thus be viewed as very advantageous for the foreign investor. One hundred percent ownership is readily available and is easily transferable. Moreover, once established, the Maquiladora is a very flexible business tool that allows for the introduction of new product lines and other changes without the often cumbersome requirement of Commission approval.

B. Type Of Maquiladora

Another example of the flexibility of the Maquiladora program is the numerous types of Maquiladoras that can be established, whether under the structure of a twin plant or as a sole subsidiary. Each type

22. General Resolution No. 2, supra note 4, sub. art. 2.
23. Id. sub. art. 3.
24. The FIL provides that the following activities are reserved exclusively for the State and no foreign or domestic enterprise may carry them out:
   a) Petroleum and other hydrocarbons,
   b) Basic petrochemicals,
   c) Exploitation of radioactive minerals and the generation of nuclear energy,
   d) Mining in cases to which the relative law refers,
   e) Electricity,
   f) Railroads,
   g) Telegraphic and wireless communications, and
   h) Other activities established in specific laws.
Foreign Investment Law, supra note 5, art. 4.

The FIL also provides that certain other activities may be carried out only by Mexican corporations in which foreigners do not participate—namely:
   a) Radio and television,
   b) Urban and interurban automotive transportation and federal highways transport,
   c) Domestic air and maritime transportation,
   d) Exploitation of forestry resources,
   e) Gas distribution, and
   f) Others established in specific laws, or regulations issued by the Federal Executive.

of Maquiladora provides different advantages to the foreign producer, depending upon the product being produced. A foreign producer may also be able to gain the benefits of a Maquiladora by entering Mexico under a shelter program.

Under the twin plant concept, an American manufacturer builds two production plants generally within close proximity, one of which is located along the Mexican side of the border, and the other on the American side. The Mexican plant will typically be a subsidiary of the American plant and will specialize in the labor-intensive aspects of the production cycle—most often assembly. The American plant, on the other hand, will focus on the capital-intensive aspects, such as manufacturing and final inspection. Together, these two plants function as one production-sharing unit.

In the early years of the Maquila program, the relative unsophistication of the Mexican labor force and production facilities dictated that most of the Maquiladoras be set up as twin plants. However, as the Maquiladoras became more sophisticated, and production cycle capabilities became more complex, the need for the twin plant structure gradually fell to the wayside. As a result, many Maquiladoras began to emerge as sole subsidiaries of American parent companies.

Under the sole subsidiary structure, the Maquiladora is still involved in the production-sharing process, but the Mexican-made Maquiladora products are shipped to various production facilities throughout the United States to be incorporated in another product. The products often emerge from Mexico in their final form and enter directly into the American distribution system through “staging warehouses” located along the border. Other goods are prepared for immediate export re-shipment from the United States to other

25. While close proximity of production plants may reduce transportation costs, in many instances the two plants are not located along the border. This may be a result of the company’s desire to utilize a less expensive labor pool in the interior of Mexico (see infra section III(C)), or a desire to maintain an existing facility in the United States. The Fisher-Price Company, the toy manufacturer, is a good example. It maintains a plastic stamping facility in New York and an assembly plant in Tijuana. Interview with Russell Bennett, General Manager and Agent, Banco Nacional de Mexico in Los Angeles, California (Oct. 28, 1985) [hereinafter cited as Bennett Interview].

26. In fact, the term “twin plant” was often used synonymously to refer to Maquiladoras, and is still often used in this manner, albeit inaccurately. See, e.g., Magnuson, Symbiosis Along 1,936 Miles, TIME, July 8, 1985, at 55.

27. An increasing amount of capital intensive work is being done in the Maquiladoras. For example, almost 50% of the value added by all in-bond plants is done by the electronics industry. Bennett Interview, supra note 25.

28. The American Chamber of Commerce in Mexico has estimated that of the 680 in-bond plants that existed in 1984, no more than 80 of them operated under what could properly be called a “twin plant” structure. AMERICAN CHAMBER HANDBOOK, supra note 3, § II, at 13.

29. Id.
foreign countries.\textsuperscript{30} It is an emerging trend for these "staging warehouses" to serve as sourcing areas or collection points for component parts that have been manufactured throughout the world. Once the required parts have been collected, they are shipped to Mexico in "kit" form, where they receive further manufacturing, assembly, inspection, and final shipment directly to world-wide purchasers.\textsuperscript{31} Whichever system of Mexican export is used, it is clear that the Maquiladoras are becoming much more sophisticated.

Shelter programs are another example of the sophistication of the Maquila system.\textsuperscript{32} The shelter program operator is a Mexican or foreign-owned corporation unrelated to the foreign corporation that is transferring the products to be worked. Such programs offer a completely outfitted production facility, along with raw materials, tools, and technical supervision, and contracts with the foreign corporation for production services on an hourly or piecework basis. Although the transferring corporation is not truly a Maquiladora—it is not a Mexican business entity—it may nonetheless be able to gain some of the advantages offered by the Maquila system. The advantage of this structure is that it often enables the foreign producer to avoid the costs incumbent in starting a new operation, while at the same time providing access to the lower labor costs available in Mexico. The shelter program may also serve as a precursor or test operation for a sole subsidiary Maquiladora to be developed in the future. The drawback, however, is that the price charged by the shelter program operator will usually be much higher than if the foreign producer had established his own Maquiladora.\textsuperscript{33}

C. Labor Resources

Access to relatively inexpensive Mexican labor resources is by far the most profitable and alluring aspect of the Maquiladora program. In rough terms, an American manufacturer may expect to pay approximately $1.10 per hour for Maquiladora workers, including benefits.\textsuperscript{34} The Mexican laws relating to minimum wage rates are well-defined and stipulate that in-bond plants must pay at least the mini-

\textsuperscript{30} Id. These re-shipments often occur by way of a Foreign Trade Zone. Id.
\textsuperscript{31} Bennett Interview, supra note 25.
\textsuperscript{32} See generally American Chamber Handbook, supra note 3, § II, at 4.
\textsuperscript{33} Gomez-Mont Interview, supra note 21.
\textsuperscript{34} Id.; Bennett Interview, supra note 25. Cf. Turner, supra note 1, at 30.
The minimum daily wage established for that part of the country.\textsuperscript{35}

At the time of this writing, the four daily minimum wage rates in Mexico were: (1) 1250 pesos in the Federal District and the major border cities, including Tijuana, Nogales, Mexicali, and Ciudad Juarez; (2) 1150 pesos in the interior cities of Hermosillo and Monterrey; (3) 1015 pesos in agricultural areas, including Chihuahua, Ciudad Obregon, Sinaloa, and Tabasco; and (4) 920 pesos in rural zones, including Durango and Guerrero.\textsuperscript{36} Using the official controlled rate of exchange,\textsuperscript{37} these daily minimum wages would approximately be equal to $3.12, $2.88, $2.54, and $2.30 respectively in the United States.

In-bond plants must also pay certain benefits required under Mexico's Federal Labor Law.\textsuperscript{38} These include "vacation and Christmas bonuses, seven paid holidays, payroll contributions for social security, education, maternity leave, employee housing, day-care assistance, and state withholding taxes."\textsuperscript{39} The cost of these required benefits usually amounts to approximately 45% of the minimum daily wage.\textsuperscript{40}

Most Maquiladoras also offer a set of voluntary fringe benefits to employees in an effort to curb high turnover and increase productivity. These benefits may include subsidized meals, housing allowances, transportation, weekly attendance and productivity bonuses, recreational facilities, and increased pay. The cost of such benefits will typically add another 35% to the minimum wage rate.\textsuperscript{41}

When these three costs are combined and spread over a full work week,\textsuperscript{42} the average benefit cost will usually equal approximately...
$1.10 per hour worked.\textsuperscript{43} Saturdays are considered part of the normal work week, but Sundays and holidays require overtime pay.\textsuperscript{44} Layoffs should be avoided, because under Mexican labor law each furloughed worker is entitled to ninety days severance pay plus twelve days pay for each year or part thereof over fifteen years worked at the facility.\textsuperscript{45} Thus, it may be more economical to continue employing a worker than to lay the worker off in the hopes of greater production in the future.

Workers have historically been readily available. With Mexico's unemployment rate running at around 40%,\textsuperscript{46} there has been little problem finding Mexican workers, especially in light of the fact that Maquiladoras typically pay better than domestic Mexican companies. Only recently have certain areas begun to experience shortages and rapid turnover rates.\textsuperscript{47} Perhaps one of the reasons for this shortage is the success of the Maquiladora program itself. As in-bond production facilities have become more sophisticated, competition has emerged between the various companies to attract the best workers. Many Maquiladoras are consequently offering special fringe benefits as a means of attracting and keeping their best workers. Another reason for the turnover is the fact that between 75% and 80% of all in-bond production workers are young women\textsuperscript{48} who frequently leave to raise families or return to the country's interior.\textsuperscript{49}

Notwithstanding the turnover rate or any shortages that may exist, the Maquila industry continues to boom. During the two years of 1983 and 1984 alone, over 80,000 new jobs were created, bringing the total in-bond industry employment to well over 200,000.\textsuperscript{50} While this

\textsuperscript{43} Gomez-Mont Interview, supra note 21. See also Koepp, \textit{Hands Across the Border}, Time, Sept. 10, 1984, at 36.

\textsuperscript{44} Workers receive double pay plus 25\% for working on Sundays, and triple pay for holidays. Turner, supra note 1, at 30.

\textsuperscript{45} Gomez-Mont Interview, supra note 21. As a practical matter, full severance pay is rarely paid to a worker because workers will most often accept a compromise payment rather than suing the employer for the money owed. Id.

\textsuperscript{46} Koepp, supra note 43, at 36.

\textsuperscript{47} Some companies along the border have reported up to 100\% annual turnover rates for new employees. Turner, \textit{Mexico Turns to its In-Bond Industry as a Means of Generating Exchange}, Bus. Am., Nov. 28, 1983, at 29.

\textsuperscript{48} A number of reasons have been given for the disproportionate number of women working in the Maquiladoras. The first is that women are less willing to risk an illegal crossing into the United States to look for work, and therefore opt for the higher paying jobs in the Maquiladoras. R. Davis, supra note 10, at 173. Another reason given is that working in the in-bond industry is not considered to be a "man's" job. Id.

\textsuperscript{49} Turner, supra note 47, at 29.

\textsuperscript{50} Turner, supra note 1, at 26.
number represents only a small percentage of a total Mexican work force estimated to be 25 million, the rate at which this industry has grown portends greater success in the future. In fact, "[t]he Bank of Mexico projects that by the year 2000, the [Maquiladora] industry could account for $10 billion in value added and employ one million workers."51

An even more significant statistic is the fact that in 1983 the in-bond industry generated $1.3 billion in foreign exchange for Mexico,52 making it the second largest revenue producer, surpassed only by petroleum sales revenues.53 Even Mexico's strong tourist industry could not match the in-bond growth.54

D. Location

The geographic proximity of Mexico to the United States is one of the key advantages of the Maquiladora program. One need only compare the 8,000 miles that must be covered to reach Taiwan with the few miles that it takes to reach most Maquiladoras to realize that proximity is an enormous economic advantage. Not only are shipping costs reduced dramatically, but time delays are reduced exponentially. This rapid response time, especially in today's fast-moving marketplace, can mean the difference between economic success and failure.55

Proximity also means that inventories in American plants of goods produced in the Maquiladoras can be dramatically reduced. This cost saver allows the Maquiladoras to enter directly into the production cycle of an American plant. The ability of the Maquiladoras to supply American final assembly plants on a continuous-flow basis, thereby avoiding bulk shipments and American inventories, may prove to be a crucial element of their success, as American manufacturers struggle to produce the most efficient marketing operations possible.56

Another benefit provided by proximity is the availability of having plant managers live in the United States while commuting daily to

51. Id.
52. Id. at 29.
54. While the tourism industry may produce a greater amount of gross revenue earnings than the Maquiladoras industry, when one considers the $1 billion per year spent on tourism promotion, the Maquiladora industry is widely recognized as being second only to Mexico's petroleum industry in terms of net foreign exchange earnings. Gomez-Mont Interview, supra note 21. See also Taylor, Mexico—Economy Improves, Offers Opportunities For Business, Bus. Am., Mar. 4, 1985, at 39; Turner, supra note 1, at 26.
55. See generally Mack & Greenbaum, supra note 1, at 50.
56. Bennett Interview, supra note 25.
work in Mexico. This option is very popular with management and is a great incentive for attracting top management skills.\textsuperscript{57} At the very least, general management visits can be frequent and inexpensive.

The location of the in-bond plant within Mexico may also be one of the most crucial factors in determining whether the Maquiladora will be successful. Such factors as the availability of support infrastructure, the supply of labor, the presence of labor unions, and the availability of transportation and customs clearing, must all be carefully examined before selecting a site at which to operate a Maquiladora.\textsuperscript{58} A failure to examine the site carefully can turn what might have been a successful Maquiladora into a disappointing investment.

One of the first factors to consider in selecting a location is the availability of support infrastructure, such as electricity, water, gas, telephone, and data transmission lines. Not all areas in Mexico are equipped with these basic resources, and the cost of developing such resources can often be prohibitive.

One option for the new investor is to locate in one of the industrial parks that have emerged in Mexico. These parks provide many of the necessary infrastructure supplies. The first of these parks was developed shortly after the initiation of the Maquila program, and was designed to aid foreign investors unfamiliar with the in-bond industry.\textsuperscript{59} Park developers have largely continued in this role throughout the years and have been instrumental in promoting the in-bond industry abroad as well as in Mexico.\textsuperscript{60}

The vast majority of these parks oriented towards the in-bond industry are located along the border.\textsuperscript{61} Even though the interior of the country has been open to in-bond development since 1972,\textsuperscript{62} the

\textsuperscript{57} See Spaeth, supra note 1, at 103.

\textsuperscript{58} AMERICAN CHAMBER HANDBOOK, supra note 3, § IV, at 3.

\textsuperscript{59} Id. § II, at 2-6.

\textsuperscript{60} Industrial park developers have often been instrumental in convincing state and local officials to invest in the basic infrastructure (e.g., roads, utilities, etc.) required to attract in-bond plants. Developers have also been an important and ongoing element in the promotion of a positive attitude towards the in-bond industry. This has not always been an easy task, especially in those communities that had no experience in industrial promotion, or those who believed that Maquiladoras were nothing more than "fly-by-night" operations. Id. § II, at 3.

\textsuperscript{61} For a detailed list of industrial parks catering to Maquiladoras and the facilities offered at each, see id. § III.

\textsuperscript{62} The Maquila program was initially limited to the border region, but in October, 1972, a Presidential agreement officially authorized the establishment of Maquiladoras throughout the entire country. Customs Code, art. 321, para. 3, D.O., Oct. 31, 1972.
The border region continues to be the most attractive region. As the border facilities become more saturated, and interior locations become more developed, the industry may gradually spread to other cities.

The facilities offered in these parks are quite similar to those offered in American industrial parks. They provide such necessary services as electric energy, natural gas, water, telephone, and telex lines. One of the most useful services traditionally provided by these parks is the construction of “inventory buildings,” which are buildings constructed by the park developers but not yet committed at the time of construction. These buildings are available to qualified corporate clients for purchase or lease. The availability of such buildings can drastically reduce Maquiladora start-up time and prevents the many problems associated with construction in Mexico. A severe shortage of such buildings, however, has recently developed.

In the wake of the 1982 Mexican banking crisis, financing at reasonable rates became unavailable, forcing park developers to curtail their building plans. The 1982 devaluation of the peso compounded the problem; dollar wage rates fell dramatically, thereby creating a resurgence in Maquiladora attractiveness. As a result, first-class industrial buildings are extremely scarce, and newcomers to the industry may be forced to wait for new construction or move into less desirable buildings. The future, however, looks brighter. While demand remains strong, new buildings are becoming available. In addition, the Mexican commercial banks are now lending money to Mexican developers on the basis of lease agreements.

The location of an adequate labor supply is also a crucial factor in determining site selection. Because certain areas are experiencing a shortage of readily available labor, the examination of the available labor pool becomes vital. Is there sufficient housing nearby? Is public transportation available? Are trade and technical schools nearby? What is the local attitude towards Maquiladoras? These are all questions that should be answered. Certain parts of the country may also be able to provide an indigenous labor force traditionally skilled in a

63. “Border cities account for 89% of the total number of plants in operation, and 88% of maquiladora employment.” AMERICAN CHAMBER HANDBOOK, supra note 3, § II, at 10.
64. Bennett Interview, supra note 25; Gomez-Mont Interview, supra note 21.
65. See supra note 64.
66. Bennett Interview, supra note 25.
67. Id.
68. These buildings often included old warehouses, schools, and even movie houses. Id.
69. Gomez-Mont Interview, supra note 21.
70. Bennett Interview, supra note 25. See infra notes 78-80 and accompanying text for a discussion of the lease considerations.
71. See supra notes 47-49 and accompanying text.
particular trade, such as knitting.\textsuperscript{72}

The presence of labor unions should also be considered. It should be noted, however, that Mexican labor unions have had relatively little to offer the workers in Maquiladoras, and it is for this reason that the unions have had relatively little success in the in-bond industry.\textsuperscript{73}

Where they do exist, unions have emerged primarily as a result of prior union representation in the other plants of the company. When the company decided to open a Maquiladora, the unions were allowed to follow along. In general, labor unions have not posed difficulties for the Maquiladora industry. Indeed, union leaders have often served as effective liaisons between workers and management for dispute resolution.\textsuperscript{74}

Mexican restrictions on foreign land ownership also play a role in determining location. The Mexican Constitution is quite explicit and stipulates that no alien\textsuperscript{75} may acquire direct dominion over land and water within 100 kilometers of the borders or fifty kilometers from the seacoast, an area more commonly referred to as the “forbidden zone.”\textsuperscript{76} The Foreign Investment Law of 1973, however, permits the Executive Branch to authorize the establishment of trusts (called \textit{fideicomisos}), whereby a Mexican credit institution acquires ownership of real estate located in the forbidden zone as trustee on behalf of a foreign beneficiary.\textsuperscript{77} This trust device imposes certain

\textsuperscript{72} See \textit{AMERICAN CHAMBER HANDBOOK}, \textit{supra} note 3, § II, at 14, for a general map of areas with specialized labor forces.

\textsuperscript{73} Union activity in Mexico is not considered a general problem for in-bond operations. Companies have consistently provided excellent work surroundings and benefits. Provided this continues and the industry ensures adequate wages, training, good fringe benefits, and reasonable advancement opportunities, stability of the workforce is not expected to be a problem. At many of the major centers of in-bond activity, unions do not formally exist. Turner, \textit{supra} note 47, at 29.

The City of Matamoros is an example of where an “extremely aggressive [sic] union has been able to capitalize on management errors and its ignorance of Mexican labor and customs, with the result that salaries and benefits in that city are about double those of any other place on the border.” \textit{AMERICAN CHAMBER HANDBOOK}, \textit{supra} note 3, § VI, Mexican Labor Law, at 3.

\textsuperscript{74} Gomez-Mont Interview, \textit{supra} note 21.

\textsuperscript{75} An “alien” is defined by this law as any foreigner, foreign company, or Mexican company that does not prohibit, in its Articles of Incorporation, foreigners from owning its stock. Foreign Investment Law, \textit{supra} note 5, art. 7.

\textsuperscript{76} \textit{LA CONSTITUCION MEXICANA}, art. 27, § 1, para. 2 (Mex.). This restriction was reiterated in the Foreign Investment Law of 1973. Foreign Investment Law, \textit{supra} note 5, art. 7. \textit{See generally} Pitts, \textit{supra} note 19, at 288-90.

\textsuperscript{77} Foreign Investment Law, \textit{supra} note 5, art. 18. The basis for this part of the Foreign Investment Law came from a Decree of April 29, 1971, by former President Echeverria. For a general discussion on the trust device in the forbidden zone, see \textit{L.}
conditions:
(1) its maximum duration may only be thirty years;\(^7\)
(2) the property must be used for tourism or industrial purposes;\(^7\) and
(3) a lease contract must be entered into with the trustee that is not to exceed ten years, but may be renewed twice.\(^8\)

Once these conditions have been met and approval is received from the Secretary of Foreign Relations, a foreigner is allowed to use land situated in the forbidden zone. This procedure is the only way open to a foreigner to legally use land in the forbidden zone. Direct land ownership by foreigners is impermissible, and any title purchased by a foreign individual or corporation for land located within this forbidden zone will be a null deed unenforceable in Mexican courts.\(^8\)

Location can be one of the most important factors of the Maquiladora program. Mexico's geographic proximity to the United States provides an American company many advantages that are not possible anywhere else in the world. At the same time, the specific location selected in which to operate in Mexico must be chosen with great care because the proper site selection will greatly facilitate the operation of the Maquiladora.

E. Exchange Controls

One of the Maquila program's main benefits to Mexico is the generation of foreign currency that is drastically needed to stabilize the peso and to service Mexico's staggering national debt.\(^8\) To accomplish this goal,\(^8\) Mexico has enacted a number of exchange control regulations specifically designed to allow the Mexican government to retain as much foreign currency as possible. The main body of law enumerating the Mexican exchange controls is the Decree on Exchange Controls issued by President Miguel de la Madrid on Decem-

\(78\) Foreign Investment Law, supra note 5, art. 20.
\(79\) Id. art. 18.
\(80\) Id. art. 20.
\(81\) The Foreign Investment Law also includes certain restrictions relating to property participation certificates. See id. art. 21.
\(82\) Gomez-Mont Interview, supra note 21.

\(^83\) Mexico's national foreign debt currently stands at approximately $96 billion. Gardner, Mexico abolishes 'free' peso exchange rate, Fin. Times, July 12, 1985, § 1, at 4, col. 5.

\(^84\) The generation of foreign currency was one of the main objectives of the Maquila program when it was first initiated. The others were the creation of employment and gaining of access to new technology to help Mexico's industrialization. These initial objectives still continue into the present and are the main reasons for the program's continued existence. See Turner, supra note 1, at 26.
ber 13, 1982.  

At the heart of this law is the requirement that all foreign currency earnings be exchanged through Mexican banking institutions at the official exchange rates.  

Until recently, there were three exchange rates in Mexico. The first was the "controlled" rate, which covers most of the country's foreign commerce. Specifically included in the transactions that must use this rate are any exportation of goods and certain payments made by Maquiladoras.

The second rate was the officially set "free" rate which was to cover all foreign exchange transactions not subject to the controlled rate. On July 11, 1985, however, this rate was abolished as part of a peso devaluation strategy. The abolition came about as a reaction to the third rate of exchange, which was a parallel market to the free rate commonly called the "super free" rate. This third rate started as a futures market rate in New York, Chicago, and along the border. It soon spread to the rest of Mexico through the private exchange houses licensed by the government, and now represents the market value of the peso. After the abolition of the free rate, only the controlled rate and the super free rate exist.

The difference in these exchange rates is quite dramatic. As of August 15, 1985, the controlled rate stood at 250 pesos to the dollar and the super free rate at 350 pesos. For the American manufacturer coming into Mexico, it would thus be much more advantageous to convert dollars needed to pay salaries and other expenses at the super free rate of exchange rather than at the controlled rate. This,

85. Decree on Exchange Controls, D.O., Dec. 13, 1982 [hereinafter cited as Decree]. There have also been numerous amendments to this Decree to add complementary provisions that further define the application of the exchange controls. A number of these were specifically designed to explain the exchange controls as they apply to the Maquiladoras. See Recent Amendments to the Exchange Control Decree Relating to Maquiladoras, D.O., Nov. 7, 1984 [hereinafter cited as Recent Amendments]. Complementary Exchange Rules, supra note 37.

86. Complementary Exchange Rules, supra note 37.

87. Approximately 80% of all foreign transactions with Mexico must go through the controlled rate. See Gardner, supra note 83.

88. Decree, supra note 85, art. 2, para. A.

89. Id. art. 2, para. B. See also infra notes 95-101 and accompanying text.

90. Decree, supra note 85, art. 9.

91. See Gardner, supra note 83.

92. Bennett Interview, supra note 25.

93. The controlled rate is set by the Banco de Mexico (Bank of Mexico) and is published in the Diario Oficial de la Federación [D.O.] (Official Gazette of Mexico). See Decree, supra note 85, art. 8.
however, is not permitted.94

The regulations, as they apply to the in-bond industry, provide that Maquiladoras are required to invoice for goods or services they export in one of the authorized currencies,95 and then exchange those currencies for pesos at the controlled rate to meet the following expenses:

1. all wages and salaries of Maquiladora employees;
2. rental payments;
3. the price of goods or services acquired in Mexico;
4. all taxes paid in Mexico;
5. insurance premiums;
6. interest and other expenses related to peso denominated loans; and
7. any other operating expenses payable in Mexico.96

Thus, if the expense falls into one of these categories, sufficient authorized currency must be exchanged at the controlled rate to meet the expenses. If the Maquiladora has been authorized by the Ministry of Commerce and Industrial Development to sell goods or render services for the domestic Mexican market, then resulting peso proceeds may be used to meet these other expenses and do not require foreign currency exchange.97 The rules also provide that this exchange must occur on or before the last working day of the month in which the expense was incurred.98 Documentation evidencing compliance with this requirement must be kept for a period of five years.99

One major area not included in the above categories is the acquisition of fixed assets such as real estate. The Exchange Control Decree specifically states that such expenses are not subject to the controlled rate and may be paid with dollars or pesos exchanged on the open

95. The authorized currencies include U.S. dollars, Canadian dollars, Swiss francs, British sterling, German marks, and any other currency immediately convertible into any of the foregoing authorized currencies. See Complementary Exchange Rules, supra note 37, rule 1.
96. Decree, supra note 85, art. 2. Cf. Recent Amendments, supra note 85, art. 43; Complementary Exchange Rules, supra note 37.
97. Recent Amendments, supra note 85, art. 43; Complementary Exchange Rules, supra note 37, rule 1, para. 1. See infra notes 116-120 and accompanying text for the requirements that must be met before a Maquiladora may sell goods or render services in the Mexican market.
98. Recent Amendments, supra note 85, art. 43; Complementary Exchange Rules, supra note 37, rule 2, para. 2.
99. Complementary Exchange Rules, supra note 37, rule 2. In-bond plants must also inform the Ministry of Finance and Public Credit on a monthly basis of the amounts of Mexican currency sold to Mexican banks and the amounts of foreign currency applied to the payments. Id. rule 3.
market. Another major exception arises in the situation where a foreign (non-Mexican) financial institution has granted credit to a third party for the development of real estate properties or industrial parks to be used by the Maquiladora. Rental payments to be used, pursuant to a credit agreement, for the repayment of the loan are not subject to the controlled rate. This inducement may help alleviate the building shortage caused by the lack of available credit within Mexico.

The exchange control requirements might be considered a drawback to the Maquila program by the American investor. The added cost imposed by the controlled rate, however, is a readily calculable cost that is not overbearing when considered against the many advantages. Foreign currency is vital to Mexico's economic stability and is part of the symbiotic relationship that the Maquila program exemplifies.

F. Access To Supplies And Machinery

An integral part of the Maquila program is the ability of in-bond operators to import into Mexico duty-free the supplies and machinery needed for the production cycle to occur in the Maquiladora. Pursuant to Mexican customs regulations, once a Maquila operation has been approved by the Ministry of Commerce and Industrial Development ("SECOFIN"), a permit may be sought to import temporarily the following items:

1. raw materials and supplies, as well as receptacles, packaging materials, labels, instruction booklets, and expendable supplies;
2. tools, production accessories, industrial security equipment, and manuals; and
3. machinery, equipment, instruments and spare parts for the production process, as well as laboratory, calibration, and test equipment, and such equipment as may be required for quality control and personnel training purposes.

The items described in paragraph (1) may only remain in Mexico for

100. Decree, supra note 85, art. 2, para. B.
101. Recent Amendments, supra note 85, art. 43; Complementary Exchange Rules, supra note 37, rule 2. These credits must be registered with the Ministry of Finance and Public Credit. Id.
102. Bennett Interview, supra note 25. See also supra notes 66-70 and accompanying text.
103. Decreto para el Fomento y Operación de la Industria Maquiladora de Export-
a period of six months unless an extension has been granted.104 Those items described in paragraphs (2) and (3) may remain in Mexico for the life of the Maquiladora.105

Mexican regulations also require that all of the imports described above must be bonded in an amount equal to the value of the import duties which would have to be paid if the goods were to remain permanently in Mexico.106 However, if the in-bond plant has an established track record and is economically solvent, the amount of the bond may be reduced to an amount equal to 40% of the duty on those goods described in paragraph (1) and 60% for those described in paragraphs (2) and (3).107 In practice, the bond never costs the in-bond operator the entire value of the potential duties because Mexican customs authorities accept a Mexican bonding company’s guarantee that the duties will be paid if the goods remain in Mexico.108 Bonding ordinarily may be arranged on a renewable annual basis.109

The regulations also make special provisions for the shrinkage and waste inherent in production processes. All such shrinkage and waste is essentially discounted from the raw materials that were initially imported, so the in-bond operator will not be held liable for the total amount which must be exported.110 The materials designated as waste111 or rejected for quality control reasons must be destroyed, given to charitable or educational institutions, exported, or formally imported into Mexico after payment of the appropriate duties.112 Although the percent of allowable wastes will vary, depending upon the product, normal waste and shrinkage will seldom exceed 5% to

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104. Id. One extension, for a like period of time, may be granted by SECOFIN if need is demonstrated. Once this period expires, the in-bond operator should seek a new import permit. In the case of a company that requires specialized installations, the extension may be for a longer period, but the company must demonstrate progress in its installations. Id. ch. II, art. 8.

105. Id. ch. II, art. 7.

106. Id. ch. III, art. 28.

107. Id.

108. Gomez-Mont Interview, supra note 21. The charge for this bonding service usually runs between 1-2% of the value of the duties covered. Id.

109. Id.


111. “Waste” is defined as that which is consumed in the production process and whose integration into the product returned abroad cannot be proven (i.e., shrinkage), or the residue of the goods that follows upon the process to which the goods are subjected. Id. ch. II, art. 10. Containers and packing materials for merchandise imported temporarily receive the same treatment as wastes. Id.

112. Id.
10%.113

All other raw material or machinery that is not imported may be purchased freely on the Mexican market. Since Maquiladoras are Mexican corporations, they are entitled to pay the same price as Mexican-owned companies. This could be a distinct competitive advantage in those situations where a necessary raw material or factor of production, such as electric power,114 is much cheaper in Mexico than in the United States.

G. Sales Within Mexico

The general policy of Mexico is that 100% of in-bond production must be exported and that the development of the domestic Mexican market is left to those companies wholly-owned or majority controlled by Mexican nationals.115 Only in very specific situations, and then to a limited degree, have Maquiladoras been able to sell their products within the Mexican marketplace.

The rules surrounding the sale of Maquila products in Mexico are enumerated in the “Decree for the Development and Operation of the In-Bond Export Industry.”116 Under Chapter II, Articles 12 and 13, a Maquiladora may petition SECOFIN for authorization to sell a portion of its production in the Mexican market. Approval will not be granted if the product is already produced in sufficient quantity in Mexico, or if there is a program to develop Mexican production of the same or a similar product.117 If neither of these conditions exist, then approval may be granted if the following conditions are met:

1. the products to be sold in Mexico have a certain degree of local content;
2. the products must be subject to the same quality control standards as those produced for export;
3. the operation must produce a positive foreign exchange budget;
4. technical assistance must be provided to the Maquiladora’s current or future Mexican suppliers; and
5. the general guidelines established for the relevant branch of

114. Electric rates are approximately one third the cost of American rates. Presentation by Banco Nacional de Mexico to the United States-Mexico Chamber of Commerce (Pacific chapter) (June 6, 1985).
115. In-Bond Decree, supra note 103, ch. II, art. 12.
117. Id. ch. II, art. 12.
Industrial activity must be met.\textsuperscript{118} In addition to these requirements, SECOFIN may consider such other factors as location, type of plant, number of employees, and the desirability of the product in general.\textsuperscript{119} Any approval will establish a quota that should not exceed 20\% of the Maquiladora's total annual production.\textsuperscript{120} Only in exceptional cases will a greater percentage be authorized, and then only if the company does not lose its character as an exporter.\textsuperscript{121}

Approval is only valid for one year, and may be withdrawn, or the quota revised, at any time during that year if the company fails to meet any of the above requirements, or if domestic manufacturers emerge to supply Mexico's needs.\textsuperscript{122} Renewal may be sought and granted on a yearly basis.\textsuperscript{123} Any goods that are eventually formally admitted into the Mexican marketplace will be subject to import duties on that portion of the product that was not produced or supplied within Mexico.

Under this structure the domestic market is not easily accessible to the in-bond operator. Even if the above requirements for approval are met, the uncertainty of the revocable approval and its short duration should make most companies wary of investing large amounts of capital in developing a domestic Mexican market.

Notwithstanding these restrictions, however, the domestic sales program can be a very effective way to test the Mexican market before committing to a joint venture with a Mexican partner. During such a test period, the in-bond operator would be able to perfect plant management in Mexico, as well as conduct a more informed search for a Mexican partner. Once it was determined that a domestic market for the product exists, and that a joint venture would be profitable, the in-bond operator could form a separate Mexican corporation as a joint venture to serve only the Mexican market in much greater quantity.

\section*{H. Technology Transfer}

The Transfer of Technology Law of Mexico\textsuperscript{124} also applies to the Maquiladoras. The basic purpose of this law is to control technology received by Mexican entities from developed countries and the price

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\textsuperscript{118} Id. ch. II, art. 13.
\textsuperscript{119} R. Davis, supra note 10, at 251-52.
\textsuperscript{120} D.O., Aug. 15, 1983, ch. II, art. 12.
\textsuperscript{121} Id.
\textsuperscript{122} R. Davis, supra note 10, at 251-52.
\textsuperscript{123} Id.
\textsuperscript{124} Law for the Control and Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks, D.O., Jan. 11, 1982 [hereinafter cited as Technology Transfer Law].
\end{flushleft}
paid for that technology. This reflects Mexico’s particular concern that joint venture corporations might pay exorbitant prices for outdated technology as a means of transferring funds out of the country under the guise of royalty payments.\textsuperscript{125}

The technology transfer law basically provides that all agreements, contracts, or other documents that become effective in Mexico and provide for the transfer of know-how or technical assistance to Mexico must be recorded with the National Transfer of Technology Registry ("NTTR") and approved by SECOFIN. The specific documents that must be recorded and approved include:

- trademark and tradename licenses;
- patents and certificate of invention licenses;
- licenses on industrial models or drawings;
- patent assignments;
- transfer of know-how through plans, diagrams, models, instruction manuals, formulae, specifications, education and training of personnel, and otherwise;
- technical assistance;
- supply of basic or detailed engineering;
- company operation, administration and management services;
- advisory, consultory, and supervisory services, when rendered by foreign individuals or corporations or their subsidiaries, regardless of domicile;
- copyright licenses which imply industrial exploitation; and
- computer programs.\textsuperscript{126}

Maquiladoras should thus enter into agreements with their parent companies which define the manner in which the two companies will interact in the production process, as well as the fees that will be charged for production assistance and services that will be rendered. These agreements are also advisable for tax purposes.\textsuperscript{127}

As a general rule, the agreements between a Maquiladora and its parent company, especially in the case where the Maquiladora is 100\% foreign owned, are subject to a much lower level of scrutiny

\textsuperscript{125} See Pitts, supra note 19, at 274.
\textsuperscript{126} Technology Transfer Law, supra note 124, art. 2.
\textsuperscript{127} See AMERICAN CHAMBER HANDBOOK, supra note 3, § VIII for a general discussion of the Mexican taxes applicable to Maquiladoras. Since Mexican workers are by law entitled to profit sharing of .08\% of total annual taxable plant income, these agreements can be utilized to reduce the taxable income of the plant. See Turner, supra note 1, at 29.
than those filed by a joint venture. Since Mexico does not restrict the outflow of profits from the in-bond industry through exchange controls, there is less incentive for Maquiladoras to pay excessive royalty payments. In-bond agreements are easily approved and registration can usually be accomplished in a week. These agreements will be governed by the applicable Mexican law, and will be subject to the jurisdiction of the Mexican courts or arbitration. Any agreement that is not registered with the NTTR will be void and thus unenforceable if the Maquiladora seeks to rely on it.

I. U.S. Tariffs

Beyond the Mexican legal structure described above, the Maquiladora program is equally subject to a number of tariff provisions contained in the United States Customs Code. In particular, the supplies and machinery to be used in Mexico must be exported from the United States. The completed goods must then be allowed to re-enter the United States without having import tariffs imposed that would cancel out the savings realized through the use of Mexican labor resources.

United States regulations do not treat exports destined for Maquiladoras any differently than any other exports. Any commercial export valued at over $250 must be reported to the Department of Commerce ("Department") at the time of export. In many cases, export licenses will be required. The commodity control list from the Department should be checked well in advance to ascertain whether a special export license will be required or whether the export can proceed under a general license. Of particular concern to the De-

128. Bennett Interview, supra note 25.
129. In comparison to the in-bond plants, a joint venture must exchange the entire profits from sales abroad at the controlled rate of exchange. Joint ventures therefore have an incentive to pay large royalty payments to an American parent company as a way of avoiding the controlled rate. These motivations do not apply to Maquiladoras because only those obligations created in Mexico need go through the controlled rate. See supra notes 83-101 and accompanying text.
130. Maquiladora or Joint Venture: Which Fits Your Company's Needs?, Seminar Transcript, United States-Mexico Chamber of Commerce meeting, Los Angeles, Cal. 5 (May 4, 1984) [hereinafter cited as Seminar Transcript].
131. Technology Transfer Law, supra note 124, art. 7.
132. Id. art. 16, para. IV.
133. This situation could arise when a Maquiladora seeks to justify a low profit earned in Mexico.
135. See AMERICAN CHAMBER HANDBOOK, supra note 3, § VII, U.S. Customs, at 1.
136. "In accordance with provisions of the Export Administration Act of 1979, the Department of Commerce reviews the Commodity Control List (CCL) at least once every 3 years in the case of multilateral controls, and annually in the case of all other controls." 15 C.F.R. § 370.1 (1985). The CCL along with its proper method of use and interpretation may be found in 15 C.F.R. §§ 399.1-399.2 (1985).
partment is the export of high technology items and certain sophisticated testing equipment.\textsuperscript{137}

Penalties for failing to obtain an export license can be quite severe.\textsuperscript{138} American customs brokers and freight-forwarders can be very helpful in assuring that all exports are processed in compliance with current export laws. Exporters should also be aware that in the last few years the United States government has budgeted significant funds and manpower to crack down on illegal exports.\textsuperscript{139} This project, called "Operation Exodus," is designed principally to stop the illegal exporting of high technology goods and data to the Soviet Union. The increased surveillance, however, has caught many other exporters beyond those in the high technology sectors.\textsuperscript{140}

When Maquiladora goods are imported to the United States from Mexico, they are subject to United States import duties, which in most cases will apply only to the increase in value attributable to Mexican production. The applicable regulations on import duties are tariff schedule 8, items 807.00, 806.20, 806.30 and 800.00.\textsuperscript{141}

Under tariff item 807.00, certain goods assembled abroad, in whole or in part, with American made parts are allowed to enter the United States upon payment of import duties on the value added abroad. For this section to apply, however, four conditions must be met:

1. the parts assembled must be of United States origin;\textsuperscript{142}
2. the parts must be exported ready to assemble;

\textsuperscript{137} 15 C.F.R. § 370.1 (1985) provides that one of the factors to be considered by the Department of Commerce in reviewing any commodity is its "technological state of development (whether it involves a new product and represents the current state-of-the-art; whether it contains advanced technology that can feasibly be extracted)." \textit{Id.} § 370.1(b)(3)(v). \textit{See also id.} § 370.3 (prohibited exports).

\textsuperscript{138} Sanctions imposed for violating the Export Administration Act are defined in 15 C.F.R. § 387.1 (1985). The penalties include fines of up to five times the value of the exports, seizure of goods, and imprisonment of up to ten years. \textit{Id.}

\textsuperscript{139} Seminar Transcript, \textit{supra} note 130, at 13.

\textsuperscript{140} \textit{Id.}


\textsuperscript{142} For purposes of item 807.00, "of U.S. origin" has been defined as an article manufactured within "all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam." 19 C.F.R. § 134.1(e) (1985). In practical terms, this means that the parts must be entirely of American origin. However, a part that is partially or wholly of foreign origin may still qualify if it has been substantially transformed or merged into a new and different commercial article in the United States, having a different name, character, and use. \textit{Id.} § 134.1(b). For this reason, Certificates of Manufacture should be obtained from suppliers of American-made parts so that appropriate credits will be received.
(3) the parts must not lose their physical identity in the finished article by change in form, shape, or otherwise; and

(4) the parts must not have been improved in condition or advanced in value except by being assembled or by operations incidental to its assembly.\textsuperscript{143}

If these conditions are met, then the assembled products will be assessed a duty based upon the full value of the product, minus the cost or value of the American manufactured parts. In effect, the American manufactured parts are allowed to return duty free.

Tariff item 806.20 is slightly different in that it applies to articles repaired or altered in Mexico and then returned. The import duty is based upon the cost or value of the alterations or processing performed in Mexico.\textsuperscript{144} It is important to note that some form of repair or alteration must occur abroad for this schedule to apply. Simply testing goods for defects will not qualify as an alteration or repair.\textsuperscript{145}

Item 806.30 is similar to item 806.20 except that 806.30 applies to nonprecious metal articles of American manufacture exported to Mexico for processing and then returned for further processing in the United States. This further processing in the United States is an essential element. Duty is imposed upon the value of the processing done outside the United States.\textsuperscript{146}

Importation under items 807.00, 806.20, or 806.30 will not, however, be allowed if any of the following conditions occur:

(1) the article being imported was exported with the benefit of drawback;\textsuperscript{147}

(2) the article being imported was initially exported only to com-

\begin{footnotesize}
\textsuperscript{143} 19 C.F.R. § 10.16(b) (1985) provides the following examples of operations which are incidental to the assembly process:

(1) Cleaning;

(2) Removal of rust, grease, paint, or other preservative coating;

(3) Application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation;

(4) Trimming, filing, or cutting off of small amounts of excess materials;

(5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad;

(6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and

(7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles.

\textsuperscript{144} 15 C.F.R. § 10.8 (1985).

\textsuperscript{145} See American Chamber Handbook, supra note 3, § VII, U.S. Customs, at 5.

\textsuperscript{146} 19 U.S.C. § 1202 (1982).

\textsuperscript{147} "Drawback" is the repayment of up to 99% of the duties paid on goods which were previously imported into the United States, then manufactured into a new and different article of commerce, and later exported. 19 C.F.R. § 191.2 (1985).
\end{footnotesize}
ply with a law or regulation of a federal agency requiring exportation (i.e., temporary importation); 

(3) the article being imported was exported from continuous customs custody with remission, abatement, or refund of duty (i.e., from a Foreign Trade Zone); or 

(4) the article being imported was manufactured in the United States while under bond pursuant to item 864.05.148

Tariff item 800.00 provides for duty-free entry of American made articles that are returned after exportation but not increased in value or improved in condition by any production process, or other means, while abroad. These goods must also not have been exported with the benefit of drawback,149 or manufactured pursuant to tariff item 864.05.150

One vital issue that runs throughout these schedules is the determination of the value of the returned product. While the law provides for six different methods of valuation,151 only two methods are usually needed in the Maquiladora setting: the Transaction Value Method, and the Computed Value Method.

Using the Transaction Value method, the value of the returned product is determined by taking the price paid for the goods when sold for exporting to the United States, as evidenced by invoice or similar record, and adding any of the following amounts not reflected in the invoice price:

(1) the packing costs incurred by the buyer;

(2) any selling commission incurred by the buyer;

(3) any assist;152


149. See supra note 147.


151. Under this section the six methods of valuation, in order of precedence for use are:

(1) Transaction Value;

(2) Transaction Value of Identical Merchandise;

(3) Transaction Value of Similar Merchandise;

(4) Deductive Value;

(5) Computed Value; and

(6) Reasonable Adjustments.

19 U.S.C.A. § 1401a(a)(1) (West Supp. 1985). The Code specifically defines the manner of calculation of value to be used under each method. Id. § 1401a(b)-(f).

For a general discussion of these valuation methods, see AMERICAN CHAMBER HANDBOOK, supra note 3, § VII, U.S. Customs, at 1-6.

152. “Assists” are defined by the Customs Code to include any of the following:
(4) any royalty or license fee which the buyer must pay as a condition of sale; and

(5) any proceeds accruing to the seller resulting from subsequent resale, disposal, or use of the imported merchandise.\textsuperscript{153}

However, because in most in-bond cases there is no clear-cut sales transaction between importer and exporter,\textsuperscript{154} as required for this method, United States customs officials will usually use the second method, the Computed Value method.\textsuperscript{155} The Computed Value method is akin to the actual value added, as measured by totalling all of the costs involved in the Mexican production or assembly process. These costs typically include foreign operating expenses, assists,\textsuperscript{156} ordinary general expenses, packing and transportation costs, and profit.\textsuperscript{157} Even though these two methods approach the valuation problem quite differently, the value determined under either method should be similar in practice.

An additional option that may be available to the in-bond operator is importation to the United States under the Generalized System of Preferences ("GSP").\textsuperscript{158} Under the GSP, designated products from beneficiary countries are allowed to enter the United States duty-free if the sum of the direct costs of production and the value of the materials incorporated from that country exceeds 35\% of the appraised value of the product at the time of its entry into the United States.\textsuperscript{159} Since Mexico is a beneficiary country of the GSP, Maquiladora goods meeting these conditions may enter the United States duty-free.\textsuperscript{160}

\begin{itemize}
  \item[(i)] Materials, components, parts, and similar items incorporated in the imported merchandise.
  \item[(ii)] Tools, dies, molds and similar items used in the production of the imported merchandise.
  \item[(iii)] Merchandise consumed in the production of the imported merchandise.
  \item[(iv)] Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.
\end{itemize}

\textsuperscript{19} U.S.C.A. § 1401a(h) (West Supp. 1985).
\textsuperscript{153} \textit{Id.} § 1401a(b).
\textsuperscript{154} It is common for the parent company or American owners to transfer funds on an as-needed basis to cover costs and expenses incurred in Mexico. Gomez-Mont Interview, \textit{supra} note 21.
\textsuperscript{155} \textit{American Chamber Handbook, supra} note 3, § VII, U.S. Customs, at 7.
\textsuperscript{156} \textit{See supra} note 152.
\textsuperscript{157} \textit{Id.} § 1401a(e) (West Supp. 1985). The Maquiladora's actual profit figures and general expenses will be used unless they are inconsistent with profits and general expenses of similar companies in Mexico in the sales of merchandise of the same class or kind. \textit{Id.}
\textsuperscript{159} \textit{19 U.S.C.} § 2462 (1982).
\textsuperscript{160} \textit{Id.} § 1462.
IV. PROGNOSIS/CONCLUSION

The importance of understanding the legal structure of the Maquila program cannot be stressed too much. The many factors of the Maquila system should be examined carefully to ensure that the Maquiladora is in compliance with all Mexican and American laws. Failure to carefully examine customs regulations and the importing and exporting of supplies and machinery can lead to considerable frustration, expense, and delay.

Selecting competent Mexican legal counsel is critical to setting up a new Maquiladora. Particular emphasis should be given to selecting a law firm that is knowledgeable of the many Mexican agencies involved in the approval process. A wise selection in this regard can greatly expedite the start-up procedure.\textsuperscript{161} Local counsel can also provide advice on the tax aspects of corporate structure in Mexico.\textsuperscript{162}

One crucial element that should not be overlooked is the importance of good management. Opening a Maquiladora is not the same as opening a subsidiary in another state of the United States. The in-bond operator will be dealing with a completely different culture in Mexico. Many of the management techniques that are successful in the United States may prove to be completely ineffective in Mexico.\textsuperscript{163} It is vital that management be sensitive to the needs and concerns of the Mexican workers, as well as to the cultural and economic concerns embodied in the policies and procedures of the Mexican government and the many agencies with which the in-bond operator will deal.

The future of the Maquila program in Mexico looks bright. Even though Mexico’s economy is expected to grow by nearly 4% this year, this increase is not large enough to absorb the 900,000 expected new entrants into the Mexican labor force.\textsuperscript{164} At the same time, Mexico continues to face a foreign debt of over $96 billion.\textsuperscript{165} Consider declining oil revenues\textsuperscript{166} and it becomes quite clear that Mexico stands to benefit from the Maquila program well into the future. The pro-

\textsuperscript{161} For a general discussion of the start-up procedure along with the various forms that must be filled out, see AMERICAN CHAMBER HANDBOOK, supra note 3, § V.

\textsuperscript{162} For a general discussion of some of the taxes imposed on Mexican corporations, see id. § VIII.

\textsuperscript{163} Koepp, supra note 43, at 36.

\textsuperscript{164} Mexico fails to pass politics, philosophy and economics, THE ECONOMIST, May 18, 1985, at 72 [hereinafter cited as Mexico fails].

\textsuperscript{165} de Onis, Mexico’s Economy: ‘We’re Alive Again’, L.A. Times, Nov. 20, 1984, § 1, at 1, col. 1.

\textsuperscript{166} Mexico fails, supra note 164; de Onis, supra note 165, § 1, at 13, col. 1.
gram continues to grow in both production and output, and the Banco de Mexico estimates that by the year 2000 Maquiladoras will employ one million workers and generate $10 billion in foreign exchange.

Critics of the Maquila program assert that it is nothing more than a return to the foreign exploitation of Mexican resources that occurred in the past. In spite of such claims, the fact remains that Mexico is waging a long-term struggle to enter the ranks of fully industrialized nations, and the Maquila program is essential to this effort. While the benefits Mexico receives from the Maquila program may not include everything that was initially envisioned, conditions in the Maquiladoras compare favorably with those elsewhere in Mexico. Perhaps the comment of one woman working in a video cassette assembly plant sums it up best: “We’re proud of what we’ve won, even if we don’t make more money.”

The future of United States tariff concessions that make the Maquila program possible looks stable. While American labor unions have claimed for years that the tariff concessions granted by the Tariff Schedule are depriving American workers of jobs, support for the other side is equally strong, if not stronger. Maquila supporters agree that foreign competition is pushing American producers abroad, and that opening a Maquiladora actually saves American jobs by providing United States companies with a competitive edge. The mayor of El Paso, Texas, Jonathan Rogers, estimates that his city alone would lose 20,000 jobs if the Maquiladoras in Ciudad Juarez were closed down. Investment in Mexico is also an ex-

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167. In 1966, when licenses for in-bond plants were first granted, there were 12 Maquiladoras employing a total of 3,000 workers. In-bond Assembly Sector Expands: Maquiladoras are Top Export Earners, LATIN AM. NEWSLETTERS, Feb. 15, 1985, at 8. By 1972, the number of plants had jumped to 350. In 1985, there are over 710 such plants, providing direct employment for over 230,000 people. Maquiladoras on the Upswing: But In-Bond Still a Dirty Word for Nationalist Lobby, LATIN AM. NEWSLETTERS, July 26, 1985, at 9.


170. It was initially hoped that there would be greater horizontal integration of Mexican manufacturers into the in-bond production process. In practice, however, only 2% of inputs used by Maquiladoras are of Mexican origin. In-bond Assembly Sector Expands: Maquiladoras are Top Export Earners, LATIN AM. NEWSLETTERS, Feb. 15, 1985, at 8.


172. Spaeth, supra note 1, at 103.

173. Id. at 103-04. The Washington, D.C., based “807 Committee” has been instrumental in assuring that the tariff concessions granted to off-shore producers are not overly eroded. Seminar Transcript, supra note 130, at 12-13.

174. Spaeth, supra note 1, at 103.

175. Magnuson, supra note 26, at 55.
cellent and positive counterpoise to the flow of illegal aliens.¹⁷⁶

From a foreign policy standpoint, a strong and healthy Mexico is by far the best neighbor, as both entrepreneur and customer, for the United States. The fact is that Mexico and the United States are mutually reliant upon one another. The Maquila program is a reflection of this symbiotic relationship, and indeed, the wave of the future.

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