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## A View of Mexican-U.S. Trade

HARRY A. INMAN\*

In order to understand the trade policies of Mexico and the United States, it is necessary to review the present trading patterns of each nation as influenced by its political, economic and social demands.

From the time of the Aztecs to the Juarez Period (1857-1872), Mexico was not an active international trader. The Aztecs dominated and controlled trading as did the Spanish and French. Economic activity was a matter of granting monopolies and special privileges. It was not until the middle of the Juarez Period that some progress was made. Greater change occurred during the Diaz Era (1876-1911) when the foreign investor was given "maximum security and freedom of opportunity".<sup>1</sup> This was a period when the United States was experiencing an economic revolution and expansion — a period of aggressive investment by U.S. investors in Mexico and in other foreign countries.

As a consequence of this long history of foreign domination and control by investment, Mexico has, since its independence, favored a protectionist trade policy. The Mexican Constitution of 1917 reflects the Mexican's concern with foreign control. Title to land on the border and seacoast was prohibited to foreigners.<sup>2</sup> Foreigners had the same status as Mexicans and had to agree not to invoke the protection of their government under penalty of forfeiting their interest or participation to the benefit of the Mexican Nation.<sup>3</sup> This doctrine was first stated by Carlos Calvo, an Argentine jurist. Foreigners could not invest in certain services affecting the functioning of government.<sup>4</sup>

The Government assumed a positive role in the production of goods and services and in the distribution of income.<sup>5</sup> It has continued to pursue a protectionist policy to encourage industrial "Mexicanization" and to prevent foreign domination of its markets. It has promoted import replacement or substitution in order to protect domestic industry. As the border was "closed" to imports, foreign corporations attempted to maintain their position in the Mexican market by establishing plants in Mexico itself.

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1. VERNON, *THE DILEMMA OF MEXICO'S DEVELOPMENT* 177 (1963). See generally FOLSOM, *INVESTING IN MEXICO — RECENT TRENDS, PRIVATE INVESTORS ABROAD — PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS* 124-125 (1975).

2. MEXICAN CONSTITUTION, art. 27, (Mex.) *Fracciones* (Sections I, IV).

3. *Id.* The "Calvo Clause" is still required today in corporate articles of incorporation and on stock certificates.

4. *Id.*

5. VERNON, *PUBLIC POLICY AND PRIVATE ENTERPRISE IN MEXICO* 6 (1964). See also WRIGHT, *FOREIGN ENTERPRISE IN MEXICO* (1971).

Currently, such corporations are required to register in Mexico. Mexican corporate law limits their control by restricting all foreign corporate holdings to a maximum forty-nine percent share.<sup>6</sup> Technical assistance and trademark agreements are restricted in the amount of royalties, terms and tenure in order to assure transfer of technology.<sup>7</sup> In addition to other restrictions, trademarks under the Law on Inventions and Trademarks must have a Mexican-connected name.<sup>8</sup> (The effective date of this provision of the law has been delayed until December 29, 1981.)<sup>9</sup>

Protectionism has served not only to ensure Mexican control over existing means of production, but also to encourage further agricultural and industrial development. Mexico is a country of cities — many people have migrated from the rural areas primarily to Mexico City, Monterrey, Guadalajara and cities along the border.<sup>10</sup> Mexico does not produce sufficient agricultural products to feed its people even though it has one of the greatest potentials for agricultural development in the Western Hemisphere. The purpose of the National Industrial Development Plan (1979-82)<sup>11</sup> is to develop those areas of economic and agricultural weaknesses by encouraging industrial and agricultural activity in the needful regions and to encourage production of required products and services. Development of this plan required a protectionist policy.

In 1979 there was a Mexican application to accede to GATT under Article XXXIII. On March 18, 1980 President Portillo of Mexico reaffirmed the need for protectionism when he announced that Mexico would not seek entry to GATT at this time. He stated, "This is not the opportune moment for Mexico to enter . . . [T]he necessary elements are not fully available to provide the protection and flexibility necessary for our development."<sup>12</sup>

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6. See Law to Promote Mexican Investment and Regulate Foreign Investment, *Diario Oficial* [hereinafter D.O.], March 9, 1972 (English Translation, 12 INT'L LEGAL MAT'LS 643 (1973)).

7. See Law on the Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks, D.O., Dec. 30, 1972 (English Translation, 12 INT'L LEGAL MAT. 421 (1973)). See Hyde and Ramirez de la Corte, *Mexico's New Transfer of Technology and Foreign Investment Laws — To What Extent Have The Rules Changed?* 1 INT'L LAW 231 (1976). See also REINER, Vol. I, II DOING BUSINESS IN MEXICO (1980).

8. Art. 127, 128 Law on Inventions and Trademarks, D.O., Feb. 1, 1976.

9. D.O., Decree, Dec. 30, 1980.

10. Urban population in 1973 was 64.2 percent. See STATISTICAL PROFILE, MEXICO, ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA, INTERAMERICAN DEVELOPMENT BANK 309 (1979).

11. 1979-1982 *National Industrial Development Plan*.

12. *Mexico to Lift Oil Output and FORGO GATT Entry*, N.Y. Times, March 19, 1980, at D11, col. 3.

The only deviation from this protectionist trend is the special treatment accorded the "Maquiladora Industry" and other export companies. The "Maquiladora Industry" is comprised of companies which rework and assemble unfinished goods exported from the United States.

Such a company may be 100 percent owned, an exception to the Foreign Investment Law<sup>13</sup> restricting foreign ownership to forty-nine percent.

The United States has never had a long-range or balanced trade policy toward Mexico except for the activity of U.S. private enterprise. Trade has been crisis stimulated, as Mexico has been considered a developing nation. Trade policy has concentrated on Canada, Europe and the Middle Eastern countries for economic and political reasons. Trade negotiations have been initiated when there was a need in the United States for a particular product such as oil and gas, minerals, commodities, fruits and vegetables. There are currently no U.S.-Mexican trade treaties with the exception of an agreement (restrictive in nature) relating to trade in textiles and textile products<sup>14</sup> and an agreement on lead and litharge tariff concessions.<sup>15</sup>

The United States has not had an effective and coordinated trade policy towards Mexico nor towards other nations, as well. As one author has stated,

After decades of international economic preeminence, the competitive position of the United States in the world economy drastically deteriorated in the 1970s. The organization of the U.S. executive branch was inadequate to cope with this deterioration. Years of easy successes in international trade caused the United States to take this preeminence for granted, leaving the United States without a coherent national trade policy or an effective means of promoting U.S. exports. Instead, many federal agencies took uncoordinated and often contradictory actions affecting U.S. trade.<sup>16</sup>

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13. See INVESTING IN MEXICO OBR 79-13, U.S. DEP'T COMMERCE, DEVELOPMENT OF THE "IN BOND" INDUSTRY IN MEXICO 1977 to 1979, and DEP'T STATE, AIRGRAM (Aug. 24, 1979) (May 1979).

14. Agreement relating to trade in cotton, wool and man-made fiber textiles and textile products, with annexes. Exchange of notes at Washington February 26, 1979, entered into force Feb. 26, 1979, effective May 1, 1978, T.I.A.S. No. 9419. Amendment effected by exchange of notes, Sept. 11 and Nov. 20, 1979.

15. Agreement relating to tariff concessions. Exchange of letters at Mexico Oct. 31 and Nov. 8, 1979, entered into force Nov. 8, 1979, effective Jan. 1, 1980, T.I.A.S. No. \_\_\_\_\_.

16. Graham, *The Reorganization of Trade Policy Making: Prospects and Problems*, 13 CORNELL INT'L L. REV. 221 (1980).

The agencies involved in trade decisions included:

- (1) State — responsible for East-West trade negotiations, the negotiation of commodity agreements and general foreign policy;
- (2) Treasury — responsible for

Trade planning has been subject to a maze of bureaucratic controls, duplication and confusion by conflicting authorities in the Departments of Commerce, Treasury and Agriculture.

Even though trade policy toward Mexico has been stimulated by crisis and has lacked central coordination, Mexico does benefit from U.S. legislation aimed at assisting the economic development of developing countries in general, such as the "Generalized System of Preferences,"<sup>17</sup> and items 806.30<sup>18</sup>

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antidumping and countervailing duty investigations, the administration of national security trade restrictions and general economic policy; (3) Commerce — serves as liaison to the business community, responsible for export promotion and the administration of adjustment assistance to domestic firms; (4) Agriculture — serves as liaison to domestic agricultural interests and the Foreign Agricultural Service, responsible for price supports and related import restrictions; (5) Labor — serves as liaison to domestic labor, responsible for the administration of adjustment assistance to workers; (6) Interior — responsible for the formulation of policies regarding minerals and raw materials; (7) Defense — responsible for all trade matters related to national security and for the trade of strategic materials; (8) Energy — responsible for oil import policy and for other energy-trade matters. Other federal agencies conducting activities affecting trade included: (1) the U.S. International Trade Commission — statutory responsibility to conduct investigations to determine whether import competition has injured U.S. industries and to conduct investigations of alleged infringements of U.S. patents; (2) the U.S. Export-Import Bank — responsible for financing U.S. export sales; (3) the Overseas Private Investment Corporation — insurer against risks attributable to investment in developing countries; (4) the Council of Economic Advisors; (5) the National Security Council; (6) the Agency for International Development; and (7) the Office of the Special Representative for Trade Negotiations. *Id.* at 228, note 38.

An affirmative step taken recently by the United States was the reorganizing of its trade structure as of January 1, 1980. Exec. Order No. 11,888, 45 Fed. Reg. 989 (1980). Primary responsibility is established in the Office of the U.S. Trade Representative (USTR) for U.S. trade policy and international trade negotiations. Operational and functional responsibilities are administered by the Department of Commerce under the International Trade Administration (ITA). A new Undersecretary for International Trade has been created. Pursuant to the reorganization plan, all commercial attaches and trade promotion are currently transferred to ITA. Investigations and enforcement of U.S. countervailing and anti-dumping laws will be transferred to Commerce but the Customs Service will continue to assess and collect duties — at the direction of the Secretary of Commerce. The Department of Agriculture remains responsible for overseeing trade in agricultural goods. Both the USTR and the Secretary of Commerce will serve as ex officio non-voting members of the Export-Import Bank and the USTR will serve as an ex officio voting member of the Board of Directors of the Overseas Private Investment Corporation.

17. Title V, Trade Act of 1974, 19 U.S.C. §§ 2461–2465 (Supp. V 1975, Implemented by Exec. Order No. 11, 888, 40 Fed. Reg. 55, 275 (1975)).

18. Section 1615(g) Tariff Act of 1930, Pub. L. No. 71–361, 46 Stat. 590 (1930) as amended by Customs Simplifications Act of 1956, Pub. L. No. 84–927, 70 Stat. 943

and 807.00<sup>19</sup> of the U.S. Customs Tariff schedules. The Generalized System of Preferences has the objective of "increasing the exports and purchasing power of developing countries in the short run and to diversify LDC economies in the longer run by encouraging the export of manufactured and semimanufactured articles."<sup>20</sup> Articles of developing countries subject to these preferences enter the U.S. free of duty unless such articles exceed "competitive need." In 1980 forty-six imports, mostly vegetables, fruits and minerals from Mexico, exceeded these "needs."<sup>21</sup> Effective March 31, 1981 a number of articles exported from Mexico were excluded from GSP treatment based on competitive need removals and graduation.<sup>22</sup>

The importation of previously exported metal products shipped abroad to Mexico for rework and assembly under section 806.30 and items for finishing assembly in Mexico under section 807.00 of the Tariff Schedules has also been a success, even though not initially structured for trade between Mexico and the United States.<sup>23</sup> The "Maquiladora Industry" was created in Mexico to support trade under these tariff schedule items. The items are, however, complex in their requirements and difficult to administer. Historically there has been lack of guidance by the Customs Service in the program. In October, 1975, the U.S. Customs Service submitted part 10 of the Customs Regulations setting forth definitions of the interpretative regulations pertaining to 807.00.<sup>24</sup> This was accomplished in 1975, even though tariff schedules had been in effect since 1963. The documentation procedures pursuant to these guidelines are laborious, confusing and harsh on importers. Although the burden is always upon the importer to supply information to Customs, often Customs itself does not know what types or amounts of information should be supplied.

During President Carter's Administration a "Consultive Mechanism" was established between Mexico and the United States composed of working groups; an Ambassador-at-Large and coordinator for Mexico Affairs was

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(1956). See IMPORT TRENDS IN TSUS ITEMS 806.30 AND 807.00, USITC PUBLICATION 1029 (Jan., 1980) at 6-9.

19. Tariff Classification Study, *effective* Aug. 31, 1965 (Pub. L. 87-456, Presidential Proclamation 3548).

20. GRAHAM, *The U.S. Generalized System of Preferences for Developing Countries: International Innovation and the Art of The Possible*, 72 A.S.I.L. 513 (July, 1978).

21. THE UNITED STATES GENERALIZED SYSTEM OF PREFERENCES, COVERAGE AND ADMINISTRATIVE PROCEDURES IN FORCE IN 1980, OAS PUBLICATION, at 58 (1980).

22. See U.S. Trade Representative Release, March 19, 1980.

23. *Supra*, notes 18 and 19.

24. See CUSTOMS IMPORT REQUIREMENTS ON ARTICLES ASSEMBLED ABROAD FROM U.S. COMPONENTS (item 807.00 TSUS).

appointed to coordinate with the various trade agencies and the Consultive Mechanism.<sup>25</sup> It is unknown whether the present Administration will continue the "Consultive Mechanism" and appoint a special Ambassador-at-Large on Mexican trade matters. Certainly President Reagan has already indicated his intent to further closer relations between the countries; trade cannot help but be on the agenda for consideration.

An interesting trade report pursuant to Section 1104 of the Trade Act of 1979 will be issued by the President to Congress concerning the advisability of entering into trade agreements with North American countries.<sup>26</sup> Public sessions have already been held by the USTR in Miami (February 12-13, 1981). The report with recommendations will be issued to Congress this summer.<sup>27</sup>

Two interesting bills have been introduced in Congress concerning U.S.-Mexican relations and trade which indicate legislative awareness of the need for cooperation between the countries. Congressman Edward Roybal (D.-Cal.) has introduced H.R. 595<sup>28</sup> establishing a Commission for a North American Economic Alliance to study the possibility of the formation of a permanent North American Economic Alliance. H.R. 836,<sup>29</sup> introduced by Congressman Henry Gonzalez (D.-Tex.), establishes a U.S.-Mexico Joint Development Bank, designed to alleviate the migratory laborer situation by offering joint development loans to the more depressed areas of Mexico from where the migratory laborers originate.<sup>30</sup>

There is no question of the United States' need for Mexican energy sources, minerals, strategic raw materials, services, markets and agricultural and fishery products, nor is there any question of Mexican need for U.S. employment support, technology and manufactured goods, as well as assistance in the development of agriculture and water resources. Mexico's infrastructure must be strengthened by increasing agricultural and industrial production, transportation and communications, electrical and water power and resources. An effective trade policy will accelerate and stimulate

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25. See U.S. DEP'T. COMMERCE, FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE UNITED STATES, MEXICO, 1980 Mexico 3 (1980).

26. § 1104, Pub. L. 96-34, 93 Stat. 310 (1979).

27. U.S. Trade Representative Release, Feb. 21, 1981. *USTR to Chair Public Meeting on North American Trade Agreements*.

28. H.R. 595, 95th Cong., 1st Session (Jan. 5, 1981).

29. H.R. 836, 97th Cong., 1st Session (Jan. 13, 1981).

30. See *Mexico Export Package Could Cause Trouble with U.S.*, World Trade News, Financial Times, Jan. 7 1981, at 5, cols. 1-6. See also THE LABOR-INDUSTRY COALITION FOR INT'L TRADE, PERFORMANCE REQUIREMENTS, A STUDY OF THE INCIDENCE AND IMPACT OF TRADE-RELATED PERFORMANCE REQUIREMENTS, and AN ANALYSIS OF INTERNATIONAL LAW (1981).

this development. The economic gap between the two economies is lessening and Mexico today is in the position, with support of oil revenue, to bargain for bilateral arrangements on its own terms. The United States and Mexico should not, however, allow their trade policies to be determined solely by demands of unions, corporations, consumers or even solely by their own governments. The two nations are too interdependent for either to risk a trade confrontation or misunderstanding. The determination to protect against imports, to restrict or encourage exports, or to allow unrestricted trade between the countries should be made with consultation and advice from a bilateral and impartial source. Each could then recognize and appreciate more fully the needs of the other. Any unilateral move toward protectionism by one country causes an immediate chain reaction in the other. Mexico today and Mexico tomorrow is and will be a strong and progressive neighbor to be appreciated. We must have active and alert communication. We must not only solve our current trade problems but prevent them from occurring in the future. It is natural for each country to react to internal demands, but, if possible, these demands should be reviewed on a bi- or multi-lateral level, whether by periodic meetings of ministers or eventually by a North American Economic Alliance. Our relationship to each other is more than social, economic and cultural — it is geopolitical.