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by Harry A. Inman*

Mexico and the United States, as could be expected, have differences in their goals and objectives of international trade. These differences stem from their historical relationship and the varying social and economic needs of each country relevant to their respective stages of development. Responding to a long history of foreign economic domination, Mexico has pursued protectionist trade policies designed to "Mexicanize" its industries. For example, Mexican corporate law requires registration of any physical corporate presence, such as a plant in Mexico, and limits foreign participation in that corporation to forty-nine percent.[1] Similarly, Mexico has declined to enter the General Agreements on Tariffs and Trade (GATT).[2] The United States, meanwhile, has never had a coordinated, long-term trade policy toward Mexico. Rather, the federal government traditionally has left the matter to the private sector until a need for some particular product, such as oil and gas, minerals or fruits and vegetables has prompted urgent trade negotiations. Depending upon its level, cooperation in international trade between these two nations can reduce or increase these policy differences. This overview of U.S.-Mexican trade will review the current issues facing the governments of these two neighbors and offer meaningful suggestions for alleviating existing problems and for promoting U.S.-Mexican trade and cooperation.

Present situation

President Reagan, in his statement at the International Meeting on

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[1] Law of the Promotion of Mexican Investment and the Regulation of Foreign Investment, ch. I, art. 5, Diario Oficial (Mar. 9, 1973), reprinted in (1973) 12 Int'l Legal Materials 643, 644 (1973) (English Translation). This law applies to corporations that come into existence after May 8, 1973. The "Maquiladoras"—foreign manufacturing plants on the borders of Mexico—are exempted from registration, however. See Inman & Tirado, A Mexican Dividend: "Las Maquiladoras," 9 Int'l Law. 431, 436 (1975). See also infra notes 19 & 28 and accompanying text.

[2] As of 1979, Mexico had not joined GATT. See General Agreements on Tariffs and Trade (Geneva), June 30, 1979, Protocol and Schedules, T.I.A.S. No. 9629. See also infra notes 11 & 12 and accompanying text.

Cooperation and Development in Cancun, Mexico,[3] recognized the different needs of countries in the world:

> Middle-income countries need foreign capital, technical assistance and the development of basic skills to improve their economic climate and credit worthiness in international capital markets. The more advanced developing nations which already benefit from the international economy, need increasing access to markets to sustain their development.[4]

The position of the Reagan Administration on international cooperation was iterated at the Cancun meeting: trade, private investment, and global growth, not the wholesale transfer of foreign aid, are the best means for alleviating the problems in the developing countries.[5] This includes the encouragement of private investment and the lowering of trade barriers.[6] "Far too little world attention has been given to the importance of trade as a key to development,"[7] the President said.

In his State of the Nation address of September 1, 1981, Mexican President José López Portillo admitted that worldwide and regional issues place Mexico in conflict with many policies of the Reagan Administration. At the same time, the Mexican leader talked of the need for the United States and Mexico to "transcend their traditional mold and look for shared criteria and solutions."[8]

A step toward the fulfillment of this need to "transcend traditional molds" would be to lessen the emerging trade tensions between the United States and Mexico. This step is vital to both nations: trade between the two countries reached almost $28 billion in 1980, making Mexico the third ranking U.S. trading partner after Canada and Japan, and the second largest market for U.S. exports.[9] Likewise, the Mexican Gov-

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[3] This conference was held October 21 and 22, 1981. It involved the leaders of 22 nations and was designed to study the question of reducing hunger and poverty in the developing countries. Washington Post, Oct. 22, 1981, § A, at 1, col. 2. The countries represented were Algeria, Austria, Bangladesh, Brazil, Britain, Canada, China, France, Guyana, India, Ivory Coast, Japan, Mexico, Nigeria, Philippines, Saudi Arabia, Sweden, Tanzania, United States, Venezuela, West Germany, and Yugoslavia. Id., Oct. 23, 1981, § A, at 20, col. 5. The result of the meeting was an agreement to support "a round of global negotiations" in the United Nations on economic problems, but no agreement was reached on how or when to proceed. Id., Oct. 24, 1981, § A, at 1, col. 1.

[4] President's Statement at the First Plenary Session of the International Meeting on Cooperation and Development in Cancun, Mexico, 17 Weekly Comp. Pres. Doc. 1185 (Oct. 22, 1981) [hereinafter cited as Speech at Cancun].

[5] Washington Post, Oct. 24, 1981, § A, at 1, col. 1.

[6] Id., Oct. 22, 1981, § A, at 1, col. 2. The Reagan Administration is vehemently opposed to any new international agencies such as an "international energy agency" and is also opposed to any changes in the power structure of the World Bank or the International Monetary Fund. Id., Oct. 23, 1981, § A, at 20, col. 2.

[7] Speech at Cancun, supra note 4, at 1186.

[8] Washington Post, Sept. 2, 1981, § A, at 17, col.1. Issues of conflict named by President Portillo include the failure of the United States to ratify SALT II and his Government's support for Cuba, Nicaragua, and leftist insurgents in El Salvador. Id.

[9] Briggs, The United States and Mexico, Dep't St. Bull., July 1981, at 4-7 (statement prepared for delivery before the Subcommittee on Inter-American Affairs of the House Foreign Affairs Committee on June 10, 1981). The largest market for U.S. exports currently is Canada. Id.

ernment has been seeking an annual rate of growth of seven percent, at least through 1982, with particular emphasis on the energy and transportation sectors.[10] Though it does not produce enough food even to feed its own people, Mexico has tremendous potential for agricultural development, an area in which cooperation with the United States could be mutually beneficial.

The current status of trade relations has been well described in a recent article by Thomas R. Graham, Esq., entitled "U.S.-Mexican Trade: Growing Pains in the Partnership."[11] Mr. Graham discusses generally the trade issues between the countries and the following sensitive areas: (1) the U.S. Department of Commerce's imposition of countervailing duties on imports of Mexican leather wearing apparel that benefit from the Mexican CEDI program;[12] (2) the recommendation of U.S. domestic industry and labor to attack the imposition of "performance requirements"[13] for foreign investors, i.e., requirements by a foreign government as conditions for doing business in the country that investors use local components and export a certain percentage of production [this proposal is supported by the Reagan Administration];[14] (3) the constant pressure on the Administration from U.S. industries and labor groups to "graduate" more Mexican products from eligibility under the Generalized System of Preferences;[15] and (4) the U.S. support of the Multifiber Agreement restricting textile and apparel imports.[16]

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[10] International Trade Administration, U.S. Dep't of Comm., Pub. No. 79-146, Foreign Economic Trends and Their Implications for the United States at 3 (1980).

[11] Graham, Todo Indica que Ambos Paises Siguen Necesitandose, Expansion, Oct. 14, 1981, at 150-54 (English translation available in UNC Law School Library).

[12] Id. at 151. For a recent decision, see Leather Wearing Apparel from Mexico, 46 Fed. Reg. 3256 (1981) (ITC determined that Mexico was not a "country under the Agreement" within 19 U.S.C. §1671(a)(Supp. III 1979); therefore, no finding of injury to domestic industry was required to support imposition of a duty).

[13] Graham, supra note 11, at 152. See "Performance Requirements," a study of the Incidence and Impact of Trade Related Performance Requirements, and an analysis of International Law, The Labor-Industry Coalition for International Trade (1981).

[14] Graham, supra note 11, at 152. Ambassador William E. Brock, U.S. Trade Representative, stated:

> Trade-related investment incentives and performance requirements (e.g., export performance and local content requirements) have serious trade-distorting effects. They are becoming widely used by developing countries and even by some developed countries. We will deal with these issues and over the longer term seek to negotiate new multilateral disciplines.

Joint Hearings before the Subcomm. on International Finance and Monetary Policy of the Senate Comm. on Banking, Housing and Urban Affairs, 97th Cong., 1st Sess. 24 (1981) (opening statement of William E. Brock).

[15] Graham, supra note 11, at 152. To "graduate" means to lose eligibility under the Generalized System of Preferences. Effective March 31, 1981, many products were graduated from Mexico. See U.S. Trade Representative Release, March 19, 1980. "Graduation" of a product theoretically results when the nation or industry producing the product has developed sufficiently to no longer deserve special treatment. In other words, the product or products are competitive with products of the developed world, without the preferential treatment. See Inman, A View of Mexican-U.S. Trade, 6 Int'l Trade L.J. 190, 194 (1980-81).

[16] Graham, supra note 11, at 153. The current multifiber agreement restricts imports of textiles and apparel from developing countries including Mexico. This is one of the few areas

Another area of possible friction is the concern of U.S. labor regarding Items 806.30 and 807.00 of the U.S. Tariff Schedules.[17] Both these tariff items promote, or at least do not discourage, manufacturing outside the United States. Item 806.30 involves articles of metal, except precious metal, that are manufactured or subjected to a process of manufacture in the United States, exported for processing, and returned to the United States for further processing.[18] The effect of Item 806.30 is to limit the duty to the value of the *foreign* processing of these articles of metal.

Item 807.00 pertains to imported articles whose final assembly is in Mexico, and thus require no further processing in the United States.[19] The effect of Item 807.00 is to limit the duty upon the full value of the imported products, less the value of the U.S. fabricated components contained therein, to imported items assembled in foreign countries with fabricated components that have been manufactured in the United States. Item 806.30 was incorporated in the U.S. Tariff Schedules in 1956[20] and Item 807.00 in 1963.[21]

The need for new initiatives

On June 23, 1981, a Bilateral Trade Committee between the United States and Mexico was established, and is co-chaired by U.S. Trade Representative William Brock, Mexican Secretary of Commerce Jorge de la Vega, and U.S. Commerce Secretary Malcolm Baldridge. The purpose of the Committee is to lessen the "communication gap" between the two countries and to improve generally U.S.-Mexican trade relations.[22]

Trade incentives such as the Generalized System of Preferences and Tariff Items 806.30 and 807.00, and communication mechanisms between countries such as joint commissions or special ambassadors, are

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where developing countries can produce and compete. It is understood that the present Administration favors a simple renewal of the current agreement. However, Treasury Secretary Donald Regan stated at the Cancun meeting that "as times go by," the United States "will be prepared to discuss a liberalization of the 'multifiber agreement.'" Washington Post, Oct. 23, 1981, § A, at 20, col. 3. How much "time" must "go by" is, of course, purely a matter of speculation.

[17] 19 U.S.C. § 1202 (1976 & Supp. IV 1980) (Items 806.30, 807.00).

[18] 19 U.S.C. § 1202 (1976 & Supp. IV 1980) (Item 806.30).

[19] 19 U.S.C. § 1202 (1976 & Supp. IV 1980) (Item 807.00). A number of manufacturing plants called "Las Maquiladoras" have been established on the borders of Mexico to take advantage of Items 806.30 and 807.00. These assembly plant operations have the advantage of limited duties, low labor costs, and accessibility to transportation. The industry is concentrated primarily in electronic assemblies, finishing of shoes, textiles, and garments. See generally Inman & Tirado, supra note 1, at 431-40.

[20] See 19 C.F.R. § 10.9 (1981).

[21] Even though Item 807.00 was incorporated in the Tariff Schedules in 1963, it was not until 1975 that Customs submitted Part 10 of its regulations setting forth definitions and interpreting crucial aspects of the item classification. See 19 C.F.R. § 10.12-.24 (1981). See also 28 Fed. Reg. 9020 (1963).

[22] During the Carter Administration, a Consultive Mechanism was established which was composed of various working groups. An Ambassador-at-Large and Coordinator of Mexican Affairs was appointed with the primary duty to coordinate some 70 agencies working in the Mexican trade area.

important; however, they are not enough. New initiatives are needed if the United States and Mexico desire to have a healthy climate of trade. The following suggestions should be examined by the two governments and adopted either individually or as a whole in an effort to foster trade cooperation between the two economies.

One initiative that could be explored is free or limited duty trade for both countries in certain commodities and services. For example, the United States needs fluorspar, railroad freight cars, and farmworkers; Mexico needs corn, wheat, insurance, and long-term financing services. In addition, foreign trade zones could be established along the border of the countries and in the principal cities within each country to help stimulate trading. Second, even though Mexico now imports grains and certain food products, it should be a primary supplier for the Western Hemisphere of most other agricultural and fishery products. The countries should coordinate their efforts to develop the potential of Mexico's agricultural lands and sea. This could be accomplished by exchanging experts, for example.[23]

A third area for improving trade involves corporate investment regulations. Trade is encouraged by investment, and often precedes investment. The Mexican laws regulating foreign investment, technology and inventions, and trademarks[24] could be revised to allow exemptions for certain companies. Often U.S. corporations hesitate to invest substantial amounts in Mexico because of the forty-nine percent foreign stock ownership limitation,[25] and because of the limited duration and the low royalty allowed under technical assistance or licensing agreements.[26] In addition, there is always the concern that foreign ownership limitations might be depleted even further by Government decree. A company simply cannot invest time, experience and technology, and not be able to have effective discussion or control over decisions. Mexican laws could be revised to allow a company to be incorporated with non-Mexicans receiving more security and control over certain decisions, trademarks, patents, and technology in specified areas that promote trade or further the public interest of Mexico.[27] The "Maquiladora" concept of placing a duty tax on only the value added in Mexico could be further developed to include not only trade activity under Items 806.30 and 807.00 but also

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[23] At the Cancun meeting, President Reagan did offer to send *volunteer* teams of U.S. farmers and agricultural experts to developing countries to help train farmers. Washington Post, Oct. 23, 1981, § A, at 20, col. 2.

[24] See Murphy, The Legal Framework for Foreign Investment in Mexico, in Private Investors Abroad—Problems and Solutions in International Business, Sw. Legal Foundation Proc. 55, 63-71 (1980).

[25] Id. at 64. See also Hyde & Ramirez de la Corte, Mexico's New Transfer of Technology and Foreign Investment Laws — To What Extent Have the Rules Changed?, 10 Int'l Law. 231, 241 (1976).

[26] Hyde & Ramirez de la Corte, supra note 25, at 236.

[27] See generally id. at 231-52.

domestic distributions.[28]

An area that is not regulated by the Mexican federal corporate law is the investment in government bonds, private corporate securities, and mutual funds. U.S. citizens and institutions should investigate and realize the potential of this type of investment in Mexico. At the same time, many states in the United States, though already promoting their liberal corporate laws, also might grant tax or other incentives to Mexican companies that invest in the state.[29] The United States and Mexico should also work out their differences over "performance requirements"[30] for investors in order to improve the climate for investment in Mexico.

Fourth, both the United States and Mexico should streamline their customs and immigration procedures to allow products and people to move more freely across the border.[31] Presently, the United States has a temporary business "B-1" visa that is easy to obtain and can be used for transactions that amount to less than establishing a permanent business relationship.[32] Mexico, on the other hand, has a "visitante" visa which is complicated, takes several weeks to obtain and could be denied.[33] In addition, to promote Mexican agricultural and industrial development, the Mexican immigration law should allow special exemptions for foreign technicians.

In certain instances, a company may have the raw material or product but be unable to obtain sufficient financing. Thus, a fifth initiative by the countries should be the encouragement of barter or hybrid barter arrangements. Such arrangements also would overcome any currency exchange problems created by inflation or devaluation. Why couldn't a loan made by a company in the United States to a company in Mexico be paid off in inventory whether it be oil, gold, silver or a raw material? Both countries should reexamine, where necessary, the possibility of facilitating import licenses and easing other import barriers to permit such barter transactions.

Sixth, there should be closer cooperation between governments and private trade, labor, and business associations to promote exports and imports. Trade, labor, and business associations in Mexico work closely with the Mexican Government, and often participate on joint commissions.[34] This is rarely true in the United States.[35]

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28 See Inman & Tirado, supra note 1, at 440. "Maquiladoras" are foreign manufacturing plants that receive materials for processing from the United States, and when the goods are returned, the United States applies a duty only on the value added by processing, i.e., the labor cost. Id. Most important, the Maquiladoras are exempt from the 49% foreign ownership limitation. Id. at 438.

29 To the author's knowledge, no state has yet considered such incentives.

30 See supra notes 13 & 14 and accompanying text.

31 See generally Graham, supra note 11, at 150-54.

32 22 C.F.R. ¶ 41.25 (1981).

33 A new visa agreement was reached on August 3, 1982 allowing U.S. businessmen on temporary business to use the Mexican tourist visa between the United States and Mexico.

34 See Forbes, Nov. 23, 1981, at 153.

35 What is more likely in the United States is the independent and uncoordinated efforts of a plethora of federal agencies, not to mention the influence of the dominant adversarial

The encouragement of tourism is another initiative that should be undertaken on a government level by both countries. Currently, the Mexican Government actively supports and encourages tourism more than the U.S. Government.[36] The United States and Mexico could streamline their customs procedures to allow tourists special exemptions and accomodations. The Mexican Government even could consider eliminating some of its restrictions on foreign purchase of real property.[37]

One of the sensitive trade areas mentioned earlier is the imposition of the U.S. countervailing duties against certain imports from Mexico without proof of injury.[38] It is unfair to penalize a country that, for economic or political reasons, has not found it feasible to become a member of GATT or sign the Subsidies Code. Why shouldn't the United States treat Mexico as a "country under the agreement" with respect to the International Counterveiling Duty Subsidy Code as the United States has done in regard to India?[39]

Cities in Mexico[40] and the United States are the centers of economic, political, and social power. A joint trade relationship between cities of each country could be another productive step toward improved trade between the two nations. Los Angeles and Mexico City, Monterrey and Pittsburgh, for examples, could exchange ideas and services regarding their environmental and traffic needs. Language proficiency, student exchanges, and tourism could be promoted. The potential of this form of cooperation is enormous.

Purchasing insurance at reasonable costs and obtaining long-term financing for the purchase of homes or cars is not possible in Mexico.[41] The Mexican Government should allow its citizens to legally purchase insurance in the United States to cover a person or property in Mexico. The Government should allow long-term financing from U.S. sources secured by property in Mexico for home mortgages and the purchase of cars. Barriers to trade in such services as insurance and banking will command considerable attention in trade talks during the next few years.

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relationships that exist among labor, business, and government in the United States today. See Graham, The Reorginization of Trade Policy Making: Prospects and Problems, 13 Cornell Int'l L.J. 221, 228 & n.38 (1980).

[36] See Forbes, supra note 33, at 154-61.

[37] For more discussion on Mexican restrictions on holding real property, see Hyde & Ramirez de la Corte, supra note 25, at 241. See also Murphy, supra note 24, at 65-66.

[38] See supra note 12 and accompanying text.

[39] Determination Regarding the Application of Certain International Agreements, 46 Fed. Reg. 48,391 (1981).

[40] Mexico's population was 67% urban in 1980, as compared to 51% in 1960. The World Bank, 1981 World Development Report 173 (August 1981).

[41] Foreign insurance and banking companies are not allowed to do business in Mexico. They can have an office there, as does National City Bank, but cannot transact business. The cost of Mexican insurance is very high, and the banks offer short term loans at high interest rates only.

Finally, the United States or certain border states should allow Mexican laborers to work legally in the United States on certain temporary projects as was allowed in the "Bracero Program" in 1951.[42] This would not only relieve the labor and population pressures in Mexico but also provide needed farm labor in the United States.

Conclusion

Obviously, the initiatives outlined here require varying degrees of mutual sacrifice. The United States and Mexico are continually battered by internal and external pressures, such as the U.S. labor unions' opposition to the Bracero and Maquiladoran Programs. But a closer economic relationship can ease these pressures and better serve the long-term economic and political interests of the two nations and their people. More than general discussions or the appointment of special ambassadors and joint commissions is needed; there should be a willingness to search for and realistically evaluate new initiatives. Each country is generally aware of what is needed and where the problems are but little is done to solve them. Considering the closeness and trade vulnerability of these two neighbors, why wait until problems become acute before evaluating and negotiating these and any other bilateral initiatives?

Postscript:

Since this article was prepared in February 1982, there have been many changes in Mexico. Mexico is now a country in financial crisis with external debts of more than $80 billion, inflation of nearly 100% and unemployment of nearly 50%. It has experienced two devaluations and exchange controls. All private banks have been nationalized and the value of the peso has tumbled. Mexico has, however, agreed to accept the guidance of the International Monetary Fund in connection with its monetary policy.

On December 1, 1982, Miguel de la Madrid Hurtado became President and announced an austerity plan. He has appointed capable persons to his Cabinet, many of whom are considered economic conservatives. Trade at this time is vital to Mexico—perhaps even more than loans. It is time for a frank and fair appraisal of our trade relationship.

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[42] The "Bracero Program" was an agreement between the two national governments by which workers from Mexico were imported to the United States for temporary employment in agriculture. See Act of July 12, 1951, Pub. L. No. 78, Ch. 223, 65 Stat. 119 (formerly codified at 7 U.S.C. §§ 1461-68), as amended by Act of Dec. 13, 1963, Pub. L. No. 88-203, 77 Stat. 363. The Act expired on Dec. 31, 1964.