

# MEXICO'S AUTO INDUSTRY: THE LAST BASTION OF PROTECTIONISM FALLS?

Jorge Camil †

## I. INTRODUCTION

In the past thirty years, practically all Mexican presidents have succumbed to the temptation to regulate the Mexican automobile industry.<sup>1</sup> The current administration of President Carlos Salinas de Gortari is not an exception to the rule. The 1989 Automotive Decrees, enacted by President Salinas on December 11, 1989,<sup>2</sup> are two executive orders which largely deregulate the domestic truck market<sup>3</sup> and confirm a lifelong history of protectionism of the car industry.<sup>4</sup>

This article presents an overview of Mexico's car industry today within the context of Mexican law, a concise history of the Mexican auto industry from 1925 to 1962, and an analysis of the legislation that preceded the 1989 Automotive Decrees. The reservations made when Mexico decided to participate in the General Agreement on Tariffs and Trade (GATT) and other issues affecting the domestic auto industry will also be reviewed. Finally, the 1989 Automotive Decrees will be discussed and evaluated in the context of Mexico's recent decisions to liberalize foreign trade and to deregulate many of the country's most important economic activities.

---

† Licenciado en Derecho, Universidad Nacional Autónoma de México; J.D., University of Houston, partner, Camil Abogados, Mexico City.

1. The only Mexican president who did not regulate the auto industry during this period was Gustavo Díaz Ordaz, who governed Mexico from 1964 to 1970. President Díaz Ordaz was preempted by his predecessor, Adolfo López Mateos, who in 1962 published a historic decree for the "integration" of the auto industry. This decree was intended to go into effect on September 1, 1964, three months before the inauguration of President Díaz Ordaz.

2. *Decreto para el Fomento y Modernización de la Industria Automotriz*, Diario Oficial [D.O.], Dec. 11, 1989 [hereinafter Car Decree]; *Decreto para el Fomento y Modernización de la Industria Manufacturera de Vehículos de Autotransporte*, D.O., Dec. 11, 1989 [hereinafter Truck Decree].

3. See *infra* notes 187-193 and accompanying text.

4. See *infra* notes 212-224 and accompanying text.

## II. AN OVERVIEW OF MEXICO'S CAR INDUSTRY

### A. *The Integration Decree: The End of Assembly Plants and the Beginning of Manufacturing Operations*

The stream of legislation enacted to regulate the Mexican auto industry started with a presidential decree, the Integration Decree,<sup>5</sup> published in 1962 to transform assembly plants into domestic manufacturing operations.<sup>6</sup> With the publication of the Integration Decree, the automobile industry was the first to be subjected to the policy of "industrial integration," which encouraged domestic manufacturers to use Mexican raw materials, intermediate products, and supplies.<sup>7</sup>

The Integration Decree imposed an import ban on parts and components for the automobile assembly industry<sup>8</sup> and required the manufacturers to submit "integration" programs to the Mexican government that would result in the domestic production of cars and trucks by September 1, 1964.<sup>9</sup>

Eventually, more legislation emerged to regulate the development of the Mexican auto industry. Following the Integration Decree, three consecutive regulations were enacted to develop,<sup>10</sup> promote,<sup>11</sup> and rationalize<sup>12</sup> the production of motor vehicles and automotive parts. Nevertheless, at the heart of every attempt to regulate the Mexican auto industry is an overriding concern with the balance of payments.<sup>13</sup> Every

5. *Decreto que Prohíbe la Importación de Motores para Automóviles y Camiones, así como de Conjuntos Mecánicos Armados para su uso o Ensamble, a Partir del 1o. de Septiembre de 1964*, D.O., Aug. 25, 1962. The Integration Decree was actually signed by President Adolfo López Mateos on August 23, 1962 [hereinafter Int. Dec.].

6. The Integration Decree imposed an import ban, effective September 1, 1964, on finished cars and engines, as well as on parts and components for the automobile assembly industry. Int. Dec., *supra* note 5, art. 1. The only parts and components that were entitled to import permits after 1964 were those required for the domestic production of engines and motor vehicles under manufacturing programs approved by the Mexican government. *Id.*, arts. 2-3. Raúl Salinas Lozano, who was Secretary of Industry and Commerce in 1962, stated in 1975 that the auto industry had been the only industrial activity ever "established by decree." H. VAZQUEZ, *UNA DECADA DE POLÍTICA SOBRE INDUSTRIA AUTOMOTRIZ*, 6 (1975) [hereinafter H. VAZQUEZ].

7. For a discussion of this government policy see H. WRIGHT, *FOREIGN ENTERPRISE IN MEXICO*, 170-75 (1971) [hereinafter H. WRIGHT].

8. See *supra* note 6 and accompanying text.

9. Pursuant to art. 4 of the Int. Dec., *supra* note 5, after Sept. 1, 1964, at least 60% of the "direct cost of production" of motor vehicles had to be incurred in Mexico. See *infra* notes 89-90 and accompanying text.

10. See generally *Decreto que Fija las Bases para el Desarrollo de la Industria Automotriz*, D.O., Oct. 24, 1972 [hereinafter Dev. Dec.].

11. See generally *Decreto para el Fomento de la Industria Automotriz*, D.O., June 20, 1977 [hereinafter Prom. Dec.].

12. See generally *Decreto para la Racionalización de la Industria Automotriz*, D.O., Sept. 15, 1983 [hereinafter Ration. Dec.].

13. Notwithstanding government regulation and export incentives, automakers and their suppliers show a combined foreign trade deficit of U.S. \$5.3 billion for the five-year period from 1978 to 1982. The effect, however, was almost reversed for the following five-year period

executive order has addressed this issue<sup>14</sup> and expressed the government's long-standing ambition to convert this economic activity into a net generator of foreign exchange.<sup>15</sup>

The domestic auto industry has been "turning out basically Mexican-made cars and trucks"<sup>16</sup> since 1965, and there are clear signs that it has finally achieved maturity.<sup>17</sup> Despite this achievement, the production of automobiles in early 1990 continues to be a bastion of Mexican protectionism<sup>18</sup> at a time when the government has deregulated large segments of the economy and made important efforts to liberalize foreign trade.<sup>19</sup>

### B. *The Mexican Supply Industry*

In 1972 the government "mexicanized"<sup>20</sup> suppliers and further promoted the mandatory use of certain Mexican parts.<sup>21</sup> The government also banned competition between automakers and their local suppliers in

from 1983 to 1987. ASOCIACIÓN MEXICANA DE LA INDUSTRIA AUTOMOTRIZ (AMIA), LA INDUSTRIA AUTOMOTRIZ DE MÉXICO EN CIFRAS, 205-209 (1988) [hereinafter AMIA 1988]. A government officer stated in 1987 that from 1970 to 1981, the trade deficit of the entire automotive industry grew more than eight times, representing 72% of the trade deficit of all manufacturing industries. Rodríguez Weber, *El Efecto de la Liberación del Comercio Sobre la Política del Desarrollo Industrial*, in BARRA MEXICANA, LA NUEVA LEY SOBRE COMERCIO EXTERIOR, 31 (1987) (hereinafter, BARRA MEXICANA).

14. See generally Dev. Dec., *supra* note 10, Statement of Purposes; Prom. Dec., *supra* note 11; Ration. Dec., *supra* note 12. See also *infra* notes 187, 198-204, and accompanying text. Although the Integration Decree does not mention in the Statement of Purposes the government's concern with the balance of payments, one author has concluded that one of the purposes of the Integration Decree was to "release the pressure on the balance of payments caused by [auto] imports" (translated by the author). M. CAMARENA, LA INDUSTRIA AUTOMOTRIZ EN MEXICO, 24-25 (1981) [hereinafter M. CAMARENA].

15. See Prom. Dec., *supra* note 11, Statement of Purposes, ¶ 4. President José López Portillo summarized the government's intentions by stating the necessity to "convert [the auto industry] into a net generator of foreign exchange that would contribute to the equilibrium of [Mexico's] balance of payments" (translated by the author).

16. H. WRIGHT, *supra* note 7, at 173.

17. On Jan. 10, 1984, Ford announced plans to invest U.S. \$500 million to build a Japanese-designed subcompact car in Hermosillo, Mexico. Wall St. J., Jan. 11, 1984, at 1, col. 6. See also Wall St. J., Aug. 8, 1989, at A6, col. 1 [hereinafter WSJ Mexi-Car]; D. HALBERSTAM, THE RECKONING, 691-92 (1986) [hereinafter D. HALBERSTAM].

18. See *supra* note 4 and accompanying text; see also WSJ Mexi-Car, *supra* note 17.

19. For a discussion of Mexico's efforts to liberalize foreign trade and deregulate its economy see generally Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of a New Economic Model*, 12 Hous. J. OF INT'L L. 1 (1989) [hereinafter Camil].

20. See Dev. Dec., *supra* note 10, art. 33. The policy of "mexicanization" required that "new foreign investors should associate with Mexican capitalists and should ideally take a minority position in new undertakings." H. WRIGHT, *supra* note 7, at 154. The term "mexicanization" has also been applied to economic policies destined to induce domestic subsidiaries of foreign corporations to sell a controlling interest to Mexican nationals in order to qualify for government incentives. See *infra* note 206.

21. Pursuant to article 2 of the Dev. Dec., *supra* note 10, the integration of Mexican-made parts was mandatory, provided that: (a) local prices did not exceed by more than 25% those offered by foreign suppliers, (b) quality control was observed, and (c) delivery was timely made.

the production of parts and components for the domestic market.<sup>22</sup> These were far reaching decisions destined to avoid the vertical integration of the auto industry,<sup>23</sup> promote the proliferation of domestic suppliers, and facilitate compliance with the mandatory "level of domestic integration" (*grado de integración nacional* or GIN).<sup>24</sup> The 1972 legislation fostered the coexistence of the two most important actors in the Mexican auto industry, vehicle manufactures and suppliers, which sometimes have the tendency to move in different directions. The domestic auto industry has been predominantly owned by foreign capital<sup>25</sup> since 1925<sup>26</sup> and includes a cross-section of American, European, and Japanese automakers.<sup>27</sup> The Mexican supply industry, on the other hand, is controlled by domestic capital in accordance with Mexican law, and it has only achieved momentum in the past twenty years.

### C. Summary of Modern Government Regulatory Policy

The modern history of the Mexican auto industry is marked by copious government regulation. Car manufacturers, unlike producers in any other industry, have been alternatively or simultaneously subject to tax incentives and special taxes,<sup>28</sup> tariffs,<sup>29</sup> price controls,<sup>30</sup> production

22. Pursuant to article 9 of the Dev. Dec., *id.*, automakers were "banned from manufacturing automotive parts or components for the local market that could be produced by the [domestic] supply industry" (translated by the author). See *infra* note 207 and accompanying text.

23. Unable to prevent foreign control of auto manufacturing companies, the government chose instead to "mexicanize" the supply companies, thus promoting a horizontal integration of the auto industry with a strong participation of domestic capital. See *supra* note 20 and accompanying text; H. VAZQUEZ, *supra* note 6, at 53; see also M. CAMARENA, *supra* note 14, at 20. Nevertheless, under the 1989 Automotive Decrees a limited vertical integration will be allowed. See *infra* note 207.

24. The required level of domestic integration (*grado de integración nacional* or GIN) under both the Integration Decree and the Development Decree was 60%. See *supra* note 9 and accompanying text. See also *infra* notes 89-90 and accompanying text.

25. Of the five automobile manufacturers currently operating in Mexico, only Chrysler's assembly operation was originally incorporated with domestic capital under the name *Fábricas Automex*. The Company, however, is now 99% owned by Chrysler and operates under the name Chrysler de México. For a breakdown of foreign and domestic participation in the auto industry in 1976 see M. CAMARENA, *supra* note 14, at 39. For financial information, including the 1989 capital breakdown of the Mexican auto industry (excluding Nissan Mexicana), see EXPANSIÓN, Aug. 16, 1989, at 98-139 [hereinafter EXPANSIÓN'S 500].

26. See *infra* note 55 and accompanying text.

27. The car manufacturers presently in Mexico are Ford, General Motors, Chrysler, Volkswagen, and Nissan (all predominantly owned by foreign capital). The only Mexican truck manufacturer that reported foreign participation in 1989 is *Fábrica de Autotransportes Mexicana, S.A. de C.V.* (FAMSA), currently number 117 in the ranking of Expansión's 500. See EXPANSIÓN'S 500, *supra* note 25, at 108. Unconfirmed information in the industry indicates that in late 1989 Daimler Benz acquired up to 80% of FAMSA.

28. From its inception, the auto industry has traditionally enjoyed a number of tax incentives and subsidies. See *infra* notes 58-59 and accompanying text. When the government decided to promote the domestic integration of the auto industry, subsidies were granted for all federal taxes on component imports and special assembly taxes. These subsidies were granted in order to keep prices at the same level as those that existed when cars were merely assembled

quotas,<sup>31</sup> export incentives,<sup>32</sup> domestic integration requirements,<sup>33</sup> and other forms of administrative control. A recurring theme of Mexican political administrations has been the control of car-lines and models to avoid excessive production in an environment where economic circumstances would not justify oversupply.<sup>34</sup>

Although the government significantly reduced the number of assembly companies that existed in 1962,<sup>35</sup> auto analysts still debate what the ideal number of car manufacturers should have been after 1964, when many assembly operations were closed.<sup>36</sup> Today, five foreign

---

in Mexico. For a discussion on tax policies for the auto industry prevailing until 1975 see H. VAZQUEZ, *supra* note 6, at 54-58. These tax subsidies and other incentives were confirmed by Article 32 of the Dev. Dec., *supra* note 10, and Articles 35 through 37 of the Prom. Dec., *supra* note 11. See also *supra* notes 176-80 and accompanying text for a discussion of some of the special taxes affecting the Mexican auto industry.

29. See H. VAZQUEZ, *supra* note 6, at 55.

30. The sale of motor vehicles has been traditionally subject to price controls by the federal government. See H. VAZQUEZ, *id.*, at 58-60. See also Int. Dec., *supra* note 5, art. 11; Dev. Dec., *supra* note 10, arts. 26-28; Prom. Dec., *supra* note 11, art. 24. The government has always imposed price and other controls on optional equipment offered by automakers. See Dev. Dec., *supra* note 10, arts. 30-31; Prom. Dec., *supra* note 11, art. 20; Ration. Dec., *supra* note 12, art. 13.

31. From the beginning of the integration program, automakers were subjected to "basic" production quotas. See H. VAZQUEZ, *supra* note 6, at 32. "Extra" production quotas have been awarded as an incentive to increase the levels of national integration and exports. *Id.*, at 33; Dev. Dec., *supra* note 10, arts. 12-13.

32. Exports have always been the ultimate goal of most legislation affecting the auto industry. See *supra* notes 13-15 and accompanying text.

33. Complying with GIN requirements has consistently been a point of contention between the Mexican government and automakers. Confidential information obtained by this author indicates that some automakers have never complied with the statutory GIN requirements. Every presidential decree since 1962 has addressed this issue. See Int. Dec., *supra* note 5, art. 4; Dev. Dec., *supra* note 10, arts. 1, 13; Prom. Dec., *supra* note 11, arts. 7-8; Ration. Dec., *supra* note 12, art. 5. Lately, compliance with GIN requirements has been difficult because devaluations of the Mexican peso necessarily increase the proportion of direct cost of production incurred abroad. See Prom. Dec., *supra* note 11, Statement of Purposes, ¶ 5.

34. See Dev. Dec., *supra* note 10, arts. 16-20; Prom. Dec., *supra* note 11, arts. 16-18; and Ration. Dec., *supra* note 12, arts. 3, 4.

35. According to one author, prior to the publication of the Integration Decree, Mexico had 15 assembly plants producing a variety of 41 different car makes and models. Ortega, *La Industria Automotriz y su Comportamiento en el Ambito Económico, Político y Social de México*, 17-18 (1982) (unpublished academic thesis on file with the Economics Department of Universidad Anáhuac) [hereinafter Ortega]. Other authors list 21 assembly plants operating before the enactment of the Integration Decree. ASOCIACIÓN NACIONAL DE DISTRIBUIDORES DE AUTOMÓVILES, ASPECTOS FUNDAMENTALES DE LA FABRICACIÓN Y DISTRIBUCIÓN DE AUTOMÓVILES Y CAMIONES EN MEXICO, 32-33 (1966) [hereinafter ANDA]. There are discrepancies also on the number of makes and models being produced by the Mexican assembly industry. A 1981 study reveals that there were 74. M. CAMARENA, *supra* note 14, at 24. In January 1963, the government had only approved the manufacturing programs of nine assembly plants. These manufacturers were Ford, General Motors, Chrysler (then *Fábricas Automex*), *Vehículos Automotores Mexicanos* (Rambler), Volkswagen, DINA, *Fábrica Nacional de Automóviles* (Borgward), Nissan, and International Harvester. Some of these plants would subsequently close or leave the Mexican market. ANDA, *supra*, at 35.

36. Apparently, there was considerable debate within the Mexican government about the number of manufacturing programs that should have been approved. See Ortega, *supra* note

automakers and five truck-assembly companies, which are predominantly Mexican, share a small Mexican market<sup>37</sup> with enormous growth potential.<sup>38</sup> Car and truck manufacturers have been supported by hundreds of domestic suppliers<sup>39</sup> accustomed to chronic overpricing because of economic circumstances,<sup>40</sup> and frequently afflicted by technical limitations.<sup>41</sup> For all their limitations, Mexican suppliers employ over seventy percent of all auto workers,<sup>42</sup> and they are responsible for fifty-six percent of the gross domestic product (GDP) attributable to the auto industry.<sup>43</sup> In addition, the supply industry has become an important contributor to Mexico's balance of payments.<sup>44</sup>

---

35, at 23 n.12. For a discussion of the political pressures placed on the Mexican government to accept certain automakers see *id.*, at 28-30. See also *infra* notes 78-79 and accompanying text.

37. AMIA lists the following corporations as manufacturers in 1988: Chrysler de México, Ford Motor Company, General Motors de México, Nissan Mexicana, Volkswagen de México, Diesel Nacional, *Fábrica de Autotransportes Mexicana*, Kenworth Mexicana, Trailers de Monterrey, and Victor Patrón. The last five corporations listed are all truck manufacturers. AMIA 1988, *supra* note 13, at 40-44. See *supra* note 25 and accompanying text.

38. The Mexican market has been erratic in the past ten years. The market reached a historic peak of 570,000 motor vehicles in 1981 and then dropped 18% in 1982 and 41% in 1983. Another peak developed in 1985 when approximately 400,000 units were sold, but auto sales dropped in 1987 to approximately 250,000 units. AMIA 1988, *id.*, at 105. Considering Mexico's population growth and the current thrust to promote popular cars, AMIA officials interviewed by the author believe that the Mexican market could easily reach one million units in the short term.

39. Officers of the *Industria Nacional de Autopartes* (INA) interviewed by the author informed this author that there are 500 auto suppliers in Mexico. Of those, approximately 300 are "high tech." Only 180 of the most important suppliers, though, are members of INA, which is a non-profit organization formed in 1961 for the purpose of representing and promoting the interests of the Mexican supply industry.

40. Historically high profits, the absence of economies of scale, and the cost of imported raw materials, parts, equipment, and technical assistance, are some of the reasons for the high cost of Mexican parts.

41. The president of Chrysler de México stated, at an important symposium on the auto industry held in 1980, that 81 "high-tech" Mexican suppliers were invited in 1979 to participate in an ambitious export program for Chrysler Corporation. Of all those invited only 15 got purchase orders. Twenty-eight suppliers were rejected for lack of competitive prices, 27 failed to qualify because of technical or investment deficiencies, and eleven suppliers simply lost interest in the program. Address by Jack H. Parkinson at the Second Symposium on the Mexican Automotive Industry, held in Querétaro, Mexico (Jan. 21-23, 1980) published in *INDUSTRIA NACIONAL DE AUTOPARTES, MEMORIA II, SEGUNDO SIMPOSIUM DE LA INDUSTRIA AUTOMOTRIZ MEXICANA*, 66 (1980).

42. Statistical information developed at INA (copies available at the offices of the *Houston Journal of International Law*).

43. Statistical information developed by Ciemex-Wefa with 1987 data furnished by the Mexican Ministry for Programming and Budget (copies available at the offices of the *Houston Journal of International Law*).

44. Figures for the five-year period 1983-1987 show that exports of automotive parts and components amounted to U.S. \$6.6 billion (an important portion of this amount, however, consists of engine exports by the auto assembly companies). Exports of motor vehicles for the same period amounted to only U.S. \$1.8 billion. AMIA 1988, *supra* note 13, at 205. Officers of the Commerce Department interviewed by the author in 1990 indicated that auto exports now represent 25% of all of Mexico's non oil-related exports.

#### D. *The Foreign Investment Issue*

Automakers enjoy a privileged situation under Mexican law. Notwithstanding the visibility of the industry, car manufacturing companies have been allowed to remain foreign-owned, despite Mexico's foreign investment law (FIL),<sup>45</sup> which requires, as a general rule, a majority participation of Mexican capital in new domestic corporations.<sup>46</sup> Although most of the car companies were originally incorporated without domestic capital<sup>47</sup> prior to the publication of the FIL in 1973,<sup>48</sup> they have never been subjected to the policy of "mexicanization,"<sup>49</sup> and they have always been allowed to expand their domestic investments.<sup>50</sup>

Mexican protectionism of the automobile industry has gone beyond tax incentives and the acceptance of controlling foreign capital in assembly companies. After 1964, a complete import ban was imposed on finished cars. As a result, makers without approved manufacturing programs were unable to import parts and components.<sup>51</sup> These restrictions created a captive domestic market for all manufacturers sanctioned by the Mexican government in 1962.

Nevertheless, carmakers have responded to Mexican protectionism with sizable investments.<sup>52</sup> Consequently, the mere announcement that Mexico was considering the liberalization of the auto market provoked a strong negative reaction. Some manufacturers even questioned the advantages of maintaining their local plants if the borders were opened to imports.<sup>53</sup>

---

45. *Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, D.O., Mar. 9, 1973 [hereinafter FIL]. The FIL went into effect on May 8, 1973.

46. For background on the FIL and the 51-49% rule, see Camil, *supra* note 19, at 9-13.

47. See *supra* note 25 and accompanying text.

48. The FIL respected acquired rights of existing companies with majority foreign participation. See Camil, *id.*, at 9-10.

49. See *supra* note 20 and accompanying text.

50. Certain general resolutions issued by the Mexican Foreign Investment Commission (FIC) imposed upon companies with majority foreign participation the obligation to obtain a government permit to expand their existing investments by way of either new facilities or new product lines. See *Resoluciones Generales*, 9, 13, D.O., Aug. 30, 1984. These general resolutions went into effect on Aug. 31, 1984. For a brief discussion on general resolutions see Camil, *supra* note 19, at 13. Most automakers have expanded their original investments after the publication of the FIL in 1973. For a comparative analysis of installed plant capacity of the five car manufacturers from 1982 to 1987 see, for 1982-1984, AMIA, *LA INDUSTRIA AUTOMOTRIZ DE MÉXICO EN CIFRAS*, 48-49 (1986) [hereinafter AMIA 1986]; and for 1985-1987, AMIA 1988, *supra* note 13, at 45-46. See also *infra* note 52 and accompanying text.

51. See *supra* note 6 and accompanying text.

52. The peso value of total assets owned by the automobile industry in Mexico went from 32.5 billion in 1978 to 5.6 trillion in 1987. In the same period, peso figures for sales went from 46.6 billion to 4.4 trillion. AMIA 1988, *supra* note 13, at 170. The real significance of these impressive figures, however, has to be assessed in the light of the revaluation of assets required by Mexico's inflationary accounting practices and of Mexico's staggering inflation in this nine-year period.

53. See WSJ Mexi-Car, *supra* note 17.

### III. A CONCISE HISTORY OF THE MEXICAN AUTO INDUSTRY: 1925-1962

#### A. Before World War II

Although the first automobiles appeared on Mexican roads shortly before the 1910 Revolution,<sup>54</sup> the history of the Mexican auto industry really began in 1925 with the establishment of Ford Motor Company's first Mexican assembly operation.<sup>55</sup> Ford's courageous decision to enter the Mexican market in the political climate that prevailed at the end of the Revolution<sup>56</sup> initiated a trend that was followed by other automakers.<sup>57</sup>

The Mexican government quickly responded to this new economic activity. Three months after the incorporation of Ford's subsidiary, existing tariffs on unassembled cars were reduced by fifty percent to encourage the establishment of other assembly companies,<sup>58</sup> and assembly plants were given the status of in-bond areas to facilitate customs operations.<sup>59</sup> Government regulations issued in 1926 and 1931 promoted the use of Mexican parts on a voluntary basis and planted the seed of what was to become, thirty years later, the domestic integration program.<sup>60</sup>

By the beginning of World War II, Ford, General Motors, and Chrysler, the Big Three, were firmly established in Mexico. Following in the footsteps of Ford, *General Motors de México* commenced assembly operations in 1937,<sup>61</sup> and the first Chrysler automobiles were assembled in 1939 by *Fábricas Automex*,<sup>62</sup> a domestic company that would subsequently become wholly owned by Chrysler Corporation. Many other assembly plants followed the Big Three shortly before and immediately after World War II. At the time of the enactment of the Integration Decree in 1962, Mexico had twenty-one assembly plants<sup>63</sup> that were producing a variety of cars and trucks including seventy-four different

54. 1908 appears to be the year when the first automobiles arrived in Mexico. See M. CAMARENA, *supra* note 14, at 19. See also ANDA, *supra* note 35, at 27.

55. See FORD, 60 AÑOS DE FORD EN MÉXICO, 31 (1985) [hereinafter FORD].

56. See *id.* at 29. The Revolution substantially reduced auto imports from 1910 to 1916. ANDA, *supra* note 35, at 27. In 1925, Mexico was still involved in a postrevolutionary conflict over religious ideology known as "the Cristero War." This conflict claimed approximately 30,000 lives. See G. F. MARGADANT, *LA IGLESIA MEXICANA Y EL DERECHO*, 165-70 (1984).

57. Most assembly operations were established between 1937 and 1948. See ANDA, *supra* note 35, at 30, 31.

58. See FORD, *supra* note 55, at 35. This important government incentive was contained in a special decree issued for Ford Motor Company de México, published on Oct. 14, 1925. See also ANDA, *supra* note 35, at 28.

59. FORD, *supra* note 55, at 35.

60. For an interesting discussion on government regulations preceding the Integration Decree, see ANDA, *supra* note 35, at 27-33.

61. See *id.* at 30.

62. See *id.*

63. Different authors give different figures on the amount of existing assembly plants and

makes and models.<sup>64</sup>

### B. Post-World War II and the Import Ban on Finished Cars

By the end of the war the domestic market was hungry for cars, and Mexico began to spend a considerable amount of its war savings on luxury imports, which included automobiles.<sup>65</sup> This was the beginning of a perennial source of conflict between import-starved domestic automakers and the Mexican government. To protect the balance of payments, in 1947 the government banned indiscriminate imports of cars and other luxury items, but promoted the continuation of assembly operations.<sup>66</sup>

Very few of the initial assembly operations were undertaken by the home offices of the original equipment manufacturers (OEMs). Many were established by domestic companies that served as licensees of one or more foreign OEMs.<sup>67</sup> This was particularly true in the case of European and Japanese manufacturers.

Volkswagen and Nissan, the other two automobile manufacturers presently in Mexico, entered the domestic market at a later date. The first Volkswagen imports arrived in 1954, and five years later an assembly license was awarded to a group of Mexican investors. Finally, in 1964, the current *Volkswagen de México* was formed to manufacture automobiles under the Integration Decree.<sup>68</sup> The procedure followed by Nissan was already a familiar pattern. Two years of imports preceded the decision to assemble one of its compact models at a plant owned by a domestic corporation that was engaged in the assembly of several European and American automobiles.<sup>69</sup>

---

models prior to the enactment of the Integration Decree. See *supra* note 35 and accompanying text. This author believes that the figure of 21 assembly plants contained in ANDA, *supra* note 35, at 32-33 may be correct, since it was corroborated by Mr. Raúl Salinas Lozano, who was Secretary of Industry and Commerce in 1962. Mr. Salinas stated that when the decision was made to issue the Integration Decree there were "about twenty assembly plants" in Mexico (translated by the author). H. VAZQUEZ, *supra* note 6, at 7.

64. See *supra* notes 35, 63 and accompanying text.

65. See ANDA, *supra* note 35, at 31. The war suspended many imports to Mexico, allowing the country to build up considerable foreign exchange reserves.

66. The government ban was contained in a decree issued on July 9, 1947, and lasted until Jan. 20, 1951. *Id.*

67. The term "OEM" is a U.S. auto industry term. Between 1951 and 1959, DINA, the Mexican truck manufacturer, was successively franchised to assemble automobiles for Fiat and Renault. ANDA, *id.*, at 32. *Fábricas Automex*, which was principally a Chrysler licensee, also assembled Fiat cars from 1960 to 1965. Ortega, *supra* note 35 at 19. See *infra* note 69 and accompanying text.

68. Ovaciones, May 4, 1969 (special supplement), at 12.

69. For a review of Nissan's 25 years in Mexico see *México Automotriz*, Mar. 1, 1987, at 19. Apparently, Nissan was given a manufacturing license instead of another manufacturer that failed to comply with the Integration Decree. See ANDA, *supra* note 35, at 38. One author has suggested that Nissan's manufacturing program was approved because of pressures on the Mexican government related to Mexico's cotton exports to Japan. See Ortega *supra* note 35, at 28 n. 14.

DINA, the largest Mexican assembly plant, began as a truck manufacturer. The company was incorporated in 1951 by private and public sector investors with a license to assemble Fiat trucks. Subsequently, Fiat signed a second license agreement for the production of compact automobiles. In 1957, financial difficulties forced the government to buy-out the private investors, cancel the Fiat agreements, and sign a license contract with Renault.<sup>70</sup>

### C. *Renewal of Car Imports and the Coming of the Integration Decree*

Although the 1947 import ban on finished cars was lifted in 1951,<sup>71</sup> the inexpensive domestic labor and the lower transportation costs of unassembled cars contributed to the continued development of the assembly industry. An equally important contributing factor was the adoption of government incentive policies.<sup>72</sup>

In 1951, the assembly industry witnessed the makings of a more definite government policy. Together with the renewal of car imports, the government outlined the principal elements of a policy that would eventually lead to the Integration Decree. This time the government established a system of production quotas, imposed a rule for incorporating certain domestic parts, and implemented a lasting system of price controls.<sup>73</sup>

The liberalization of car imports in 1951 backfired. Official figures demonstrate that imports surpassed local production in the 1950s. This situation induced the government to adopt additional measures, which would be a premonition of things to come. In 1960, the government expressed its willingness to increase production quotas in favor of companies that incorporated larger percentages of domestic parts:<sup>74</sup> the Mexican auto industry was ready for the Integration Decree.

Since the domestic auto industry was not yet organized to lobby as an interest group,<sup>75</sup> the Mexican government consulted with individual assembly plants prior to the enactment of the Integration Decree. The *Asociación Mexicana de la Industria Automotriz* (AMIA), which was to play a significant role in the enactment of future legislation, was in its

---

70. For a brief summary of DINA's history see Ovaciones, May 14, 1969, at 20-21. In 1989, as part of the Mexican government's privatization policy, DINA was sold to a group of private Mexican investors. Renault eventually left the Mexican auto market but is now back with a wholly-owned subsidiary that manufactures engines for export in the north of Mexico.

71. See M. CAMARENA, *supra* note 14, at 22.

72. See *id.* at 21.

73. See *id.* at 22.

74. See *id.* at 24.

75. Interview with Mr. Alfonso Ponce Robles, first General Manager of AMIA, in Mexico City (Nov. 6, 1989).

organizational stage in the early 1960s and, therefore, ill-equipped to represent the industry.<sup>76</sup>

Three years of governmental analysis and fact-finding missions to the United States, Europe, Japan, and Brazil led the Mexican Secretary of Industry to conclude that the local market would be more than adequately served with three manufacturing companies.<sup>77</sup> Nonetheless, President López Mateos was apparently of a different opinion,<sup>78</sup> and the government approved nine manufacturing programs that met the conditions established in the new rules of the game.<sup>79</sup>

#### IV. LEGISLATIVE BACKGROUND: FOUR PRESIDENTIAL DECREES IN HISTORICAL PERSPECTIVE

Mexican presidents have, to a certain extent, legislative authority. Their enactments take the form of *reglamentos*, whose purpose is to explain, regulate, or supplement specific laws,<sup>80</sup> or *decretos*, which are executive orders promulgated and published in the same manner as congressional acts.<sup>81</sup> This legislative authority has been widely used in the automotive industry.

The four presidential decrees discussed in this section of the article have never been in full force and effect simultaneously, because each presidential enactment has been superseded by the next one.

##### A. Phase One: The Integration

The first important executive order, the Integration Decree, transformed mere assembly operations into manufacturing facilities,<sup>82</sup> imposed the mandatory use of certain Mexican parts,<sup>83</sup> and terminated indiscriminate auto imports.<sup>84</sup> In addition, this executive order provided the Mexican government with a mechanism to protect the balance of

---

76. AMIA was originally organized on Jan. 3, 1951, as part of the *Asociación Mexicana de Caminos* (Mexican Road Association) and did not acquire an independent status until 1955. *Id.*

77. The Secretary, Mr. Raúl Salinas Lozano, was one of the authors of the Integration Decree. See H. VAZQUEZ, *supra* note 6, at 6.

78. Mr. Salinas Lozano revealed that there were two factions within the Mexican government debating the ideal number of manufacturers that should be approved. See H. VAZQUEZ, *id.*, at 6-7.

79. Considering that Mr. Salinas, who was in favor of approving only three plants, was at the time the highest ranking official on industrial matters, the winning faction must have received the support of President López Mateos. *Id.*

80. See H. WRIGHT, *supra* note 7, at 16.

81. See *id.* at 16-17.

82. See *supra* note 6 and accompanying text.

83. Although the Integration Decree was rather vague on the matter of so-called "mandatory parts," the in-house machining of the engine was obligatory. Int. Dec., *supra* note 5, art. 3, ¶ (a).

84. Int. Dec., *id.*, art. 1. See *supra* note 6 and accompanying text.

payments.<sup>85</sup>

Mexico's decision to convert assembly plants into production units with a capacity to undertake the machining of engines and other automotive parts, was consistent with the policies of "import substitution"<sup>86</sup> and "industrial integration."<sup>87</sup> Although these economic policies were originally designed to promote industrial development, they had in fact provided Mexican administrations since 1940 with the opportunity to utilize "tariffs, tax concessions, and import licenses to implement investment restrictions, which were dictated by the status of the economy, the balance of payments, or the prevailing political sentiment towards foreign capital."<sup>88</sup>

The mandatory GIN requirement, announced in 1962 by the Integration Decree, provided that manufacturers were obligated to originate at least sixty percent of each automobile's "direct cost of production" in Mexico.<sup>89</sup> Notwithstanding this government policy, Mexican-made cars continued to have a high proportion of foreign parts and components. This high percentage of foreign parts was a result of two factors: domestic suppliers were hard to find and the sixty percent GIN requirement could be diluted with production costs, which included raw materials, intermediate components, fuel, electric power, wages, and depreciation.<sup>90</sup>

An important by-product of the Integration Decree was the termination of licensed assembly operations in the car industry—a circumstance that enhanced the quality of the products and the technological level of the domestic auto industry.<sup>91</sup>

The reality of high-priced automobiles was recognized by the Mexican government in 1962 as an unavoidable quid pro quo for the creation

85. The severe restrictions on indiscriminate imports established by the Integration Decree gave the Mexican government an important instrument to protect the balance of payments. See *supra* note 14 and accompanying text.

86. The policy of "import substitution" was designed to induce local manufacturers to change from "the establishment of plants for the mere assembly or final processing of imported parts or intermediate products" into real manufacturing facilities. H. WRIGHT, *supra* note 7, at 84.

87. "Industrial integration" is a term "applied in Mexico to the domestic production of a commodity from domestic raw materials and intermediate products and other Mexican-source supplies." H. WRIGHT, *supra* note 7, at 170.

88. Camil, *supra* note 19, at 7.

89. See *supra* note 9 and accompanying text. The term "direct cost of production" was taken from the law for the promotion of new and necessary industries, which was a federal statute that gave tax incentives to key industries. See generally *Ley de Fomento de Industrias Nuevas y Necesarias*, D.O., Jan. 4, 1955.

90. See *Reglamento de la Ley de Fomento de Industrias Nuevas y Necesarias*, D.O., Dec. 2, 1955, art. 10.

91. See *supra* note 67 and accompanying text.

of an industry that was considered important to Mexico's economic development.<sup>92</sup> Nevertheless, high prices were to plague the Mexican auto industry for many years.<sup>93</sup>

The Integration Decree was a very important instrument of Mexican economic policy in the 1960s.<sup>94</sup> Nevertheless, the 1970s brought a change in political style that would substantially affect the Mexican economic model and the government's attitude toward foreign investment.<sup>95</sup>

### B. Phase Two: The Development

The 1972 Development Decree<sup>96</sup> was not enacted merely to adapt the domestic auto industry to Mexico's new economic model.<sup>97</sup> The industry was in need of more substantial legislation and this decree helped make the transition from the "integration" stage into a higher level of economic and technical development.<sup>98</sup> Additionally, the supply industry had grown considerably since 1962 and had to be regulated.<sup>99</sup>

Although the sixty percent GIN requirement<sup>100</sup> was maintained, additional production quotas were offered as an incentive to achieve higher levels of domestic integration.<sup>101</sup> Moreover, automakers were obligated in 1972 to use all available domestic parts and mechanical components<sup>102</sup>

---

92. Article 11 of the Int. Dec., *supra* note 5, recognizes a tolerated difference between prices authorized in Mexico and those charged at the OEM's home offices.

93. In 1989 prices of Mexican-made cars and trucks, including sales tax and other special taxes, were frequently 100% higher than those of comparable vehicles in the United States. See *infra* notes 177 to 182.

94. For an interesting discussion of the importance of the Integration Decree within the context of Mexico's economic policy in the 1960s, see H. WRIGHT, *supra* note 7, at 170-175.

95. For a brief analysis of the 1970 economic changes resulting from the administration of President Luis Echeverría, see Camil, *supra* note 19, at 8-12.

96. See *supra* note 10 and accompanying text.

97. For a summary of Mexico's "old" economic model prevailing in the 1950s and 1960s see Camil, *supra* note 19, at 8-9, 21-22.

98. The Development Decree clearly recognizes the need to review existing legislation on the auto industry to increase efficiency and productivity. Dev. Dec., *supra* note 10, Statement of Purposes, ¶ 6.

99. The government recognized the importance of the supply industry by dividing the Development Decree into two separate sections that regulate, respectively, auto manufacturers and suppliers. See *id.*, Tits. I, ¶ I.

100. See *supra* notes 9, 24 and accompanying text.

101. Pursuant to article 13 of the Dev. Dec., *supra* note 10, every percentage point of domestic integration after the mandatory 60% GIN requirement gave manufacturers the right to an "extra" production quota. The incentive was increased even higher for each percentage GIN point in excess of 70%.

102. Pursuant to article 4 of the Dev. Dec., *id.*, certain domestic mechanical systems, such as brake, transmission, rear axle, engine, and clutch had to be included within the GIN requirement. For a complete list of all mandatory mechanical systems, see article 2 of the *A Cuer do que Reglamenta las Disposiciones del Decreto que Fija las Bases para el Desarrollo de la Industria Automotriz*, D.O., Oct. 24, 1972 [hereinafter 1972 Regs.].

of registered suppliers<sup>103</sup> with officially approved manufacturing programs.<sup>104</sup> However, the mandatory use of Mexican parts and components was limited to suppliers that met price,<sup>105</sup> quality,<sup>106</sup> and delivery<sup>107</sup> standards established by the government.

The historic decision to create an automotive industry by executive order in 1962<sup>108</sup> had a ripple effect on the development of the industry. Since 1962, domestic automakers have been more susceptible to change in government policy than to market conditions. One illustration of this effect is the 1972 mandatory export requirement,<sup>109</sup> which obligated manufacturers to compensate all imports by exporting a corresponding quota of auto products.<sup>110</sup> Another example is the control imposed by the Development Decree in 1972 on car-lines, models,<sup>111</sup> and optional equipment.<sup>112</sup> These regulations were designed to adjust the supply of automobiles to the purchasing power of the Mexican people.<sup>113</sup> In order to continue a tradition of tax incentives, this executive order also offered automakers up to 100% reductions on a number of federal taxes, as well as the opportunity to deduct accelerated depreciation on fixed assets.<sup>114</sup>

The Development Decree considerably restricted foreign investment in supply companies,<sup>115</sup> and it provided that any violation of the foreign

---

103. In order to have domestic parts included under the mandatory GIN requirement, suppliers were required to register with the Ministry of Industry and Commerce, and obtain from that office the approval of their manufacturing programs. Dev. Dec., *supra* note 10, arts. 7, 8.

104. For an excellent explanation of the approval process for manufacturing programs under Mexican legal practice, see H. WRIGHT, *supra* note 7, at 156-160.

105. See Dev. Dec., *supra* note 10, art. 2, ¶ I.

106. *Id.*, ¶ II.

107. *Id.*, ¶ III.

108. See *supra* note 6 and accompanying text.

109. See Dev. Dec., *supra* note 10, art. 11.

110. Article 11 of the Dev. Dec., *id.*, established the following export compensation requirements in 1972:

MODEL YEAR	PROPORTION OF BASIC QUOTA TO BE EXPORTED
1973	30%
1974	40%
1975	50%
1976	60%
1979	100%

111. See *id.*, arts. 16-20.

112. See *id.*, arts. 29-31.

113. This was a concern expressed by President Luis Echeverría at the time of the enactment of the Development Decree. See *id.*, Statement of Purposes, ¶ 4.

114. The federal taxes in question were (a) import duties on manufacturing equipment, parts, and components, (b) special tax on assembly operations, and (c) rebates on certain indirect taxes caused by exports of automotive products. *Id.*, art. 32.

115. Article 33 of the Dev. Dec., *id.*, determined that at least 60% of the capital stock of supply companies should be owned by Mexicans. The limitation appears now to be excessive in view of the 51/49% general rule on foreign participation imposed by the FIL a year later. See 1972 Regs., *supra* note 102, art. 16. In order to preserve the 60/40% rule in the supply

investment limitations could result in the loss of the corresponding shares in favor of the Mexican government.<sup>116</sup>

### C. Phase Three: The Promotion

In 1976 Mexico suffered a major currency devaluation. After twenty-two years of monetary stability, the government decided to float the peso in response to speculation and flight capital, which have been largely attributed to the change of Mexico's economic model in 1970. The new model, which emphasized a more equitable income distribution,<sup>117</sup> produced a growing government deficit that was predominantly financed with external debt.<sup>118</sup> This debt put considerable pressure on Mexico's balance of payments.

The 1976 devaluation explains the overwhelming concern with the balance of payments contained in the 1977 Promotional Decree.<sup>119</sup> Accordingly, a significant portion of this regulatory document established the mechanics to ration foreign exchange<sup>120</sup> through an annual budget for the entire automotive industry.<sup>121</sup> Companies with Mexican investors were given preferential access to foreign exchange quotas.<sup>122</sup>

With the enactment of the 1977 regulations, the government again resorted to legislation to foster economic change. This time the goal was to promote supplier exports, and automakers were obligated to compensate at least fifty percent of their foreign exchange quotas with component exports from their local suppliers.<sup>123</sup>

A major innovation of the Promotional Decree was the change in the formula used for the computation of the GIN requirement. Before

---

industry, the 1972 Regs., *supra*, whose purpose is to interpret the Development Decree, required a division of the capital stock of supply companies into two classes of shares called series "A" and series "B" representing, respectively, the 60/40% statutory breakdown. Although series "A" shares were only available for Mexican individuals or corporations controlled by Mexican investors, series "B" shares could be acquired by either foreign or domestic investors. To avoid a pyramid effect caused by indirect foreign participation in the series "A" portion of the capital, Mexican companies with minority foreign partners could only acquire series "A" shares if they also purchased a proportional share of series "B" stock. *Id.*

116. *Id.*

117. See Camil, *supra* note 19, at 8-9.

118. See *id.* at 11.

119. See *supra* note 11 and accompanying text; *supra* notes 13-15 and accompanying text; see generally Prom. Dec., *supra* note 11, Statement of Purposes.

120. See Prom. Dec., *supra* note 11, arts. 3-6, 9-10; see generally *Acuerdo que Establece las Reglas de Aplicación del Decreto para el Fomento de la Industria Automotriz*, D.O., Oct. 19, 1977 [hereinafter 1977 Regs.].

121. See Prom. Dec., *supra* note 11, art. 3. For the formula to determine each assembly company's foreign exchange quota, see 1977 Regs., *supra* note 120, §§ 4-13.

122. See Prom. Dec., *id.*, art. 4.

123. See *id.*, art. 6.

this decree, automakers were able to meet this obligation with manufacturing costs related to the production process.<sup>124</sup> The Promotional Decree, on the other hand, required the GIN formula to be based on the actual cost of parts.<sup>125</sup>

*D. Phase Four: The Rationalization*

Twenty years after the publication of the Integration Decree, Mexico's auto industry continued to be a burden on the balance of payments.<sup>126</sup> To correct this situation, a fourth executive order, the Rationalization Decree,<sup>127</sup> was enacted in 1983 to make structural changes in the production of motor vehicles. Since Mexico's economy was still in a state of confusion in 1983,<sup>128</sup> the new administration of President Miguel de la Madrid established these seven goals for the auto industry:<sup>129</sup> (a) achieve economies of scale,<sup>130</sup> (b) reach the objectives of Mexico's economic plan,<sup>131</sup> (c) convert the industry into a net generator

124. See *supra* notes 89-90 and accompanying text.

125. See Prom. Dec., *supra* note 11, art. 7. For the new formula to determine the GIN requirement, see 1977 Regs., *supra* note 120, ¶ 14.

126. See Ration. Dec., *supra* note 12, Statement of Purposes, ¶ 3, 4. President de la Madrid stated, upon the enactment of the Rationalization Decree, the need to have an auto industry that is not "a burden for the country's balance of trade" (translated by the author). *Id.*

127. See *supra* note 12 and accompanying text.

128. President de la Madrid was preceded by President López Portillo who intensified the borrowing spree that commenced in 1973.

President López Portillo ended his term of office in 1982 amidst economic confusion caused by the following factors: (a) the substantial fall in international oil prices, (b) the ninety billion dollar external debt, (c) the devaluation of the Mexican peso, (d) the nationalization of commercial banks, (e) the mandatory conversion of all dollar deposits into pesos, and (f) the imposition of foreign exchange controls for the first time in modern Mexico [(citations omitted)].

Camil, *supra* note 19, at 12.

129. See Ration. Dec., *supra* note 12, Statement of Purposes, ¶ 2. Moreover, article 5 of the Ration. Dec., established the following GIN requirements as goals for the duration of President de la Madrid's term:

VEHICLE	MODEL YEAR			
	1984	1985	1986	1987
Cars	50%	50%	55%	60%
Light Trucks	65%	70%	70%	70%
Medium & heavy trucks	65%	70%	75%	80%
Truck tractors	70%	90%	90%	90%
Buses	70%	90%	90%	90%

130. See Ration. Dec., *supra* note 12, Statement of Purposes, ¶ 4.

131. *Id.* at 2.

of foreign exchange,<sup>132</sup> (d) promote the production of popular vehicles,<sup>133</sup> (e) enforce environmental protection laws,<sup>134</sup> (f) reduce gas consumption,<sup>135</sup> and (g) eliminate unnecessary tax subsidies.<sup>136</sup>

The Rationalization Decree eliminated V-8 gasoline engines on cars and trucks,<sup>137</sup> and confirmed an old regulation that prevented foreign-owned companies<sup>138</sup> from installing diesel engines on trucks and buses.<sup>139</sup> These regulations literally ousted foreign OEM's from the Mexican truck market and claimed this important segment of the auto industry for domestic investors.<sup>140</sup>

The Rationalization Decree contained a highly controversial provision that further restricted foreign participation in the capital of supply companies. In this regard, Mexican corporations with foreign partners were excluded from participation as shareholders in the sixty percent domestic portion of supply companies.<sup>141</sup> This controversial provision was reversed one year later to allow holdings by Mexican corporations with minority foreign participation.<sup>142</sup>

A governmental commission for the automotive industry, which was created by the Development Decree in 1972 and kept in operation for more than a decade,<sup>143</sup> was reinstated by the Rationalization Decree, this time under the auspices of the Secretary of Commerce and Industrial

---

132. *Id.*, ¶ 3.

133. *Id.*, ¶ 7.

134. *Id.*, ¶ 10.

135. *Id.*

136. *Id.*, ¶ 11.

137. *See id.*, art. 9.

138. Article 22 of the Prom. Dec., *supra* note 11, limited the use of diesel engines in the assembly of trucks and buses to "companies with a majority participation of Mexican investors" (translated by the author).

139. *See* Ration. Dec., *supra* note 12, art. 10.

140. *See supra* note 37 and accompanying text.

141. *See* Ration. Dec., *supra* note 12, art. 19. This highly controversial restriction was considered excessive and in violation of the FIL, which imposed a 40% limitation without excluding Mexican companies with minority foreign participation. *See* FIL, *supra* note 45, art. 5, ¶ (c).

142. *See Decreto por el que se Reforma el Artículo 19 del Decreto para la Racionalización de la Industria Automotriz*, D.O., Oct. 3, 1984. This amendment to article 19 of the Rationalization Decree permitted Mexican companies with minority foreign participation to hold stock in supply companies.

143. The commission was created in 1972 by the Development Decree with broad powers to serve as a consulting body for the executive branch and to propose legislation for the automotive industry. Originally, the commission consisted of appointed representatives from the Ministries of Industry and Commerce and Finance. *Dev. Dec.*, *supra* note 10, arts. 40-45. As the functions of the Mexican cabinet shifted around, the chair of the commission went to the Ministry of National Properties and Industrial Promotion, and representatives from the Commerce Department were added. *Prom. Dec.*, *supra* note 11, arts. 39-46. The Rationalization Decree confirmed the continued existence of the commission, which includes representatives from the Ministry of Finance and the Ministry of Commerce and Industrial Promotion. *Ration. Dec.*, *supra* note 12, arts. 24-29.

Promotion.<sup>144</sup>

## V. THE GATT RESERVATIONS AND OTHER ISSUES AFFECTING THE MEXICAN AUTO INDUSTRY

### A. *The GATT Reservations*

In 1979 Mexico initiated formal negotiations to join GATT.<sup>145</sup> Although Mexico's trade barriers at the time consisted mainly of import permit requirements for a large number of foreign products,<sup>146</sup> the government was gradually substituting import permits with tariffs.<sup>147</sup> When Mexico filed its formal application, a task force of participating representatives from GATT countries was formed to analyze the compatibility of Mexico's foreign trade policy with GATT regulations.<sup>148</sup> The task force's initial reaction was that some of the provisions contained in the Mexican automotive program were incompatible, unless they could be justified as concessions available in favor of developing industries.<sup>149</sup> Apparently, the incompatibility rested with Mexico's GIN requirement.<sup>150</sup> Although the government made a satisfactory explanation of the policy behind its domestic auto industry, the task force recommended that any similar policies in favor of other Mexican industries would have to conform in the future to GATT regulations.<sup>151</sup> After a year of arduous negotiations and amidst considerable debate,<sup>152</sup> President José López Portillo decided not to join GATT in 1980.<sup>153</sup>

In 1985 Mexico started serious efforts to liberalize its foreign trade policy. The extent of the Mexican economic crisis compelled the government to open the economy and promote exports.<sup>154</sup> Consequently, a series of important events culminated with another application to join GATT.<sup>155</sup> This time, Mexico was ready. The significant events that led

144. *See id.*, art. 25.

145. *See* L. MALPICA, *QUÉ ES EL GATT?*, 225 (1st. rev. ed. 1988) [hereinafter L. MALPICA].

146. *See id.* at 235.

147. Between 1977 and 1979, Mexico substituted import permits with tariffs for 5,104 products. *Id.*

148. *Id.* at 226. The task force was formed with representatives from Argentina, Australia, Brazil, Canada, EEC, Colombia, Egypt, Spain, United States, India, Japan, New Zealand, Nicaragua, Peru, Romania, Sweden, Switzerland, and Uruguay.

149. *Id.* at 239.

150. *See id.* at 239-240.

151. *See id.* at 240.

152. For an interesting discussion of the 1979-1980 national debate on the convenience for Mexico to join GATT, *see id.* at 273-290.

153. On March 18, 1980, a significant date that marked the forty-second anniversary of the oil expropriation, the President decided that Mexico would not join GATT. *See id.* at 291-293.

154. *See supra* note 128 and accompanying text for some of the reasons for the Mexican crisis.

155. *See infra* notes 156-158 and accompanying text.

Mexico to join GATT included a public hearing held by the Mexican Senate,<sup>156</sup> a new foreign trade law passed by the Mexican Congress,<sup>157</sup> and a commercial "understanding" signed with the United States.<sup>158</sup>

After the Mexican Senate determined that "there were no economic, political, legal, or social obstacles" for Mexico to join GATT,<sup>159</sup> a new application was made within the framework of the 1979 negotiations.<sup>160</sup> In the course of the new negotiations, Mexico made clear its intention to continue certain priority economic programs, such as the one for the auto industry, contained in the National Development Plan.<sup>161</sup> The government agreed to accelerate the substitution of import permits with tariffs, but the Mexican representatives did not foresee this happening soon in the automotive industry.<sup>162</sup> Mexico recognized the need to re-examine certain economic policies such as "import substitution"<sup>163</sup> and "industrial integration"<sup>164</sup> because they adversely affected the competitiveness of some Mexican products. Nevertheless, the government was reluctant to reappraise the existing program for the auto industry.<sup>165</sup>

---

156. The results of this hearing were published in D.O., Nov. 22, 1985. For the circumstances surrounding this hearing see L. MALPICA, *supra* note 145, at 370-372. See also Cruz Miramontes, *Análisis de la Ley de Comercio Exterior de 1986 Reglamentaria del Artículo 131 Constitucional* in BARRA MEXICANA, *supra* note 13, at 43. The President also sent an official communication to the Secretary of Industry and Commerce instructing him to commence negotiations with GATT. The terms of this communication were published in D.O., Nov. 25, 1985.

157. *Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior*, D.O., Jan. 13, 1986. This law grants the President the powers to establish tariffs on foreign trade. *Id.*, art. 1.

158. *Entendimiento entre México y Estados Unidos en Materia de Subsidios e Impuestos Compensatorios*, D.O., May 15, 1985. Under the terms of this "understanding," generally, Mexico agreed not to subsidize exports in a manner that would affect United States commerce, and the United States agreed not to impose countervailing duties. See *id.*

159. See L. MALPICA, *supra* note 145, at 372.

160. President de la Madrid specifically instructed the Secretary of Industry and Commerce to conduct "the corresponding negotiations within the framework of the Protocol negotiated by Mexico and accepted by the Contracting Parties in 1979" (translated by the author). For the complete text of this letter see *id.* at 845.

161. See *id.* at 848. The President instructed his Secretary of Industry and Commerce to abide by the National Development Plan "particularly with respect to programs contained in the chapters on Industrial Promotion and Foreign Trade" (translated by the author). These chapters contain the government's policy on the auto industry. See *Plan Nacional de Desarrollo 1983-1988*, D.O. May 31, 1983, Part II, at 93, 94. In the text of the National Development Plan, President de la Madrid deplored the failure of Mexico's previous policy for the auto industry and announced the enactment of the Rationalization Decree. *Id.*

162. Mexico's representative informed the GATT task force that import permits would continue to be required for the protection of certain products, such as "automotive vehicles and used automotive parts pursuant to [Mexico's] Automotive Program" (translated by the author). L. MALPICA, *supra* note 145, at 862. The Mexican government indicated that the new administration would be the one that adopted the final decision on maintaining the import permits for the auto industry. *Id.* at 865.

163. See *supra* note 86 and accompanying text.

164. See *supra* note 87 and accompanying text.

165. See L. MALPICA, *supra* note 145, at 864, 865; see also *supra* note 162 and accompanying text.

### B. *The Labor Situation*

Mexico does not have a federation of auto workers. Therefore, all assembly plants have independent labor unions that are either affiliated with national labor organizations<sup>166</sup> or operated outside concerted labor policy.<sup>167</sup>

Although independent trade unions have made it possible for automakers to always negotiate with union officials that understand the specific needs of individual plants, proliferation has often left the companies at the mercy of parochial union leaders<sup>168</sup> who operate under the umbrella of Mexico's highly protective labor legislation.<sup>169</sup>

A symbiotic relationship between trade unions and Mexican politics<sup>170</sup> is illustrated by repeated episodes of substantial government intervention to mediate the settlement of labor controversies.<sup>171</sup> Nevertheless, the risk of labor conflicts has often been reduced by diversification of plant sites in "politically safe" labor environments.<sup>172</sup>

166. Some plants have trade unions that are affiliated either with the powerful *Confederación de Trabajadores de México* (CTM) or with the equally important *Confederación Regional de Obreros y Campesinos* (CROC). Some automakers like Ford and Chrysler, with several plants throughout the country, have a "national company union" for all the plants. Interview with German Muggenburg, prominent Mexican labor lawyer, in Mexico City (Jan. 10, 1990) [hereinafter Muggenburg Interview]. This, however, can prove to be detrimental for the automaker in a serious labor conflict in one of the plants. See *infra* note 172. Other automakers like General Motors, however, have their plant unions affiliated indistinctly with either CTM or CROC. Muggenburg Interview. Affiliation with these national labor organizations reduces the possibility of wildcat labor conflicts and insures the effectiveness of the government's mediation in the settlement of labor disputes. See H. WRIGHT, *supra* note 7, at 284, 285.

167. At least one automaker, Volkswagen, has its entire labor force, consisting of approximately 12,000 workers, in one location and represented by a totally independent trade union, which is not affiliated with any national labor organization. Muggenburg Interview, *supra* note 166.

168. Volkswagen, which is located in the state of Puebla, and Nissan, originally located in the state of Morelos, were involved in acrimonious labor disputes that have been attributed to political ideology or greed. Interview with a labor analyst and journalist in Mexico City, who wishes to remain anonymous (Dec. 11, 1989) [hereinafter Confidential Interview]. Less than one month after the publication of the 1989 Automotive Decrees, a labor conflict attributed to political motives closed down Ford's plant in Cuautitlán, near Mexico City. Ford's union conflict resulted in one dead worker and several others hospitalized with gunshot wounds. Fidel Velázquez, the powerful leader of CTM, indicated that the problem was created by sympathizers of opposition parties. See *Tribuna*, Jan. 9, 1990, at 19, col. 1; see also *El Financiero*, Jan. 22, 1990, at 71, col. 1; *EXPANSIÓN*, Jan. 31, 1990, at 26.

169. Mexico boasts of having some of the most progressive labor legislation in the world, with broad standards included in the 1917 Constitution "dealing in detail with such matters as hours of work, rest days and vacations, minimum wages and other benefits, occupational risks, discharge, labor unions, collective bargaining, strikes, and dispute settlement." H. WRIGHT, *supra* note 7, at 285.

170. For a discussion on some of the reasons for the close ties between organized labor and the Mexican government see *id.*, at 284, 285.

171. See *id.* Reportedly, a recent acrimonious labor conflict at Ford's plant in Mexico City required the intervention of two top cabinet members and one governor. See *Proceso*, Feb. 5, 1990, at 30, col. 3.

172. Commencing in 1972, Nissan's plant in Cuernavaca, Morelos, was the victim of a

To achieve competitive prices under Mexico's new economic climate, some automakers and their local suppliers are currently engaged in a modern version of "Russian roulette," which consists in the early termination of their collective labor contracts in order to subsequently rehire all or part of the workers under more favorable conditions.<sup>173</sup> The element of risk lies in the fact that the transition from the old to the new labor contract may result in an acrimonious labor conflict that could paralyze operations for a long period of time.

No doubt exists that labor will be a key element in Mexico's competition for world markets.<sup>174</sup> The challenge of the 1990s for all Mexican industry will be to advance almost overnight from captive domestic markets plagued by poor quality standards and high prices, into a world of internationally competitive products. Many local manufacturers have discovered that a major barrier to competitive prices is an expensive labor contract negotiated with the carefree attitude that any excessive costs could be passed along to the consumer. This kind of attitude may no longer be allowed to flourish, and trade unions are likely to encounter tougher management bargaining practices, particularly in the case of some automotive suppliers that are facing extinction because they will no longer be protected by mandatory GIN requirements.<sup>175</sup>

---

series of socialist-oriented labor conflicts spurred by an organization called *Frente Auténtico de los Trabajadores* (FAT). Nissan eventually succeeded in restoring order and opened new plants in Aguascalientes, a "safe" state with no labor unrest, and in the State of Mexico. Confidential Interview, *supra* note 168. Nevertheless, the most recent labor conflict at Ford's plant in the State of Mexico threatens to reach its new plant in Hermosillo, Sonora. The workers recently stated that failure to satisfy their petitions could result in demonstrations to close the highways leading to other Ford plants in the cities of Hermosillo and Chihuahua. See *Tribuna*, Jan. 9, 1990, at 19, col. 1; *supra* note 166. A more recent account of Ford's current labor conflict reports that the Hermosillo plant went on strike on February 1, 1990. See *PROCESO*, Feb. 5, 1990, at 30, col. 3.

173. The attorney representing the workers in Ford's most recent labor conflict indicated that the "company's idea was to close the Cuautitlán plant and then reopen it under new conditions." *El Financiero*, Jan. 22, 1990, at 71, col. 1. Apparently, Ford's original idea was to eliminate a dissident union faction. *Id.* The practice of buying out an existing labor contract has become particularly risky because there are signs that some opposition parties may try to profit from nationally prominent labor conflicts in order to gain a stronger foothold in Congress during the 1991 political elections. See *supra* note 168. A published account traces Ford's recent labor problems to the company's 1987 effort to buy out its collective labor contract in a manner that caused considerable friction at the highest levels of CTM. See *PROCESO*, Feb. 5, 1990, at 29, col. 1.

174. Referring to a bitter labor conflict that occurred on January 8, 1990, the president of Ford's local subsidiary stated that labor stability was essential to the company's making new sizable investments of U.S. \$300 million. *Ovaciones*, Jan. 8, 1990, at 1, col. 1 (2d ed.); *EXPANSIÓN*, Jan. 31, 1990, at 26.

175. This is particularly true of the truck industry, with respect to which the 1989 Automotive Decrees eliminated the mandatory use of Mexican parts. See generally *Truck Decree*, *supra* note 2.

### C. Special Taxes

The sale of automobiles is subject to several taxes that substantially increase the already high price of Mexican cars.<sup>176</sup> For years, automakers have traditionally passed on to Mexican consumers a special federal tax on the sale of new cars.<sup>177</sup> In addition to this special tax, which was established in 1979, buyers are obligated to pay another tax on the "possession or use" of motor vehicles,<sup>178</sup> as well as a fifteen percent value added tax on the sale of goods and services.<sup>179</sup> Over twenty percent of the price of a top-of-the-line automobile is attributable to Mexican federal taxes.<sup>180</sup> An interesting question is whether the government

176. See *supra* notes 92-93 and accompanying text.

177. See generally *Ley del Impuesto Sobre Automóviles Nuevos (ISAN)*, D.O. Dec. 31, 1979, as amended [hereinafter ISAN]. The ISAN was actually enacted on December 22, 1979 and went into effect on January 1, 1980. This tax applies to sales of new passenger cars and light trucks manufactured in Mexico, "which are sold to a consumer for the first time by either the manufacturer or a dealer" (translated by the author). ISAN, *supra*, art. 1, § I. The ISAN applies also to auto imports for the current model year, "as well as for the previous seven model years" (translated by the author). *Id.*, art. 1, § II. ISAN's rather steep tax rates have been amended several times since 1979, but they continue to be calculated today on the basis of fixed statutory rates without deductions to the "average sale price" for each model. For the formula to calculate the average sale price see *Id.*, art. 3, § I. For imports, ISAN's statutory tax rates are applicable to the "attributed value" of imports for tariff purposes. *Id.*, art. 2, ¶ 2. Article 3, section I of ISAN, *supra*, contains the tax rates below, which apply to floor and ceiling prices that are adjusted by the taxing authorities from time to time by special rulings to account for inflation. These adjustments are also to avoid the 50% bracket for domestic sales. The 50% bracket essentially applies to luxury imports.

Approximate Value of a Vehicle in U.S. Dollars  
on December 1989.

	Tax Rate
Up to \$7,186.33	2%
From \$7,186.33 to \$8,623.59	5%
From \$8,623.59 to \$14,372.65	10%
From \$14,372.65 to \$28,745.31	15%
\$28,745.31 and higher	50%

178. See *Ley del Impuesto Sobre Tenencia o Uso de Vehículos*, D.O., Dec. 30, 1980, as amended [hereinafter Possession Tax]. This tax is applicable to any individual or corporation that is in possession or use of motor vehicles. The tax is equivalent to 1.25% of the sales price of a new automobile. Possession Tax, *supra*, art. 5, § AI. This tax is payable on an annual basis and is proportionately reduced by 10% for each year of the vehicle's age. *Id.*, art. 1.

179. See *Ley del Impuesto al Valor Agregado (VAT)*, D.O., Dec. 29, 1978, as amended [hereinafter VAT]. The VAT is passed on to consumers by individuals or corporations engaged, *inter alia*, in the sale of goods and services. The general tax rate is established by law at 15%. *Id.*, art. 1. It is interesting to note, however, that the VAT is a "grossed-up" tax that applies to the basic price plus the ISAN.

180. The following exercise is based on the dealer's basic price of a top-of-the-line automobile, plus the approximate cost to the local consumer of all applicable federal taxes at statutory rates that do not account for government inflationary adjustment.

will continue to reduce taxes on automobiles after 1991<sup>181</sup> in order to help automakers meet the challenge of internationally competitive prices.<sup>182</sup>

## VI. MORE LEGISLATION: THE 1989 AUTOMOTIVE DECREES

The 1989 Automotive Decrees<sup>183</sup> are significant because they constitute the first attempt to liberalize Mexico's auto industry since the enactment of the Integration Decree in 1962. With their publication, the government made the momentous decision to establish different rules of the game for truck and car manufacturers, and it chose to exercise selective protectionism to deregulate the production and importation of motor vehicles. Although both decrees were published simultaneously in the *Diario Oficial*, they are separate executive orders that are designed to go into effect at different dates.<sup>184</sup> The Car Decree contains the general regulations of the automotive industry, which includes the operations of local suppliers;<sup>185</sup> whereas, the Truck Decree is a specific piece of legislation that regulates only the production and importation of special vehicles, trucks, and buses.<sup>186</sup>

---

(All amounts are in U.S. dollars at 2700 pesos to \$1.)

Basic price		
of car	\$28,000	
ISAN	4,200	(15% of basic price)
VAT	4,830	(15% of basic price plus ISAN)
Possession		
Tax	350	(1.25% of basic price)
Total:	\$37,380	

This same car, fully "loaded," would cost approximately \$18,000 in the United States.

181. The Car Decree does not go into effect until November 1, 1990. See *infra* note 184 and accompanying text. The government, however, substantially reduced the ISAN in 1987 and 1988. See D.O., Dec. 31, 1987, § 2, at 38, transitory provision; D.O., Dec. 31, 1988, art. 3, *as amended*.

182. Considering the language used in the 1989 Automotive Decrees, it does not seem likely that the government will be eager to make any more substantial cuts on taxes affecting the sale or possession of automobiles. See *infra* note 193.

183. See *supra* note 2 and accompanying text.

184. Although both of the 1989 Automotive Decrees were published in the *Diario Oficial* on December 11, 1989, the Truck Decree went into effect on January 1, 1990, and the Car Decree goes into effect almost a year later on November 1, 1990. See Truck Decree, *supra* note 2, 1st transitory art.; Car Decree, *supra* note 2, 1st transitory art.

185. See generally Car Decree, *supra* note 2. The Car Decree contains, aside from the provisions governing the production and importation of automobiles, the following regulations: (a) the rules for the Mexican supply industry (arts. 6 and 7); (b) the operating rules for the governmental commission on the automotive industry (arts. 15-19); and (c) the list of previous legislation, which will be superseded by the enactment of the 1989 Automotive Decrees (3d transitory art.).

186. See generally Truck Decree, *supra* note 2. The Truck Decree governs the production and importation of buses, heavy-duty trucks over 8,864 kilograms, truck tractors of two or three axles, and "special" vehicles, which include vehicles for the handicapped. *Id.*, art. 2, §§ IV-VII.

### A. *The Truck Decree*

The liberalization of the Mexican auto industry will start with the deregulation of the truck market. On January 1, 1990, truck assembly companies may, under certain conditions, import vehicles similar to the ones now being produced in Mexico,<sup>187</sup> and others may qualify to manufacture or import "special" vehicles.<sup>188</sup> The benefits of this surprising deregulation will be gradually extended to buses, truck tractors, and heavy-duty trucks.<sup>189</sup> Domestic manufacturers and their suppliers were relieved to find out that, at the last minute, the government dropped the project to allow the importation of used trucks.<sup>190</sup>

A primary goal of the Truck Decree is the price reduction of transportation vehicles,<sup>191</sup> which is consistent with the current administration's efforts to curb inflation.<sup>192</sup> Accordingly, as of 1991, the government will demand a gradual adjustment to obtain international prices.<sup>193</sup>

187. Pursuant to articles 6 and 11 of the Truck Decree, *supra* note 2, truck manufacturers may complement their local supply with imports, on the condition that the value of those imports does not exceed the domestic value added (*valor agregado nacional* or VAN) of their local products. This condition will be lifted in 1991 for buses and in 1993 and 1994 for truck tractors and heavy duty trucks, respectively. The VAN requirement is an offshoot of the old GIN requirement and will be determined by deducting from all sales the value of imports made by the manufacturer, or by the corresponding suppliers in the case of parts and components that are not originally produced by the manufacturer. *Id.*, art. 12. The domestic value added content will be closely monitored by the Ministry of Industry and Commerce and will be based on audited financial statements by officially approved accounting firms. *Id.*, art. 13.

188. *Id.*, art. 16. Aside from registration, other conditions established for the production of "special" vehicles include adequate product warranties, service, and parts. *Id.* The Truck Decree does not contain a definition of "special" vehicles. A previous draft of the Truck Decree contained a complete deregulation of buses, which allowed any individual or corporation the right to manufacture or import buses in January, 1990. As it turned out, the Truck Decree postponed this date to January 1, 1991. See Truck Decree, art. 15, draft dated December 5, 1989 (on file at the offices of the *Houston Journal of International Law*).

189. On January 1 of 1991, 1993, and 1994, buses, truck tractors, and heavy-duty trucks, respectively, will be able to be produced or imported by any individual or corporation that is registered with the Ministry of Commerce and Industrial Promotion, provided they can furnish consumers with adequate warranties, service, and parts. Truck Decree, *supra* note 2, art. 16.

190. Considering that the price of new Mexican trucks is approximately 100% higher than new foreign trucks, a decision to allow the importation of inexpensive used vehicles would have had a very negative impact on the domestic truck industry and its suppliers.

191. Truck Decree, *supra* note 2, Statement of Purposes, ¶ 5. President Salinas considers a reduction in the overall cost of transportation essential for the industrial development of Mexico.

192. For a discussion on the Mexican government's current efforts to curb inflation see Camil, *supra* note 19, at 5.

193. Pursuant to article 8 of the Truck Decree, *supra* note 2, "[w]henever the prices established by any manufacturer before local taxes exceed international prices for comparable vehicles pursuant to rules set forth by the [government's automotive] Commission, the Ministry [of Commerce and Industrial Promotion] may authorize imports. . ." (translated by the author). The government, however, will give notice to the corresponding manufacturer before authorizing the imports. *Id.*, art. 9. Similar provisions exist for car manufacturers. See Car Decree, *supra* note 2, art. 21.

### B. The Car Decree

In a bold departure from previous government policy, the 1989 Automotive Decrees allow truck and car manufacturers the freedom to choose<sup>194</sup> the type of vehicles that will be produced in the country.<sup>195</sup> This responds to the concept of "globalization" of the industry, which is now recognized by the Mexican government.<sup>196</sup> Additionally, under certain conditions,<sup>197</sup> car and truck manufacturers will be able to complement their local supply with imports.<sup>198</sup> In the case of car manufacturers, these conditions focus mainly on the availability of positive foreign exchange flows, which can now be used to compensate the value of auto imports.<sup>199</sup>

This renewed concern with the balance of payments<sup>200</sup> continues to show the government's firm intention to turn the automotive industry into a net generator of foreign exchange.<sup>201</sup> In fact, when the recently published Car Decree goes into effect in model-year 1991,<sup>202</sup> all automakers will be obligated to maintain positive foreign exchange

---

194. In the past, the government has almost always restricted the kinds of car lines and models produced by the industry. See *supra* note 34 and accompanying text.

195. Both truck and car manufacturers are now free to select the kinds of vehicles they produce based on "the efficient use of their installed capacity and their available resources" (translated by the author). Truck Decree, *supra* note 2, art. 5; Car Decree, *supra* note 2, art. 3.

196. "Globalization" means different things to different people, but an acceptable definition may be the international auto industry's current tendency to optimize the results of its worldwide operations at an automaker's home office. This implies careful management of all available international resources in order to determine (a) the suppliers, (b) the ideal location of assembly plants, (c) the technological development, (d) the availability and convertibility of foreign exchange, (e) the identification of markets, (f) the competition, and (g) the world-wide tax strategy. See INA ¿QUÉ ES LA GLOBALIZACIÓN? (copies on file at the offices of the *Houston Journal of International Law*).

197. In the case of truck manufacturers, the conditions imposed for imports are limited to the VAN requirement. See *supra* note 187 and accompanying text. For car manufacturers these conditions include export compensation and a certain ratio of imports to local sales. See *infra* note 205 and accompanying text.

198. Truck Decree, *supra* note 2, art. 6; Car Decree, *supra* note 2, art. 4.

199. Pursuant to article 12 of the Car Decree, *supra* note 2, car manufacturers may use all of their positive foreign exchange flows to compensate for imports. This provision establishes a compensation ratio of 2.5 to 1 in 1991; 2 to 1 in 1992 and 1993; and 1.75 to 1 in 1994 and thereafter. Also, imports may not exceed local sales by 15% in 1991 and 1992, and 20% in 1993.

200. See *supra* notes 13-15 and accompanying text. The Car Decree dedicates one whole chapter to balance of trade issues. See generally Car Decree, *supra* note 2, arts. 8-14. The new foreign exchange provisions obligate automakers to maintain, on an annual basis, positive foreign exchange flows. *Id.*, art. 5. Net exports by *maquiladoras* directly or indirectly owned or merely promoted by automakers can be computed, up to 20%, for purposes of determining the balance of payments of a specific company. *Id.*, art. 9. Also, automakers may buy from each other positive foreign exchange credits to compensate for imports. *Id.*, art. 10. Finally, the purchase of domestic fixed assets for production may be computed, up to 30%, as foreign exchange credits for imports. *Id.*, art. 11.

201. See, e.g., Car Decree, *supra* note 2, art. 5.

202. See *supra* note 184 and accompanying text.

flows<sup>203</sup> by deducting the cost of imports<sup>204</sup> from export-derived income.<sup>205</sup>

The Car Decree does not include a GIN requirement, but it makes OEMs purchase parts and components from domestic suppliers<sup>206</sup> for at least thirty-six percent of the "national value added content" (*valor agregado nacional* or VAN) of their sales.<sup>207</sup> This new requirement applies to the manufacture of cars for the domestic market, as well as to the manufacture of parts and components by OEM's under the limited vertical integration, which is now permitted by the 1989 Automotive Decrees. The VAN requirement, however, is optional in the case of exports. Nevertheless, since the VAN content is determined on the basis of total sales, including profits, the thirty-six percent domestic purchase requirement could be a more difficult challenge to meet than the last GIN requirement, which was based only on the actual cost of parts.<sup>208</sup> In order to assist automakers with this requirement, the Car Decree authorizes purchases of parts and components from suppliers, which are not part of the officially recognized "Mexican auto parts industry."<sup>209</sup>

203. See *supra* notes 200-201 and accompanying text.

204. In the computation of an automaker's balance of trade, deductible imports result from its own foreign purchases of raw materials, parts, and components, as well as from the import value of the parts and components purchased from suppliers. Car Decree, *supra* note 2, art. 8.

205. Export-derived income results from an automaker's own foreign sales, as well as from exports of parts and components promoted by such automaker. *Id.*

206. This requirement may be fulfilled by purchase orders from either "officially recognized" auto suppliers or the recently recognized national supply companies. An interesting innovation of the Car Decree is the recognition of suppliers that do not necessarily specialize in the auto industry. These recently recognized suppliers (*proveedores nacionales*) apparently do not have to conform to the 60-40% equity restriction imposed by the FIL for "officially recognized" auto supply companies (*empresas de autopartes*). This, however, may be in conflict with the FIL's definition of automotive suppliers as companies engaged in the "manufacturing of components for automotive vehicles." Nevertheless, the suppliers that will be included in this new category will be manufacturers, *inter alia*, of paint, glass, upholstery, and rubber tires for the automotive industry. See FIL, *supra* note 45, art. 5, ¶ (c). See also *supra* note 115 and accompanying text. Under the Car Decree, no foreign investment restrictions are imposed on newly recognized "*proveedores nacionales*." For the definition of and requirements to operate as a "national supplier" see Car Decree, *supra* note 2, art. 2, § VII. To qualify as a "national supplier," however, a company must not have controlling shareholders that are OEM's. *Id.*

207. See Car Decree, *supra* note 2, art. 7. The VAN is determined on the basis of the total value of a company's annual domestic sales, plus the total value of its foreign trade balances. These balances are calculated, generally, by deducting imports from export-derived income. *Id.*, art. 8. Automakers may now undertake the manufacturing of parts and components subject to compliance with the VAN requirement. *Id.*, art. 7.

208. The last GIN requirement contained in the Rationalization Decree established a combination of a 60% GIN requirement for domestic sales after 1987, based on the actual cost of parts, and a 30% GIN requirement for exports. This was the equivalent of recognizing two quality standards in the manufacture of automotive vehicles. Ration. Dec., *supra* note 12, art. 5; see *Acuerdo que Establece las Reglas de Aplicación del Decreto para la Racionalización de la Industria Automotriz*, D.O., Aug. 28, 1984, tenth rule.

209. See *supra* note 206 and accompanying text. The FIL officially recognized that auto parts companies now qualify for a twenty-year "temporary" exception to the 40% foreign investment limitation under Mexico's 1989 foreign investment regulations. See *Reglamento de*

Although the Car Decree does not expressly address the possibility of granting new manufacturing licenses,<sup>210</sup> officials of the Mexican government insist that, given the appropriate conditions, new automakers could be accepted in addition to the ones already established in the country.<sup>211</sup>

## VII. THE NEW LEGAL FRAMEWORK: AN EXERCISE IN SELECTIVE PROTECTIONISM

A simple review of the circumstances surrounding the government's decision to enact two separate executive orders with different rules for car and truck manufacturers indicates that the 1989 Automotive Decrees constitute an exercise in selective protectionism. This indication is confirmed by an in-depth analysis of the new regulations. Although the Truck Decree clearly suggests the government's willingness to accept new manufacturers,<sup>212</sup> the Car Decree gives potential manufacturers, at best, an opportunity to be considered for approval.<sup>213</sup> Moreover, the new regulations contain certain discriminatory provisions that favor the car industry. These provisions invite the return of foreign auto manufacturers<sup>214</sup> into the heavy-duty truck market, which was until now<sup>215</sup> predominantly controlled by Mexican investors.<sup>216</sup>

The 1989 Automotive Decrees convey the impression that, in the free market environment promoted by the government to modernize the

*la ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, D.O., May 16, 1989 [hereinafter *For. Inv. Regs.*]; see also Camil, *supra* note 19, at 16-18.

210. This possibility has been closed since the enactment of the Integration Decree in 1962, notwithstanding the stream of legislation that followed in the course of 27 years. See *supra* notes 35-36 and accompanying text.

211. Officers that are staff members of the Undersecretary for Industry and Foreign Investment support the theory that new automakers could be accepted because (a) this acceptance is not expressly prohibited by the Car Decree, and (b) the definition of OEM's under the Car Decree refers to "companies that are *established* in the country" (emphasis supplied) without distinguishing whether such an *establishment* must be prior to or after the enactment of the new regulations. Interview with Mr. Manuel Fernandez, Head of Advisors to the Undersecretary of Industry, in Mexico City (Jan. 11, 1990). Mr. Fernandez is credited with being the principal draftsman of the 1989 Automotive Decrees. The Car Decree defined "*Industria Terminal*" (OEM's) as "all companies established in the country which are manufacturing or undertaking the final assembly of automotive vehicles . . ." (translated by the author). Car Decree, *supra* note 2, art. 2.

212. Article 16 of the Truck Decree, *supra* note 2, allows *any* individual or corporation registered with the government the right to produce or import "special" vehicles on January 1, 1990, buses on January 1, 1991, truck tractors on January 1, 1993, and heavy-duty trucks on January 1, 1994. See also *supra* notes 188-189 and accompanying text.

213. See *supra* notes 210-211 and accompanying text.

214. The restrictions that ousted foreign automakers from the truck market were lifted by the 1989 Automotive Decrees. See *supra* notes 137-140 and accompanying text.

215. See *supra* note 27.

216. See *supra* note 37 and accompanying text.

Mexican economy, the fuse is running short for the truck industry.<sup>217</sup> Automobile manufacturers and their domestic suppliers, on the contrary, most likely will enjoy some of the protectionism that prompted their continued investments in the past.<sup>218</sup>

Subject to the domestic value added requirement, foreign trucks may be imported in 1990, and there will be a gradual but unconditional deregulation of buses, truck tractors, and heavy-duty trucks commencing in 1991.<sup>219</sup> Car manufacturers, on the other hand, were given a full year to adapt to largely unwanted new legislation.<sup>220</sup> Moreover, their imports will continue to be protected by export compensation requirements beyond 1994,<sup>221</sup> when the truck industry will be completely deregulated. Additional protection is awarded to car manufacturers by limitations on imports equal to fifteen percent of domestic car sales in 1991 and 1992, and twenty percent in 1993.<sup>222</sup>

In all fairness, there was a very powerful reason to accelerate the liberalization of the truck industry. Shortly before the enactment of the 1989 Automotive Decrees, the government completely deregulated the surface transportation oligopoly to provide market conditions that would result in substantial price reductions for Mexican consumers. Consequently, the accelerated liberalization of the truck industry was the quid pro quo that is supposed to provide cargo and passenger carriers with inexpensive vehicles in a short period of time.

At the government's invitation, considerable lobbying ensued before the enactment of the 1989 Automotive Decrees. Foreign automakers, truck assembly companies, AMIA officials, suppliers, and other affected parties<sup>223</sup> participated in endless meetings with government officials to

217. The terms and conditions imposed by the 1989 Automotive Decrees for the modernization and liberalization of the auto industry seem to convey the idea that the existing truck industry's only alternative is to either become fully competitive in the next four years or risk being substituted by an entirely new industry.

218. See *supra* note 52 and accompanying text for current figures of investments by foreign automakers. Domestic auto suppliers were protected by the 36% VAN requirement. See *supra* note 206 and accompanying text.

219. See *supra* note 212 and accompanying text.

220. Four months prior to the publication of the Car Decree, many members of the auto industry began expressing great concern about losing the protectionism the industry had enjoyed for the past thirty years. See *WSJ Mexi-Car*, *supra* note 17. Apparently, the conditions contained in the Car Decree constitute an acceptable compromise between what the Mexican government wanted and what the auto industry expected. See *supra* note 184 and accompanying text.

221. See *supra* note 199 and accompanying text.

222. See Car Decree, *supra* note 2, art. 12, § II.

223. The lobbying started as early as January, 1989, almost one year prior to the enactment of the new regulations. The discussions continued for several months with various weekend working sessions with the participation of government officials and other interested parties in the city of Cuernavaca, a famous resort near Mexico City. Interview with Cesar Flores, President of AMIA, in Mexico City (Jan. 24, 1990).

convey their part of the story. It would not be an exaggeration to say, however, that in the tug-of-war resulting from such discussions, the powerful auto industry, which constitutes the most important private industry in the country,<sup>224</sup> carried the day.

### VIII. WHAT NOW FOR AUTOMAKERS AND SUPPLIERS?

Under the decisive leadership of President Salinas, Mexico "has adopted a bold and imaginative economic program that represents, in many respects, a major break with the past."<sup>225</sup> In order to recover sustained economic growth the government has deregulated a number of important economic activities<sup>226</sup> and accepted the participation of foreign investment in sectors of the economy that were until recently reserved for Mexican investors.<sup>227</sup> For all the dramatic changes in the domestic economy, Mexico will still need to attract additional foreign investment in the absence of captive domestic markets fostered by protectionism.<sup>228</sup>

Mexico's decision to liberalize its economy and compete for world markets could be, to a certain extent, thwarted by circumstances beyond its control. The opening of East European markets, for example, is an event that could affect the Mexican auto industry. A suggestion has already been made that the opening of East Germany "could prove the salvation of the West German motor car industry."<sup>229</sup> Assuming the opening of the East German economy, another source recently questioned the advisability of Volkswagen to "export capital to distant Barcelona when it can tap workers in nearby Karl Marx City who speak the same language and cost less than three dollars an hour."<sup>230</sup> Fiat, with a seventy-year history of licensed technology to Polish carmakers, is about to expand its investments in that country, and is reportedly "on the verge of striking a giant joint venture deal with the Soviet Union."<sup>231</sup> Japanese automakers are also showing a keen interest in the Eastern block.<sup>232</sup>

---

224. See generally EXPANSION 500, *supra* note 25 (for current figures on the Mexican auto industry); see also *supra* note 44 (for export figures by the automotive industry).

225. Camil, *supra* note 19, at 19.

226. See *id.*, n. 172.

227. See *id.* at 16-18.

228. "There are many indications that foreign investment was moved primarily in the past by the allure of trade barriers designed to protect companies with domestic manufacturing facilities" (footnote omitted). *Id.* at 20-21.

229. FORTUNE, Dec. 18, 1989, at 48, col. 1, 49, col. 1.

230. *Id.* at 49, col. 1.

231. *Id.*, col. 3.

232. Suzuki Motor recently announced an accord to build cars in Hungary. It will be the first Japanese automaker in Eastern Europe. See Wall St. J., Jan. 10, 1990, at A8, col. 6. The announcement was made after nearly five years of negotiations. Suzuki expects to build "eventually 100,000 cars a year." *Id.*

U.S. automakers, the most heavily committed in Mexico,<sup>233</sup> are already tapping the vast market of Europe,<sup>234</sup> perhaps to the detriment of their Mexican investments. Additionally, a recession in the American auto market, as forecasted for 1990,<sup>235</sup> could easily distract critically needed resources from the Mexican subsidiaries of U.S. plants.

Mexico has already recognized the turn of events in Eastern Europe. Accordingly, President Salinas departed in early 1990 on an extended European tour to convey the message that "Mexico should not be forgotten by Europe in its excitement over tumultuous changes sweeping Eastern Europe."<sup>236</sup>

Despite the dramatic changes in Europe, Mexico continues to be an attractive market for European, American, and Japanese automakers. The recent liberalization of the Mexican economy within the framework of new legislation on foreign investment,<sup>237</sup> technology,<sup>238</sup> and the *maquiladora* program,<sup>239</sup> guarantees plenty of opportunities awaiting aggressive investors under Mexico's 1989 Automotive Decrees.

## IX. CONCLUSIONS

The modern history of the Mexican auto industry began in 1962 with the publication of the Integration Decree, which marked the turning point from haphazard legislation and government policy into a systematic attempt to adapt this economic activity to Mexico's policies of "import substitution" and "industrial integration." These economic policies were consistent with the post World War II economic model, which fostered protectionist measures that resulted in a captive domestic market for foreign manufacturers. This protectionism is blamed today for Mexico's sagging exports.

---

233. For current figures on the level of investment in Mexico by the Big Three, see generally EXPANSION 500, *supra* note 25, at 98-139. See also *supra* note 52 and accompanying text.

234. In early 1990 General Motors was reportedly on the verge of announcing a joint venture with a state-owned company in Hungary to manufacture "nearly 25,000 cars and roughly 100,000 engines a year by 1995 at the latest." Wall St. J., Jan. 11, 1990, at A3, col. 4.

235. As early as December of 1989, U.S. auto analysts were already forecasting a gloomy outlook for the car and truck industry. Wall St. J., Dec. 14, 1989, at A2, col. 2. Analysts were particularly concerned about G.M.'s sliding sales. *Id.* at A1, col. 6. Rising inventories were reportedly on the verge of causing the Big Three to temporarily lay off 100,000 by January, 1990. Wall St. J., Dec. 15, 1989, at B4, col. 3. Chrysler, and other automakers slowed down production in early 1990 in contemplation of a sales drop that "would be the lowest since 1983 . . ." Wall St. J., Jan. 19, 1990, at C6, col. 5. Since 1987, the Big Three have closed seven plants in the U.S., while Japanese automakers have opened five U.S. plants in the same period of time. See Wall St. J., Feb. 2, 1990, at A3, col. 1.

236. The News, Jan. 29, 1990, at 1, col. 1.

237. See generally For. Inv. Regs., *supra* note 209.

238. See generally *Reglamento de la ley Sobre el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas*, D.O., Jan. 9, 1990.

239. See generally *Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación*, D.O., Dec. 22, 1989.

The economic importance of Mexico's auto industry is highlighted by the fact that almost every political administration has enacted legislation to regulate the production, importation, and sale of motor vehicles. Nevertheless, a constant source of concern for the Mexican government has been the balance of payments. Although every administration since 1962 has tried to convert the auto industry into a net generator of foreign exchange, unpredictable economic circumstances, which include devaluations, have contributed to an increase in the industry's foreign trade deficit.

Unable to avoid the control of the Mexican auto industry by multinational corporations, the government focused its regulatory efforts toward achieving a domestic supply industry that would prevent the vertical integration of the automotive industry. The government's efforts notwithstanding, many Mexican suppliers have been unable to achieve competitive status, because of captive domestic markets that preclude economies of scale and permit huge profit margins, to the detriment of Mexican consumers. Today, domestic suppliers will be pressed to be competitive by the relaxation of Mexico's new foreign investment regulations and by the conditional acceptance of vertical integration.

The new regulations contained in the 1989 Automotive Decrees constitute an effort by the current administration to adapt the auto industry to Mexico's new economic model. Nevertheless, this liberalization of the auto industry resulted in a selective protectionism that largely places the burden of modernization on truck assembly companies and on certain inefficient domestic suppliers. The fairness of this decision, however, can only be evaluated within the context of Mexico's recent deregulation of many economic activities, which includes surface transportation to reduce the cost of industrial, commercial, and agricultural goods and services.

The liberalization of Mexico's auto industry, albeit incomplete, has raised some concern over the balance of payments. Some fear that indiscriminate imports may result in a foreign exchange crisis that could trigger the restriction of imports and the return of trade controls. This, however, would not be consistent with Mexico's new foreign trade policy.

Placed in the dilemma of a choice between inefficient protectionism and free markets, the government left domestic truck manufacturers open to world competition and awarded international automakers already in the country a friendly protectionism that will guarantee their continued participation as key players in the Mexican economy.