THE WESTERN MAQUILADORA TRADE ASSOCIATION

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[TRANSLATION]

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Re: Commentaries on the proposed Decree to modify the Decree known as the "*Decreto par el Fomento de la Industria Manufacturera, Maquiladora y de Servicios de Exportacion* (the "Maquiladora Decree"), published in the COFEMER portal on January 12, 2010

Lic. Alfonso Carballo Perez
Director General
Comision Federal de Majora Regulatoria

Estimado Lic. Carballo:

Our organization herby provides comments on the proposed amendments to the Maquiladora Decree (the “Proposal”).

Maquiladoras that operated under the Maquiladora Decree prior its amendment on November 13, 2006, and Maquiladoras that operated under the PITEX decree prior to November 13, 2006 and that became Maquiladoras on that date as a result of the amendment of he Maquiladora Decree that caused all former PITEX companies to become Maquiladoras would be affected by the approval of the Proposal.

This letter addresses the negative impact that the changes proposed in Article 33 of the Maquiladora Decree would have on Maquiladoras and their related foreign companies.

Summary of the Proposed Changes to Article 33

Mexican law provides special tax rules for Mexican companies and nonresident companies that undertake "maquila operations", i.e. for Maquiladoras and the nonresident companies that enter into manufacturing agreements with a Mexican company that conducts its operations under a Maquiladora Program. Those special tax rules are contained in Articles 2 and 216 Bis of the Mexican income tax law, in the Presidential Decree issued on October 30, 2003 (the October 2003 Decree), and in the Presidential Decree issued on November 5, 2007 (the November 2007 Decree).

If the proposed amendments to Article 33 are approved, they would implement limitations that would purport to deny some nonresident companies that participate in a maquila operation the benefit of the permanent establishment exemption that Article 2 of the Income Tax Law provides for foreign companies participating in maquila operations, and as a result would also deny some Maquiladoras the benefit of both the partial income tax exemption provided for Maquiladoras generally under the October 2003 Decree and the special tax base provided

for Maquiladoras generally for purposes of the Single Rate Tax (the "IETU") under the November 2007 Decree.

The proposed amendments to Article 33 do not change the meaning of what constitutes a Maquiladora or what constitutes a "maquila operation" in general for purposes of the Maquiladora Decree. Rather the proposed amendments purport to make the changes in the tax law by manipulating the definition of "maquila operation" in an attempt to give it a different meaning solely as that term applies in defining the eligibility for receiving the benefit of the permanent establishment exemption, the partial income tax exemption and the special tax base for purposes of IETU. That is, without changing the meaning of what constitutes a maquila operation under the Maquiladora Decree, the proposed amendments would attept to create an artificial more limited definition of a maquila operation solely for purposes of limiting the category of maquila operations that are eligible to receive the tax benefits of Article 2 of the income tax law.

When that provision of Article 2 of the income tax law was enacted in 2002, the term "maquila operation" referred to any operation conducted by a Mexican company under an approved Maquiladora Program. Any operation conducted by a Mexican company operating under an approved Maquiladora program is by definition a “maquila operation” that qualifies for the permanent establishment exemption provided in Article 2. As written, the proposed amendments to the Maquiladora Decree would attempt to limit the definition of “maquila operations” for tax purposes by excluding the operations of Mexican companies that use certain equipment or certain materials or that constitute a service maquiladora. The assumption behind the proposed amendment in Article 33 is that it would be possible to change the meaning of maquila operation solely for purposes of Article 2 of the income tax law, without changing what constitutes a maquila operation for purposes of the Maquiladora Decree itself, solely, in order to eliminate the availability of the tax rules for maquila operations for some operations that continue to constitute maquila operations for purposes of the Maquiladora Decree as a whole.

In the Proposal, the revised Article 33 would read as follows:

> “ARTICLE 33. For purposes of the last paragraph of Article 2 of the Income Tax Law, the maquila operation referred to in Article 2, section - III of this Decree shall be the one that meets the following conditions:
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> I. That the goods referred to in Article 4, section I of this Decree, provided by a foreign resident pursuant to a maquiladora agreement which gives rise to an authorized Program by the Ministry, be subject to a process of transformation or repair, be imported temporarily and be returned abroad pursuant to the provisions of the Law or this Decree, including virtual exports. For purposes of this section, it shall not be necessary to return abroad the scrap and waste.
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> The goods referred to in this section may also be owned by a foreign resident third party that has a manufacturing commercial relationship with the foreign resident company that has the maquila agreement through which it carries out the maquila operation in Mexico, to the extent that these goods are provided as a result of such commercial relationships.
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> For purposes of this section, transformation is also considered to be the processes carried out with the goods consisting of: dilution in water or in other substances; washing or cleaning, including the removal of rust, grease, paint or other coating substances; application of preservatives, including lubricants, encapsulation, protective or preservative paint, adjustment, filling or cutting; conditioning in doses; packaging, repackaging, packing or repacking; submission to tests and marking, tagging or rating;
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> II. Companies that carry out the maquiladora operation referred to in the section above may use in their productive processes, Mexican and foreign goods that have not been imported temporarily. The goods provided by the foreign resident and introduced into Mexico via temporary importation must represent the majority of the total value of the materials incorporated into the final product. When such goods are provided via virtual

customs documents, the materials used for their production must in turn be in majority from abroad.

Goods that are virtually exported by a Mexican resident supplier, and subsequently virtually imported on a temporary basis by the maquiladora shall not be considered as goods provided by the foreign resident;

III. The transactions mentioned in section I of this article must be carried out with goods referred to in paragraph a) of section III of Article 4 of this Decree, owned by the foreign resident imported temporarily in terms of the referred rule, or that have been subsequently imported permanently into Mexico by means of a change of regime, provided that they have not been owned by the company performing the maquila operation or other related party resident in Mexico. The above shall not be applicable to companies that operated under a duly authorized maquila program prior to November 13, 2006.

IV. That the companies that carry out the transactions referred to in this article comply with the requirements established under the penultimate paragraph of Article 2 of the Income Tax Law."

The following categories of maquila operations are among those that Article 33 of the Proposal would attempt to exclude from receiving the tax benefits mentioned above, by stating that those maquila operations would not to be treated as "maquila operations" solely for tax purposes under Article 2 of the Income Tax Law:

1. Under new paragraphs I and II of Article 33 of the Proposal, maquila operations would be treated as not constituting maquila operations solely for this purpose if they fail to meet the proposed new requirement that "materials provided by a foreign resident and introduced into the Mexican territory through temporary importation must represent a majority by value of the materials incorporated into the finished product." The Proposal would restrict the application of the income tax and IETU benefits mentioned above to Maquiladoras that use materials and components supplied by Mexican national suppliers and those that the Maquiladora has definitively imported from abroad, as is common in maquila operations. The Proposal would also disrupt the legal and tax structures that support transactions conducted using virtual pedimentos among maquila operations, by imposing burdensome or impossible requirements on companies to discover the portion, by value, of the Mexico source materials and components that another Maquiladora has incorporated into components that a Maquiladora acquires and incorporates into its finished products. Finally, the Proposal would further limit the flexibility of maquiladora operations with an artificial prohibition on taking into account for this purpose materials that are imported from abroad by the Maquiladora's national suppliers and incorporated into components provided to the Maquiladora for use in manufacturing its finished products.

2. Under new paragraph II. of Article 33 of the Proposal, maquila operations would be treated as not constituting maquila operations solely for this purpose if they fail to satisfy the proposed new requirement that the equipment made available by the nonresident company for use by the Maquiladora in its manufacturing operations must not include either equipment that was originally imported definitively into Mexico or equipment that was previously owned by the Maquiladora or a related party resident in Mexico, unless the maquila operation was in existence as a maquila operation prior to November 13, 2006, and

3. Because the Proposal eliminates mention of service maquiladoras in new paragraph I. of Article 33, maquila operations conducted by a service Maquiladora would also be treated as not constituting maquila operations solely for this purpose.

There may be existing maquila operations that contribute substantially to the Mexican economy through the export manufacturing sector that fall into these categories of companies that would lose the favorable Mexican tax treatment that they have enjoyed until now, and many other maquila operations for which there will continue to be important commercial reasons to operate in

whole or in part as a service maquiladora, in order to maximize their use of Mexico source materials in an export manufacturing operation in Mexico. Until now the Maquiladoras and nonresidents participating in the maquila operations in these categories have, of course, been treated as maquila operations and have benefited from the special tax rules for maquila operations that Article 2 of the Income Tax Law and the Presidential Decrees of 2003 and 2007 make available to maquila operations in general.

Multinational companies have established and structured their maquila operations in these ways in reliance on receiving the tax benefits that are available to all other Maquiladoras. In most cases the availability of the benefits of those tax rules, which the proposed amendment to Article 33 would purport to eliminate for those companies, have been key factors for those multinational companies in structuring those operations and in deciding to establish those operations in Mexico.

As Mexico has long recognized, foreign resident companies generally will not participate in a maquila operation without adequate protection from having a permanent establishment in Mexico, and the availability of the reduced income tax rate for Maquiladoras is critically important to the investment decisions of many multinational companies. There are also multinational companies that would not consider establishing or expanding a maquila operation in Mexico if the result would be that the Maquiladora's IETU liability would exceed 50% of its income tax base, as would be the case for many Maquiladoras in the absence of the special IETU tax base for the Maquiladora under the November 2007 Decree.

There is distinct lack of information about the purpose of the proposed disqualification of Maquiladoras and their foreign affiliates from the benefits of the normal maquiladora tax rules. Whatever that purpose, it does not appear to the Companies that it relates to enforcing the integrity of the export manufacturing system. Indeed the primary impact of the proposed rules would be to affect adversely maquiladoras whose activity solely involves export manufacturing, support of export manufacturing, or support of a foreign company's operations outside of Mexico. Indeed the Proposal are notable in that the actions that they would prohibit, often retroactively, are not abusive of the maquiladora system and in every case have historically been allowed or encouraged by the Mexican government.

In particular, Mexico's industrial policy for at least the past 40 years has been focused on increasing the availability and utilization of Mexican sources of supply in maquila operations, but now the Proposal is directed to restrict the use of Mexico source materials. Likewise, a nonresident company participating in a maquila operation has always been allowed to include equipment previously owned by the Maquiladora or a Mexican affiliate among the equipment that it makes available for use by the Maquiladora. In particular this practice, which would be prohibited under the Proposal, has always been common for nonresident companies participating in maquila operations with Maquiladoras that previously operated as PITEX companies. Prior to November 2006 PITEX companies had routinely obtained approval of Maquiladora Programs and cancelled their PITEX programs, and after November 2006 former PITEX companies were Maquiladoras automatically for all purposes as a result of the repeal of the PITEX Decree and the amendment of the Maquiladora Decree.

Similarly no distinction has been made in the past, and no reasonable distinction exists, between equipment that was originally imported on a temporary basis and later imported definitively, which nonresident companies would continue to be allowed to make available for use in maquila operations under the proposed rules, and equipment imported definitively in the first place, whose continued use would now result in a complete and sudden loss of the benefits of the maquiladora regime for the Maquiladora and the nonresident company.

Indeed no principled reason has been suggested for the proposed rules to carve out these arbitrary categories of maquila operations to deprive them of the benefits of the tax regime that all other Mexican companies and nonresident companies participating in maquila operations continue to enjoy.

Summary of the Negative Impact of the Proposal

Maquiladoras have numerous concerns about the legality of the Article 33 of the Proposal, about the additional burdens that these new regulations would impose on maquila operations,

and about the negative effect that the proposed restrictions on maquila operations would have on the Mexican economy.

1. Confusion and Uncertainty

Far from clarifying the application of the tax benefits available to maquiladoras, the Proposal would create more confusion among Maquiladoras operating in Mexico as to the principles that Mexico is applying, and will apply in the future, in implementing or restricting application of the tax rules that it has enacted in order to promote the stability and growth of its export manufacturing sector.

The manner in which the Proposal would implement the purported new restrictions on the maquiladora tax regime, through amendments to the Maquildora Decree and a cross reference to Article 2 of the income tax law, would also create confusion and uncertainty, given the ad hoc manner in which Mexico has implemented prior changes to the maquiladora tax regime. For example, there is uncertainty as to whether the proposed amendments to Article 33 would restrict the ability of a Maquiladora that did not comply with the new restrictions to retain the benefit of using the special IETU tax base provided for maquiladoras under the 2007 Decree. As others have noted in their comments on the proposed amendments to Article 33, it is not appropriate to attempt to amend the Income Tax Law through cross references from a regulatory decrees such as the Maquiladora Decree, and one reason for that is the additional uncertainty and complexity that results from such an ad hoc approach.

Another example of the confusion that the Proposal would cause is the question that others have raised in their comments to COFEMER about whether, under the Proposal, a Maquiladora would be permitted to own equipment used in its operation. We understand that the Proposal would not enact any such restriction, and it would of course be absurd to prohibit a Maquiladora from owning equipment and to require that it all equipment be owned by the foreign company. Nevertheless, the fact that others (perhaps including tax auditors from the SAT) could misinterpret these complex unprincipled rules in that way illustrates the extreme risks and uncertainties that the proposed rules would impose on companies operating in Mexico's export manufacturing sector.

This additional uncertainty and complexity in rules restricting favorable tax treatment of maquila operations would be detrimental to companies participating in the maquiladora industry and to the Mexican economy for two reasons:

1. they would create additional costs, in interpreting the rules, in designing systems to deal with complex rules and multiple possible interpretations, and in compliance burdens, both with external auditors and the tax authorities, and

2. they would cause companies to act conservatively and to curtail operations that they otherwise would have established in Mexico in order to "play it safe”.

These additional costs and this conservative behavior would tend to limit the growth of Mexico's export manufacturing sector as a result of implemeint the proposed amendments to Article 33.

2. The Proposed Restrictions on the Use of Mexico Source Inputs

As noted above, the Proposal would restrict the use of materials and components from Mexican sources, those that have been definitively imported from abroad, and those supplied by other Maquiladoras. Like many other companies and industrial organizations that have submitted comments to COFEMER regarding the Proposal, we see the proposed changes to Article 33 as arbitrary revenue raising initiatives that are founded on a profound misunderstanding of the networks of commercial relationships that have developed among Maquiladora operations and with the local suppliers, and that are now essential to the existence and expansion of Mexico’s export manufacturing sector.

Comment submitted by others have discussed some of the many negative impacts the Proposal would have on companies with maquila operations and on the Mexican economy, because companies would be forced to operate in a manner that would not violate these rules, in order to

preserve the protection for the nonresident companies from having a permanent establishment in Mexico. The following are among the negative effects that are particular concerns to Companies:

1. The proposed new restrictions would require Maquiladoras to incur substantial compliance costs, for developing and implementing systems to insure compliance, for investigating the portion of Mexican inputs incorporated in assemblies being provided to them by other maquiladora companies, if that is possible, and for audits of the compliance with the new restrictions.

2. The proposed new restrictions would interfere with implementation of the active programs that these companies and other multinational companies have been pursuing to increase their use of materials and components from Mexican sources in their maquila operations. This would have the two adverse effects:

- it would increase the costs of materials for the companies that are forced to purchase inputs abroad that they would have produced in Mexico, thereby constricting potential growth of the export manufacturing sector, which depends on minimizing the cost of manufacturing products for export in Mexico, and

- it would negatively impact the growth of Mexican national suppliers on which Mexico is depending for the long-term growth and health of the Mexican economy.

3. The proposed new restrictions would create risks that companies would find it hard to quantify or to avoid, forcing them to implement conservative policies that would magnify the negative impact that the new restrictions would have on the ability of companies to achieve the cost savings that will justify expansion of their operations in Mexico to their full potential.

4. Enactment of changes so arbitrary and so fundamentally at odds with Mexico's overall economic interests and long-term economic policies would raise serious questions for all multinational companies about the viability of locating or expanding their export manufacturing operations in Mexico.

We also share the concerns specifically mentioned in the comments on the proposed changes to Article 33 that the Institute of Public Accountants of Nuevo Leon filed with COFEMER on February 10, 2010.

3. The Proposed Restrictions on the Use of Equipment Permanently Imported or Previously Owned by the Maquiladora

Article 33 of the Proposal would eliminate the benefits of the maquiladora tax regime for maquila operations in which the Maquiladora makes use of equipment made available by the nonresident company that either (1) has never been imported temporarily into Mexico or (2) was once owned by the Maquiladora or a related Mexican company. There is no justification for the random distinction that the proposed rule would make between the tax treatment of maquila operations that use definitively imported equipment owned by the nonresident company that was previously imported temporarily and those that make any use of definitively imported equipment owned by the foreign company that was definitively imported from the beginning. Likewise a Maquiladora's use of foreign owned equipment that was previously owned by the Maquiladora does not in itself constitute an abuse if the transfer of the assets from the Maquiladora to the foreign company was made on an arm's length basis in accordance with Mexican law.

Moreover, both of these transactions are common and have never in the past been subject to restrictions. Specifically, the Proposal would restrict the use of legitimate and transparent transactions that many Maquiladoras have engaged in over the past decades and that a Maquiladora would generally undertake when it implements the contractual structure of consignment manufacturing used in the vast majority of maquila operations, under which a nonresident company makes assets available to the Maquiladora for use in manufacturing inventory that the nonresident owns in Mexico. Understandably, and properly, the Proposal do not purport to limit the ability of a maquila operation that has in the past employed the Maquiladora as a buy-sell company to implement consignment manufacturing arrangements for that company. Article 33 of the Proposal would, however, impose unacceptable tax

consequences on companies that transfer the ownership of equipment used in Mexico from the Maquiladora to the nonresident company in those or other transactions.

Of course any transfer from a Mexican party to foreign party needs to comply with rules governing that application of VAT to the transaction in question, and of course if the transfer is from a Mexican party to a related foreign party it must be undertaken at an arm's length price that is documented in the manner required by Mexican law. The same is true of any related transactions that occur in connection with such a transfer of equipment or any transaction. As others have commented, it is important for all companies to comply with the Mexican tax obligations arising from their transactions in Mexico, and it is appropriate for the Mexican tax authorities to enforce those obligations.

This does not, however, justify banning certain legitimate transactions or causing them to result tax consequences so serious that they are in effect prohibited. Indeed, a Maquiladora's sales of equipment to a nonresident company are transparent transactions that are easily audited to make sure there is full compliance with the tax law.

Instead the Proposal appears to be an attempt to narrow, arbitrarily, the group of maquila operations that can benefit from the tax regime that Mexico has implemented to encourage the development of export manufacturing generally and Maquiladora operations in particular.

It is a particular concern that the Proposal appear to be designed to cause a nonresident company participating in a maquila operation have a permanent establishment in Mexico based on providing even a *de minimis* amount of equipment to the Maquiladora that was imported definitively or that was previously owned by the Maquiladora or a related Mexican party. There are a great variety of circumstances in which Maquiladoras have definitively imported some equipment or have purchased equipment and then sold it to the nonresident that is providing the equipment used in its maquila operation. These transactions have of course been completely routine and there has been nothing in the law or regulations to suggest that they are disfavored or that they would lead to adverse tax consequences. The application of Article 33 of the Proposal to create unacceptable tax risks for such companies illustrates how misguided and poorly designed the Proposal is, and why many Maquiladoras, along with a broad spectrum of Mexican companies, professional associations and industry groups are asking COFEMER to reject them.

Moreover, we strogly believe that the Proposal would apply retroactively to eliminate the permanent establishment exemption and the special tax rules under the income tax and the special IETU tax base in the case of maquila operations that have engaged in these transactions since November 13, 2006, unless they go to the trouble and tax cost of transferring back to the Maquiladora company ownership of equipment the nonresident company acquired from the Maquiladora since that date.

It is unfortunate and disturbing to multinational companies that are considering the possibility of manufacturing in Mexico or that have been active in Mexico's export manufacturing sector for many years, that Mexico would consider pursuing such an erratic course in arbitrarily restricting the use of transactions that they and others have engaged in historically and that they will need to use in the future to implement the structures that will enable them to maximize the amount of manufacturing activity that can locate in Mexico.

COFEMER should reject this arbitrary and retroactive restriction on maquila operations in Mexico.

4. The Proposed Elimination of the Maquiladora Tax Regime for Service Maquiladoras

Like the other proposed changes in Article 33, the proposed elimination of the benefits of Mexico's maquiladora tax regime for service maquiladoras would intervene arbitrarily to increase the costs and tax risks for a variety of commercially important relationships on which Mexico depends for the growth of its export manufacturing sector. The new restriction would in many cases have the effect of penalizing companies that have used service maquila operations to facilitate expansion of their export manufacturing operations in Mexico, and complicating their ability to conduct export manufacturing activities in a manner that is competitive in the global economy.

It is equally important for service maquiladoras and manufacturing maquiladoras to eliminate the risks of a highly factual inquiry into whether a U.S. company or other nonresident company has a permanent establishment in Mexico. As Mexico learned from the painful episode in 1998, when it attempted to impose tax on nonresident companies participating in maquila operations in general, foreign companies will leave Mexico or locate elsewhere before they will tolerate having a permanent establishment in Mexico, which would cause them to be subject to Mexican income tax and IETU on an undefined portion of the income of the nonresident company. Therefore, uncertainty about whether Mexico might claim that a particular operation causes the nonresident company to have a permanent establishment in Mexico will cause companies to avoid that operation. That is why the application of the permanent establishment exemption for nonresident companies is so important for maquila operations and why it would be unwise for Mexico to remove the permanent establishment exemption for service maquila operations.

The ability to use service maquiladoras for warehousing and to enable suppliers to maintain stocks of goods for just-in-time delivery are essential for a growing number of Mexico's largest Maquiladora operations. Eliminating the current tax treatment for service maquiladoras would interfere with the availability of those services. The additional exposure to permanent establishment treatment, in particular, can make foreign suppliers more reluctant to participate in cost-efficient supply arrangements with Mexican Maquiladora companies or cause them to implement more costly organizational structures. That would tend to reduce the competitiveness in the global market of the manufacturing Maquiladora operations that would bear those costs, and encourage major manufacturers to locate or expand their operations outside of Mexico.

Another commercially important use of service maquiladoras that would become more risky and more uncertain if COFEMER allows the proposed changes to become effective is the use of a service maquiladora to consolidate administrative functions for a group of maquiladoras. Participants in the Advisory Group operate multiple maquiladoras in Mexico, and there may be commercially important reasons to operate different maquiladora operations in different companies. In order to get the benefit of keeping those operations in separate companies, however, it is important to avoid the duplication of administrative costs in running each operation separately. Therefore, separating the administrative functions of several affiliated Maquiladoras into a single services maquiladora as part of the export manufacturing operations may be essential in order to achieve the efficiencies and cost savings that are required to allow a multinational group to justify expanding or maintaining its export manufacturing operations in Mexico.

Other companies have begun to combine manufacturing and service maquiladora programs in a single entity, and this proposed change would disrupt those operations and create administrative costs and uncertainty in taking the actions needed to preserve the eligibility of the manufacturing operations for favorable tax treatment.

By interfering clumsily in the development of commercial relationships required to allow Mexico’s Maquiladoras to operate efficiently and cost effectively in the global economy, the apparent attempt of the proposed amendment to Article 33 to deny service maquila operations the protection of the standard maquiladora tax regime would impair Mexico’s ability to achieve its objective of growing its export manufacturing sector.

5. Compliance with the Mutual Agreement on Maquiladora with the United States

Under Article 33 of the Proposal, Mexico could deny the benefit of a permanent establishment exemption to substantial categories of U.S. companies that participate in maquila operations. Therefore, the proposed amendments to Article 33, if approved, would call into question Mexico's compliance with its obligations under the Mutual Agreement on Maquiladora Taxation, presently in effect, which the Mexico and the United entered into in 1999.

Under the Mutual Agreement, Mexico has agreed to provide a permanent establishment exemption to any U.S. company that makes assets available to a Maquiladora for use in processing in Mexico inventory owned by the U.S. company, if the Maquiladora and the U.S. company comply with the standards set forth in the Mutual Agreement, which have been enacted into Mexican law in Article 216 Bis of the Income Tax Law.

The Proposal would not change the requirements for qualifying for a Maquiladora Program, i.e. to conduct maquila operations. Therefore, Mexico will continue to be obligated under the Mutual Agreement to provide a permanent establishment exemption to any U.S. company that participates in operations conducted under a Maquiladora Program by making assets available to the Maquiladora for use in processing in Mexico inventory owned by the U.S. company, provided that the Maquiladora complies with the requirements set forth in Article 216 Bis.

The proposed amendments to Article 33 would, however, purport to deny the benefits of a permanent establishment exemption under Article 2 of the income tax law to a substantial number of the U.S. companies that participate in maquila operations, contrary to Mexico's obligations under the Mutual Agreement and the requirements of Mexican law. As noted above the amendments would attempt to do that by manipulating the definition of "maquila operations" for income tax purposes to create a separate narrower definition of maquila operations for that purpose without changing what constitutes a maquila operation under the Maquiladora Decree.

All U.S. companies that participate in maquila operations depend on the continued effectiveness of the Mutual Agreement because in the absence of that agreement the payments that they are required to pay to the Maquiladora under the terms of Article 216 Bis would not be fully deductible for U.S. income tax purposes under U.S. law. It is unclear whether Mexico's noncompliance with its obligations under the Mutual Agreement under the proposed rules would cause the United States to reexamine its willingness to continue to allow a full deduction to U.S. companies for the payments that they are required to make to Mexican Maquiladoras under Article 216 Bis. Nevertheless, our organization believes that it would be unwise for COFEMER to approve the proposed changes in Article 33, which would create this additional risk and uncertainty for all maquila operations that involve a U.S. company, about the ability of the U.S. company to deduct its payments to the Maquiladora for U.S. income tax purposes.

6. Use of Regulations to Limit the Application of the Proposed Restrictions

It would be completely inadequate to attempt to deal with the unacceptable costs and risks that would arise from the proposed amendments to Article 33 by approving the Proposal and recommending the government issue regulations to control or limit the application of the Proposal. This approach acknowledges that the Proposal is defective and inappropriate, but instead of rejecting them outright, the suggested use of regulations would create greater uncertainty and the likelihood that the industry would be burdened with further complexity.

Requests to COFEMER

For these reasons, our organization respectfully request that COFEMER rejects the Proposal.

Respectfully submitted,

Dale D. Robinson
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