

BUSINESS NEWS – Special Report

Maquiladoras:

When you can't collect taxes, collect antidumping duties.

In November 2006, the Maquila and PITEC decrees were merged into a sole document known as the IMMEX decree (the "Decree") – which created the new IMMEX companies. This decree governs not only the customs aspects of IMMEX companies, but also defines what a *maquila* operation should be for tax purposes through its article 33. Article 33, taken together with articles 2 and 216-Bis of the Income Tax Law and several other legal provisions, are the basis for determining the tax treatment of the *maquiladora* industry.

The Decree provides for certain tax benefits that in practice result in payment of no more than 17.5% Income Tax and Sole Rate Corporate Tax, mainly as a consequence of the incentives afforded to this industrial sector, instead of the current general rate of 30%.

As reported in October in a special issue of this Business News, the Ministry of Economy and the Ministry of Finance promoted an amendment to the definition of *maquila* operations provided by Article 33 of the Decree, for the purpose of achieving the tax benefit.

The draft amendment to the Decree was published for public comment by the Mexican Best Regulatory Practices Body (COFEMER, by its Spanish acronym) on January 12, 2010. As a result, a number of parties expressed opposing arguments to the draft; especially towards the proposed Article 33. Such new article provides that goods furnished by the foreign resident that are imported temporarily should represent a substantial proportion of inputs used for the manufacturing of the *maquila* product. Thus, it would seem that at least 51% of the goods utilized for the production of an export product must be foreign in origin.

Further, today the Commerce and Industrial Development Committee of the Mexican Senate suggested that the full Senate admonish the Minister of Economy to avoid issuing the amendment Decree until the opposing arguments received through COFEMER were properly taken into account.

Whether the proposed Decree will be published, we are uncertain. What we do know is that, in a precedent-setting case and for the first time in the Mexican antidumping history, yesterday the Ministry of Economy announced the initiation of a dumping investigation on the imports of denim from the People's Republic of China. That would not seem out of the ordinary except for the fact that contrary to previous antidumping practice and, perhaps, contrary to the Mexican Customs Law, the Ministry of Economy has agreed with petitioners that the dumped imports causing material injury or threat of injury should include temporary imports, such as those conducted by the IMMEX or *maquiladora* industry.

We believe that IMMEX companies, *maquiladoras* and their foreign principles should be wary of this sort of policy becoming the standard, because if temporary imports are also subject to antidumping duties, the *maquiladora* industry may well be shot down ■