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THE IMPACT OF NAFTA ON THE UNITED STATES COMPUTER INDUSTRY: WHY TRADE REFORMS WILL SPARK INCREASED EXPORTS TO MEXICO

I. INTRODUCTION

Taking the lead. Rising to the occasion. This is what the United States does best. Only now, the United States cannot do it alone. Today the United States faces a rapidly changing world economy.[1] Gone are the days immediately following World War II where the United States enjoyed economic and technological superiority by encouraging exports into the American market.[2] Today, the United States must transcend its domestic boundaries in order to compete in an economy marked by a global market for goods.[3]

The first step toward competing in an expanded global market is recognizing the importance of free trade[4] to a wealthy economy.[5] The emergence of a global system of free trade has spurred many countries to form regional free trade blocs [6] in order to strengthen their economic

1. After World War II, the United States controlled the most advanced technology and enjoyed economic superiority. Robert Gilpin, *Can The Interdependent World Political Economy Survive? Three Perspectives on the Future*, *in* THE GLOBAL AGENDA 237 (Charles W. Kegley, Jr. & Eugene R. Wittkopf eds., 2d ed. 1988). At that time, the world economy flourished through three major industrial powers: the United States, Western Europe, and Japan. *Id.* The United States, the predominant economic and military power, stimulated Japanese and European economic growth by encouraging exports into the American market. *Id.*

2. Gilpin, *supra* note 1.

3. Lester Thurow, *America, Europe, and Japan: A Time to Dismantle the World Economy*, *in* THE GLOBAL AGENDA 309 (Charles W. Kegley, Jr. & Eugene R. Wittkopf eds., 2d ed. 1988).

4. *See infra* note 10 for a definition and discussion of free trade.

5. Since World War II, the Western world has shared an understanding of how free trade fosters wealth. John Major, *Why We Need Europe*, NEWSWEEK, Dec. 14, 1992, at 54. Mr. Major notes that in round after round of GATT negotiations, tariffs have been brought down and quotas have been abolished. *Id.*

6. Regional economic blocs refer to countries that are geographically located in such

positions.[7] In 1992 the United States, Mexico, and Canada signed the North American Free Trade Agreement (NAFTA)[8] in an effort to compete in this regional trade bloc scheme.[9] NAFTA creates the largest

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proximity as to facilitate a free flow of goods and services, manpower, and capital. *See, e.g.*, *NAFTA as a Tool of the United States*, INDONESIAN COM. NEWSL., Nov. 23, 1992 at 4.

7. Samuel Framarz, *Giant Trade Blocs Promise to Shake Up World Commerce*, THE REUTER LIBR. REP., Aug. 19, 1992 at 2.

8. On September 25, 1990, President Bush notified Congress that he intended to negotiate a free trade agreement with Mexico. Alan F. Holmer and Judith H. Bello, *The Fast Track Debate: A Prescription for Pragmatism*, 26 INT'L LAW. 183, 189 (1992). Article 2 of the United States Constitution gives the President, with the approval of two-thirds of the Senate, the power to make treaties, with the advice and consent of the Senate. U.S. CONST. art. II, § 2, cl. 2. However, Article I of the Constitution gives Congress the authority to regulate trade with foreign nations. U.S. CONST. art. I, § 8, cl. 3. Therefore, the President does not need statutory power to negotiate trade agreements with foreign countries, but the implementation of any such trade agreement must go through Congress. Holmer and Bello, *supra*, at 184. However, under the Fast Track Procedure, effective until June 1, 1993, the President had statutory authority to ultimately say "yes" or "no" to a trading partner. *Id.* at 195-97. Fast Track is a procedure that was devised in the Trade Act of 1974, 19 U.S.C. §§ 2101, 2111-2112, 2191 (1988), and revived in the Omnibus Trade and Competitiveness Act of 1988 19 U.S.C. §§ 1102-1103, 2902-2903 (1990). *Id.* at 184. Fast Track establishes a congressional-executive partnership for trade negotiations that in practical terms gives the President the power to make a trade agreement and the assurance that Congress will, in all likelihood, implement the agreement. *Id.* *See also* 137 CONG. REC. H3517 (daily ed. May 23, 1991) (Congressional debate over the extension of fast-track procedures).

On February 5, 1991, President Bush, President Salinas de Gortari of Mexico, and Prime Minister Mulroney of Canada announced their decision to discuss the feasibility of a free trade agreement with all three countries. *A Framework for Free Trade Discussion*, MEX. SERVICE, Feb. 13, 1991, at 16. The final details of NAFTA were completed on August 12, 1992. Laura Kelso, *Business Mexico Update*, BUS. MEX., Sept. 1992 at 21. However, the United States is not expected to ratify the treaty until some time in 1993. *Id.*

9. *Mex. - Economic and Trade Policy*, NAT'L TRADE DATA BANK MARKET REP., Mar. 1992. For example, the European Economic Community (EEC) agreed to a Single European Market providing for the free flow of goods and services, manpower, and capital. *NAFTA as a Tool of the United States*, *supra* note 6, at 4. The EEC is made up of twelve member countries: Germany, France, Holland, England, Denmark, Spain, Belgium, Luxemburg, Portugal, Ireland, Italy, and Greece. *Id.* In addition to the members of the EEC, there are seven countries that are members of the European Free Trade Area (EFTA): Austria, Finland, Iceland, Norway, Sweden, Switzerland, and Lichtenstein. *Id.* In October of 1991, these two groups agreed to form a trading area called the European Economic Area (EEA). *Id.*

The Association of Southeast Asian Nations (ASEAN) has recently launched (Jan. 1, 1993) the Asian Free Trade Area (AFTA) with this same understanding. Philip Liu, *Taiwan: European Single Market - A Mixed Blessing for Taiwan's Economy*, BUS. TAIWAN, Jan. 11, 1993, at 6. ASEAN includes Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Brunei. BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 541 (1991). These countries have a combined population of about 320 million and a gross national product exceeding $260 billion. *Id.* at 542. ASEAN is especially important to the United States because all six of the ASEAN countries lay beside some of the most imporfree trade[10] zone[11] in the world.[12]

Computer industries in the United States, Mexico and Canada need NAFTA in order to compete more effectively with computer industries of other regional trading blocs. The focus of this Comment is upon computer industry trade barriers[13] in Mexico that NAFTA will elimi-

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tant sea lanes of the world. *Id.* at 543. In addition, these countries welcome foreign investment into their countries. *Id.*

The Asian-Pacific Economic Cooperation (APEC) was formed in 1989 to draw all of the nations of the Pacific closer together. *Id.* APEC includes the six ASEAN members, Australia, Canada, Japan, Korea, New Zealand, and the United States. *Id.* APEC's stated goals include the battling of global protectionism and the maintaining of liberal trading systems. *Id.* However, APEC has essentially avoided any formal structure. *Id.*

10. A country can maximize its economic gain by specializing in the production of goods in which it is most efficient and then trading with another country for goods it produces less efficiently. JOHN L. MANZELLA, THE BUSINESSMAN'S GUIDE TO FREE TRADE 1 (1989). For example, if country A is more efficient in producing wheat, and country B is more efficient in producing fabric, each country will increase its total output by exporting the good it produces more efficiently. *Id.* at 2. This increase in combined output is allocated between the two countries in trade. *Id.*

The principles of free trade can be traced to eighteenth-century British economist, Adam Smith. RICHARD G. LIPSEY & PETER O. STEINER, ECONOMICS 698 (2d ed. 1969). Smith criticized government intervention into foreign trade and was responsible for vast reforms in the British civil service concerned with trade control. *Id.* Smith tried to show that there were gains from trade, and that protectionism (inhibiting foreign trade) was reducing the wealth of Britain. *Id.* at 709.

This classic international trade theory is the underlying theme of modern free trade zones. A free trade zone is a port designated by the government of a country for the entry of duty-free goods. CHARLES F. VALENTINE ET AL., THE ERNST & YOUNG GUIDE TO GLOBAL MARKETS 149 (1991). A duty is a tax imposed on imports by the customs (duties) authority of a country. *Id.*

The United States adopted a free trade policy at the peak of its power following World War II. ROBERT A. ISAAK, INTERNATIONAL POLITICAL ECONOMY: MANAGING WORLD ECONOMIC CHANGE 75 (1991). Much like the British who first came to see free trade as a way of expanding business worldwide to increase British prosperity, America began to see the benefits of free trade. *Id.* In particular, a system of free trade puts a wealthy, multi-resourced country at a powerful trade advantage over a developing, single-commodity nation. *Id.*

A free trade agreement refers to one or more countries agreeing that commodities will be freely imported or exported without special taxes or restrictions. BLACK'S LAW DICTIONARY 666 (6th ed. 1990). However, the countries that are parties to the free trade agreement retain their own tariff system in trade with third parties. CLIVE PARRY ET AL., ENCYCLOPAEDIC DICTIONARY OF INTERNATIONAL LAW 137 (1986).

Trade restrictions can take the form of high protective tariffs, import licensing requirements, and quotas. *Infra* note 13 (discussing trade restrictions).

11. *See supra* note 10 for a definition of free trade zone.

12. Congress has found that the zone will encompass 360 million people with a combined Gross Domestic Product of more than $6,000,000,000,000. H.R. 3055, 102d Cong., 2d Sess. (1992).

13. Mexico had trade protectionist barriers for many years. GEORGE MUNOZ, A GUIDE TO DOING BUSINESS IN MEXICO IN THE 1990'S 21 (1992). Mexico did not want to open its

nate. This Comment will show that the elimination of these trade barriers will spur United States exports to Mexico and give Mexico the technology infrastructure it needs, making all three NAFTA countries more competitive in the international computer arena.

Historically, the United States has had problems exporting computer products and services into Mexico because of two trade barriers: high protective tariffs[14] and software piracy.[15] Currently, tariffs are 250 percent higher in Mexico than in the United States.[16] This puts American computer firms at an economic disadvantage and discourages firms

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borders to unrestricted trade for fear that Mexican businesses would suffer. *Id.* As a result, high tariffs, (duties or taxes on the importation of foreign merchandise, BLACK'S LAW DICTIONARY 1456 (6th ed. 1990)), surcharges, and permit licenses restricted importing of foreign commodities. MUNOZ, *supra*, at 21. Other barriers include import quotas and restrictions on foreign investment. *Questions and Answers about the North American Free Trade Area*, *infra* note 24.

However, trade activities between the United States and Mexico have increased since Mexico joined The General Agreement on Tarrifs and Trade (GATT) in 1986. *Business Review*, UNITED STATES INTERNATIONAL TRADE COMMISSION, May 1992. GATT is a multilateral tariff treaty negotiated in Geneva in 1947. H.G. NICHOLAS, THE UNITED NATIONS AS A POLITICAL INSTITUTION 163 (1975). By the principles of GATT, member countries must promote trade policies of nondiscrimination and fair competition. GENERAL AGREEMENT ON TARIFFS AND TRADE, 55 U.N.T.S. 196-98 (Oct. 30, 1947). This includes reciprocity in the reduction of tariffs and other trade barriers, as well as the elimination of discriminatory treatment in international commerce. *Id.* Article II of GATT, entitled "Schedules of Concessions," limits a member Party to the maximum level of tariffs previously agreed upon in GATT negotiations. *Id.* at 200.

14. A protective tariff is a tax designed to protect or encourage domestic goods by imposing a high rate on imported goods of a similar nature. BLACK'S LAW DICTIONARY 1457 (6th ed. 1990). When Mexico taxes the importation of personal computers, for example, American vendors of these computers and peripherals are less likely to view Mexico as a viable market. *Question & Answer: Safi Quereshey - AST Exec on Mexico*, COMPUTER RESELLER NEWS, April 20, 1992 [hereinafter *Question & Answer*].

Incidentally, by this method of taxing, Mexico severely hampers its own computer industry, because Mexican companies assemble computers predominately from components coming from outside of Mexico. *Id.*

In April of 1991, the Mexican Government eliminated the import permit (a license or instrument by customs officials certifying that the duties on certain products have been paid, BLACK'S LAW DICTIONARY 1140 (6th ed. 1990)) requirement on computers and peripherals, but it increased the tariffs on these products from ten percent to twenty percent. *Mexico - Computers/Periph/Software/SVCS*, NAT'L TRADE DATA BANK MARKET REP., June 17, 1991.

15. The term software piracy refers to the illegal copying of software, either for commercial resale or for the private internal use by organizations. Mary Witoshynsky, *Computer Age Pirates Beefed-up Intellectual Property Laws May Soon Have Offenders Walking The Plank*, BUS. MEX., July, 1992, at 11.

16. James M. Sheehan, *The Free-Trade Case Against NAFTA*, CHRISTIAN SCI. MONITOR, Sept. 11, 1992, at 19.

from exporting into Mexico.[17] Software piracy also discourages investment into Mexico, as fair and adequate intellectual property[18] laws are vital to the growth of free trade.[19] U.S. software companies estimate the loss of millions of dollars to software piracy, absent stronger enforcement of Mexican copyright laws.[20]

This Comment will show that NAFTA will eliminate these trade barriers, and that without NAFTA, American vendors and manufacturers of computer products and services will remain outsiders to Mexico's market. This Comment will first discuss the background on trade relations between the United States and Mexico. Then, this Comment will demonstrate why NAFTA is essential to increased computer exports into Mexico. This includes a demonstration of the impact of the existing Free Trade Agreement between the United States and Canada (FTA)[21] upon the U.S. computer industry. Finally, this Comment concludes that NAFTA is crucial to the gradual elimination of import tariffs,[22] and the solid enforcement of copyright protection in Mexico.[23] NAFTA's trade reforms will spark increased computer exports into Mexico and will make the NAFTA trading bloc a leader among its international counterparts.

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17. *See supra* note 13 and accompanying text for a discussion of trade barriers to investment in the Mexican market.

18. *See infra* note 39 for a definition of intellectual property.

19. *See infra* notes 40 and 49 and accompanying text for a discussion of software piracy as a non-tariff trade barrier.

20. Witoshynski, *supra* note 15, at 11. Business Software Alliance (BSA) lost to Mexico an estimated $100 Million in 1991 to software counterfeiters. *Id.* Robert W. Holleyman II, managing partner of BSA, reported that software piracy manifests itself in two forms: commercial pirates who copy software for resale, and users who illegally copy software for organizations. *Id.* Holleyman asserts that for every one legitimate software package sold in Mexico, there are approximately eight illegal copies in use. *Id.*

21. The U.S.-Canada Free Trade Agreement Implementation Act of 1988 (FTA) came into effect on January 1, 1989. *Canada - Computers and Software Market*, NAT'L TRADE DATA BANK MARKET REP., April 1992. The United States and Canada entered into this Agreement in order to lower all barriers to trade. Robert Trautman, *U.S., Canada Reach Sweeping Free Trade Agreement*, THE REUTER LIBR. REP. Oct. 4, 1987. Under the FTA, U.S. exports to Canada have expanded by $12.9 billion between 1988 and 1992. Judith H. Bello and Alan F. Holmer, *The NAFTA: Its Overarching Implications*, 27 INT'L LAW. 591 (1993).

22. A tariff is a government tax on imports that is designed either to raise revenue or to protect domestic industry from foreign competition. E.D. HIRSCH, JR. ET AL., THE DICTIONARY OF CULTURAL LITERACY 434 (1988).

23. Copyright protection in this Comment refers to the legal protection of computer software from unrestricted and unauthorized copying. R. LEE HAGELSHAW, THE COMPUTER USER'S LEGAL GUIDE 122 (1985). In the United States, a copyright lasts for the life of the author plus 50 years, or if the software is a work made for hire, the copyright lasts for 75 five years from the date of first publication. *Id.* The copyright owner has the exclusive right to make, sell, rent, or lease copies of the software. *Id.*

II. BACKGROUND

The United States and Mexico share a 2000-mile border.[24] On one side of this border lies an industrial power and on the other a developing nation.[25] Across this border lies an untapped market for the unrestricted trade of goods and services.[26]

Although neighbors, the United States and Canada have not always traded extensively with Mexico, because of Mexico's history of trade protectionism.[27] When Mexico joined the General Agreement on Tariffs and Trade (GATT)[28] in 1986, Mexico began reducing its tarifffs and trade barrriers.[29] When Mexico's current President, Carlos Salinas de Gortari, took office in 1989,[30] he initiated a liberal policy toward foreign investors.[31] For example, Mexican computer companies were able to

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24. *Questions & Answers about the North American Free Trade Area*, NAT'L TRADE DATA BANK MARKET REP., June 18, 1991. The United States shares a 4000-mile border with Canada. *Id.*

25. 138 CONG. REC. H7054 (daily ed. July 30, 1992) (statement of Rep. Coleman).

26. Trade between the United States and Mexico is discussed throughout this Comment.

27. Trade protectionism refers to a country having a policy against foreign involvement in the domestic economy. Mark O'C. O'Brien and Carlos Muggenburg R.V., *Salinastroika: Recent Developments in Technology Transfer Law in Mexico*, 22 ST. MARY'S L.J. 753, 755 (1991). The passage of Mexico's 1917 Constitution imposed the first set of restrictions on foreign investment. *Id.*

28. See *supra* note 13 for a discussion of GATT.

29. *Id. See also* President Bush, *North American Free Trade Agreement: President Bush White House Fact Sheet*, Department of State Dispatch (Aug. 17, 1992). From 1986 to 1991, U.S. exports to Mexico increased from $12.4 billion to $33.3 billion, twice as fast as U.S. exports elsewhere. *Id.*

30. O'Brien and Muggenburg, *supra* note 27.

31. *Organizing - General, Investing, Licensing, & Trading*, Sept. 1, 1991. Salinas reduced local content requirements, modified ceilings on foreign equity, and eliminated most import requirements. *Id.*

During the Echeverria administration (1970-76), three pieces of legislation restricted foreign business activities in Mexico in the areas of technology transfer, direct foreign investment, and intellectual property. O'Brien and Muggenberg, *supra* note 27, at 754. The 1972 Technology Transfer Law, the 1973 Foreign Investment Law, and the 1976 Intellectual Property Law brought significant disincentives for international business with, and foreign investment into, Mexico. *See generally id.* at 755-56.

The Salinas administration has abrogated both the Technology Transfer Law and the 1976 Intellectual Property Law. Brendan Hudson, *Business and the Law: Mexico's Echeverrian Wall Crumbling But Not Yet Fallen*, BUS. MEX. Feb. 1992, at 15. In May, 1989, the Mexican Secretariat of Trade and Industry published new foreign investment rules. *Id.* (The Foreign Investment Law has not been changed, however, the Salinas administration has released numerous regulations that permit a more liberal application of the law. BUS. MEX., Feb. 1992.)

In addition, Salinas has put a lot of service traditionally provided by the government into the hands of the private sector. Munoz, *supra* note 13 at 5. Privatization refers to the private sector providing services that the government previously provided. *Id.* Independimport components from the most efficient suppliers for the first time in Mexico.[32] Local computer companies were required to buy from national suppliers before Mexico opened its borders to foreign investment.[33] This resulted in significant financial loss because the local market was so small that computer components were produced on a limited scale at a high cost.[34] Now, Mexican companies can shop internationally for the most cost-effective suppliers.[35] As a result, Mexico is now the fastest growing export market for the United States.[36] In addition, Mexico is the United States' third-largest trading partner, after Canada and Japan.[37] While U.S. industries continue to access Mexico's newly opened market, computer vendors and manufacturers are growing increasingly wary of high protective tariffs[38] and inadequate intellectual property[39] protection in Mexico.[40]

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ent of NAFTA, Mexico is modernizing its infrastruture, for example, roads and telecommunications, with the use of private and foreign capital. *Id.*

For instance, telecommunications has long been trapped under the weight of import restrictions, and the previous lack of privatization. *NAFTA Fuels Mexico's Telecom Explosion*, BUS. LATIN AM., Jan. 13, 1992. Telecommunications refers to the science and technology of communication by electrical or electronic means. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 712 (1979). With Mexico's new-found reception to foreign investment, experts are predicting a market for imported computer hardware and software for telecommunications equipment at $750 million by 1994. Hudson, *supra* note 31, at 15.

Finally, in 1989, Mexican President Salinas and Mexican Finance Minister Pedro Aspe, embarked on a four-point free-market reform plan which now has the economy growing, inflation falling, and the stock market rising. *Mexico's Economic Miracle*, THE JERUSALEM POST, Aug. 13, 1992. The four principles outlining this plan include a stable currency; the privatization of state-owned companies; new tax and regulatory policies (lowering taxes on labor and capital, lowering trade barriers, and removing oppressive regulations); and new laws to protect investors. *Id.*

32. Susan Drummet, *The Cosmopolitan Computer Age*, BUS. MEX., Oct. 1991, at 12. Originally, local computer companies were required to buy components from national suppliers. *Id.* Since the local market was so small, components were produced on a limited scale at a high cost. *Id.* Now that Mexico has opened its borders, companies can shop around for the most cost-effective suppliers. *Id.*

33. *Id.* In addition, Mexico's Computer Decree of 1990 has allowed locally manufactured computer products to compete internationally. *Question & Answer*, *supra* note 14. By this Decree, Mexico directed its strategy bringing local computer manufacturing activities in line with corporate planning. *Id.* For example, Hewlett Packard converted its Guadalajara plant from domestic production of minicomputers to exclusive production of a line of impact printers to be exported around the world. *Id.*

34. *Supra* note 32.

35. *Id.*

36. *Mexico - Economic and Trade Policy*, NAT'L TRADE DATA BANK MARKET REP., Mar. 1992.

37. *Mexico - Country Marketing Plan*, NAT'L TRADE DATA BANK MARKET REP., Oct. 1991.

38. *See supra* note 14 for a definition of protective tariffs.

39. Intellectual property refers to property rights in ideas. JESSE DUKEMINIER &

Currently, Mexico imposes a twenty percent tariff on computers and parts imported into its country.[41] This is 250 percent higher than that of the United States,[42] and over five times Canada's 3.9 percent tariff on computer imports.[43] In addition, Mexico is still attempting to raise its tariffs regardless of its more open trading policies.[44] When Mexico places such a heavy tax burden on the importation of computers, U.S. companies are less likely to view Mexico as a viable market.[45]

U.S. software companies are also losing confidence in Mexico as a legitimate export market because of inadequate protection of intellectual property rights.[46] Mexico passed the Law for the Promotion and Protection of Industrial Property in June of 1991 to address these concerns.[47] In August of 1991, Mexico amended this law to give software publishers exclusive copyright protection.[48] However, Mexico has not

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JAMES E. KRIER, PROPERTY 63 (2d ed. 1988). For example, patents, copyrights, and trademarks are all considered to be intellectual property. *Id.* NAFTA defines intellectual property rights as copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications, and industrial design rights. North American Free Trade Agreement, Sept. 6, 1992, art. 1721, cl. 5. [hereinafter NAFTA].

40. Software piracy destroys the local economy and local developers by causing job losses and reductions in tax revenues for legitimately purchased software. *Leading Software Publishers Urge Approval of NAFTA: Unprecedented Copyright Protection Contained In Agreement*, BUSINESS WIRE (Nov. 1993). *See also* note 49 and accompanying text for a discussion of U.S. hesitance to export into Mexico.

41. *Question & Answer*, *supra* note 14.

42. *Supra note* 16.

43. *Id.* at 19.

44. *GATT Report Finds Mexico Making Strides Toward More Open Economy*, INT'L TRADE REP., April 21, 1993.

45. *See supra* notes 13 and 14 for a discussion of the negative impact of high protective tariffs.

46. *Infra* note 63.

47. *Organizing-General, Investing, Licensing, & Trading*, Sept. 1, 1991.

48. *Patent and Trademark Protection, Investing, Licensing, & Trading*, Sept. 1, 1991. In the late 1960s and early 1970s, the Copyright Bureau of the Secretariat of Public Education (SEP) registered computer programs under Article 7 of the Federal Copyright Law. Mariano Soni, *Mexican Copyright Law*, BUS. MEX., Oct. 1991, at 14. Although computer programs were not expressly covered in the legal provisions of the law, the bureau interpreted the law to include computer programs under the broad concept of "other works." *Id.* However, in the 1980s, the bureau began denying registration of computer programs precisely because there was no express provision for them. *Id.* Finally, on October 8, 1984, General Resolution No. 114 was published, whereby the SEP acknowledged that computer programs were works created by authors and entitled to protection and registration under the Copyright Law. *Id.* Mexico's new Copyright Law, referred to in accompanying text, clarifies the exclusive protection of copyright-eligible computer programs. *Id.* This new Mexican law states that the author is the only one who has the right to use or develop his work, or sell it to a third party. *Mexico Overhauls Copyright Law By Protecting Recordings, Software*, BNA INT'L BUS. DAILY, Aug. 14, 1991. In addi-

adequately enforced the new law.[49] U.S. software developers continue to lose nearly the balance of their sales to illegal counterfeiters.[50] In addition, approximately fifty percent of the total software used in Mexico is secretly imported and illegally produced.[51]

NAFTA will eliminate the risk of high tariffs as well as the risk of inadequate protection of intellectual property. One goal of NAFTA is the reduction of distortions to trade.[52] Distortions, or barriers, to trade include high protective tariffs.[53] NAFTA provides that no party may increase any existing custom (tariff), or adopt any new customs duty,[54] on an originating good.[55] NAFTA also provides that each party shall progressively eliminate customs duties on originating goods.[56] This

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tion, this law gives computer programs copyright protection for fifty years, which is the traditional Western standard. *ABA Meeting Looks at NAFTA and Intellectual Property Rights*, INT'L TRADE REP., Apr. 22, 1992, at 724.

49. *Enforcement of Copyright Protection Still Faulty, Subcommittee Told*, INT'L TRADE REP., Sept. 30, 1992. In addition, foreign software companies are not satisfied that the legislation provides sufficient protection. *Mexico*, COUNTRY REPORTS (Walden Pub. Ltd. 1993). Towards the middle of 1992, Mexican federal agents began conducting more than sixty anti-piracy raids. David Clark Scott and Laurent Belsie, *Mexico Leads Region in Halting Pirates*, THE CHRISTIAN SCI. MONITOR, Feb. 1993, at 7. For example, in January of this year, federal police conducted an all-night raid of Mexico City's Grupo Nacional Provincial, one of Mexico's largest insurance companies. *Id.* The raid produced dozens of pirated copies of Lotus, Microsoft, and Aldus computer software. *Id.* However, none of the arrested, since the raids began, have been brought to trial or fined. *Id.* at 9.

50. Witoshynsky, *supra* note 15, at 11. For example, Business Software Alliance (BSA) lost an estimated $100 million in 1991 to software counterfeiters. *Id.* Software counterfeiting is the illegal copying and sale of software in order to make it appear legitimate. *Deadlines Approach for Two GATT Airbus Complaints, Boeing Official Tells ABA*, INT'L TRADE REP., Nov. 6, 1991.

51. *Mexico - Computers/Periph/Software/SVCS*, *supra* note 14, at 8.

52. NAFTA, Preamble 1.

53. *See supra* note 13 for a discussion of Mexico's protectionist policies, and note 14 for a definition of a protective tariff. Currently, tariffs in Mexico are 250 percent higher than in the United States. *Supra* note 16.

54. "Custom" or "duty" in this Comment refers generally to the tax or tariff imposed by a country upon the importation of foreign commodities.

55. NAFTA, art. 302(B)(1) (1992). Rules to determine the origin of a good are based on whether a processed item has been substantially transformed to warrant a change in tariff classification. *Draft NAFTA Is Leaked*, BUS. LATIN AM., Mar. 30, 1992. The term "substantially transformed" means that products that use foreign inputs must go through considerable change (e.g., a raw material being processed into a finished good) in order to be used in an export to a free trade party. *The North American Free Trade Agreement: The Ties That Bind*, 6 CHICAGO FED. LETTER, Sept. 1992, at 3. The reason for this rule is to ensure that a country involved in a free trade agreement will not use cheaper foreign parts in its exports while using its favorable tariff arrangements to avoid higher tariffs. *Id.*

56. NAFTA, art. 302(B)(2) (1992). NAFTA also provides that any agreement between any two parties to accelerate the elimination of a customs duty shall supersede any prior inconsistent duty rate. *Id.* at art. 302(B)(3).

means that Mexico's twenty percent tariff on computer imports must be progressively eliminated. No NAFTA party can unilaterally raise the tariff.

Another goal of NAFTA is the promotion of trade in goods and services that are subject to intellectual property rights.[57] Under NAFTA, computer programs are exclusively protected as literary works within the scope of copyright protection.[58] In addition, NAFTA maintains that each party to the agreement must take effective action[59] against any act of infringement of intellectual property rights.[60] This includes expeditious remedies to prevent infringements, and remedies to deter further infringements.[61] Therefore, NAFTA mandates that all three NAFTA parties must provide and enforce intellectual property rights.

III. WHY NAFTA IS ESSENTIAL TO INCREASING U.S. COMPUTER EXPORTS TO MEXICO

NAFTA is vital to increased computer exports for two reasons. First, NAFTA provides for the gradual elimination of import tariffs.[62] Second, NAFTA improves Mexico's environment for copyright protection.[63] The United States, Canada, and Mexico all stand to gain from NAFTA's gradual elimination of tariffs and improved copyright

57. NAFTA, Preamble 1.

58. NAFTA, art. 1705(1)(a) (1992). According to this Article, each party must protect the works covered by Article 2 of the Berne Convention. *Id.* The Berne Convention for the Protection of Literary and Artistic Works, 1 B.D.I.E.L. 715 (1990) was completed at Paris on May 4, 1896. Its current form stems from the Paris Act of 1971, as amended on October 2, 1979. *Id.* According to Article 2, among the works that merit copyright protection are "literary and artistic works." *Id.* at art. 2(1). NAFTA provides that computer programs are literary works within the meaning of the Berne Convention. NAFTA, art. 1705(1)(a) (1992). NAFTA gives a copyright holder the right to authorize or prohibit the importation of copies of works made without the copyright holder's authorization, and a copyright protection period of no less than 50 years. *Id.* at art. 1705(2)(a)(4).

59. A discussion of each party's current legal means of protecting against copyright infringement is addressed in the analysis portion of this text.

60. NAFTA at art. 1714(1).

61. *Id.*

62. *See infra* note 65 and accompanying text (addressing NAFTA's treatment of tariff reduction).

63. Fair and adequate intellectual property laws are vital to the growth of free trade because inadequate or overly restrictive laws create a non-tariff barrier which discourages technological investment. Geoffrey Kransdorf, *Intellectual Property, Trade, and Technology Transfer Law: The United States and Mexico*, VII B.C. THIRD WORLD L.J. 277, 278 (1987). Computer industry executives say that Mexico's Law for the Promotion and Protection of Industrial Property is only a first step. *Copyright Law Aids Software & Sound Recordings*, BUS. LATIN AM., Aug. 5, 1991. These industry executives are hoping that in the free trade negotiations Mexico will expand protection even further. *Id.* Software companies insist that Mexico stands to lose international business and investor confidence

protection.[64]

A. NAFTA Provides for the Gradual Elimination of Import Tariffs

NAFTA mandates that tariffs will be phased out over a period of five to ten years.[65] This is the assurance that manufacturers and sellers of computers need in order to export to Mexico. Mexico still has higher than average tariffs on computers, despite GATT[66] demands of nondiscrimination and fair competition.[67]

When Mexico joined GATT in 1986, it agreed to maintain tariff levels at a fifty percent (50%) level.[68] Mexico has unilaterally lowered its tariffs to twenty percent.[69] However, just as Mexico unilaterally lowered the tariff, it can unilaterally raise it back up to fifty percent absent a further agreement.[70] This is a risk that saddles long-term exports to Mexico. Without NAFTA, there is no guarantee that Mexico will significantly lower its tariff.[71] NAFTA eliminates this risk.[72]

Under NAFTA, Mexico must phase out the tariff completely within ten years.[73] NAFTA mandates that the tariff gradually decrease.

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as long as there is a fear of inadequate protection of intellectual property. Witoshynsky, *supra* note 15, at 14.

64. *Id.*

65. Jack C.C. Li, *Taiwan: North American Free Trade Agreement Sparks Concerns*, BUS. TAIWAN, Aug. 24, 1992. NAFTA negotiators have tentatively agreed on harmonizing tariffs over a period of five years for computer parts and 10 years for finished computers. *Mexico's Commitment to Relax Restrictions on Foreign Banks is Agreement in Principle*, INT'L TRADE RPT. July 15, 1992.

66. *See supra* note 13 for a discussion of GATT.

67. *Id.*

68. *ROUND TABLE DISCUSSION: The North American Free Trade Agreement: In Whose Best Interest?* 12 J. INT'L BUS. 536, 552 (1992).

69. *Id.*

70. *National Governors Assoc. Forum on North American Free Trade*, FED. NEWS SERVICE (Statement of Carla Hills, former United States Trade Representative) (June 25, 1991).

71. The most recent GATT negotiations are tentatively calling for a 33 percent reduction on tariffs. *Mexico Ready For GATT Accord, Says Minister*, XINHUA GEN. NEWS SERVICE, Jan. 1992. Since Mexico has today a maximum tariff of 20 percent, well below the 50 percent level Mexico agreed to when it acceded to GATT in 1986, Mexico will be able to fulfill the possible GATT agreement without adjusting its existing tariff structure. *Id.*

72. The Uruguay Round (the most recent round) of the GATT also calls for the reduction of tariffs by member countries. *Id.* However, the Uruguay Round has not yet reached a successful completion. *See generally* Bello and Holmer, *supra* note 21, at 595. This is why NAFTA is so crucial. GATT combines multilateral trade negotiations of over one hundred nations. *Id.* This means talks are slower, and trade-offs are more frequent. *Id.* Trade liberalization is limited to that level which is acceptable to virtually every nation participating. *Id.*

73. *Supra* note 65.

Therefore, no NAFTA Party can unilaterally raise the tariff. NAFTA is essential in order to build this investor confidence in Mexico. The elimination of this tariff gives NAFTA members an economic advantage over countries outside the trading bloc.[74] With this increased confidence and economic advantage comes increased exports to Mexico.[75]

At the same time, NAFTA will strengthen Mexico's developing market. Mexico's infrastructure is in need of investment and repair.[76] With more computer imports, Mexico will be able to share in the latest technology, research, and development. In addition, as Mexican industries modernize and incomes rise, the demand for computer equipment and related services will also rise.[77] The demand for computers in Mexico rose twenty-one percent last year, while that of the United States and Canada decreased.[78] Mexico's developing computer industry needs the U.S. computer exports and services that the elimination of tariffs will generate.[79] Mexico has no indigenous computer industry.[80] Most of the computer manufacturers in Mexico import the bulk of their components[81] from the United States.[82]

Canada was in a similar situation prior to the enactment of the U.S./Canada Free Trade Agreement (FTA) in 1989.[83] Canada, like Mexico, manufactures very little computer equipment and peripherals domestically.[84] The location of Canada's major cities along the north-

74. Countries outside the free trade area will continue to be subject to the tariff.

75. With increased exports to Mexico comes increased U.S. jobs. More than 7.5 million U.S. jobs are tied to merchandise exports. NORCOM Int'l Corp., *North American Free Trade Agreement Fact Sheet*, Feb. 26, 1993, at 1. Of these, 2.1 million are supported by exports to Canada and Mexico. U.S. exports to Mexico now support more than 600,000 American jobs. *Id.* The Institute for International Economics recently estimated that this number will exceed 1 million by 1995 under NAFTA. *Id.* at 3.

76. *ABA Program Stresses Changes in Financing for Latin American Projects in the 1990s*, INT'L TRADE REP., Oct. 28, 1992.

77. *Report Says Free Trade Pact Would Create Jobs In California As Exports, Investments Grow*, BNA INT'L TRADE DAILY, June 4, 1993.

78. *Id.*

79. *See infra* note 82 and accompanying text for a discussion of Mexico's dependence on the the United States computer industry.

80. *Question & Answer*, *supra* note 14, at 36.

81. Components include semiconductors, metal parts, cables, screws, resistors, power supplies, and packaging materials. *Mexico - Computers/Periph/Software/SVCS*, *supra* note 14.

82. *Id.* Imports satisfy 62% of the total Mexican hardware market. *Id.* The United States is the largest supplier of computers and related equipment to Mexico, with a market share of 81% on imports of computer systems, 73% on peripheral equipment, and 94% on software. *Id.*

83. *Supra* note 21.

84. *Canada - Country Marketing Plan, FY'92*, NAT'L TRADE DATA BANK MARKET REP., Oct. 1991. For example, the United States represents 96% of total software industry imports to Canada. *Id.*

ern U.S. border makes Canada a natural market for U.S. products and services.[85] Yet before the FTA, American computer exporters were reluctant to sell in Canada because of its 3.9% tariff.[86]

When the FTA went into effect, Canada eliminated the 3.9% tariff immediately.[87] This benefited the U.S./Canadian computer industries in two ways. First, it remedied the frustration of U.S. computer equipment producers who were reluctant to sell in Canada because of the high tariff.[88] Second, U.S. computer products became more competitive in Canada because the same imports from other countries were still subject to the tariff.[89] The availability of new equipment and new technologies benefited Canada's manufacturing industries and increased their own productivity.[90] Canada was concerned that its manufacturing productivity had been falling behind its international competitors.[91] Canada realized that it had to adopt the technologies of its competitors or lose markets.[92] Therefore, both Canada and the United States gained from the elimination of import tariffs.

The United States and Mexico can also achieve this mutually advantageous trading relationship. Two main factors underlie U.S. industry concern about Mexico's current import tariff as it relates to that of Canada before the FTA. One factor is that Mexico's twenty percent tariff on computers is over five times that of Canada.[93] The second factor is that Mexico's local computer productivity is far behind that of Canada.[94] If Mexico follows Canada's example and eliminates the tariff on computer imports, it will increase its own computer productivity, in addition to increasing U.S. computer exports.

U.S. companies are just as hesitant to increase computer exports to

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85. *Canada - Computers and Software Market*, NAT'L TRADE DATA BANK MARKET REP., Apr. 1992.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Canada - Country Marketing Plan, FY'92*, NAT'L TRADE DATA BANK MARKET REP., Oct. 1991. Canada was concerned that its manufacturing productivity was falling behind that of its international competitors. *Id.* U.S. suppliers became the beneficiaries of this demand for new investment in plants, equipment, and know-how. *Id.*

91. *Id.*

92. *Canada - CAD/CAM*, NAT'L TRADE DATA BANK MARKET REP., Dec. 1991.

93. *Supra* note 85.

94. *Specialist Warns Mexico Lags In Computer Industry*, NOTIMEX MEXICO NEWS SERVICE, Aug. 17, 1992. For example, experts have stated that the development of software in Mexico and the technical quality and creativity of Mexico's computer industry are vastly inferior to the United States' and Canada's. *Id.* U.S. industry experts have insisted that modernizing Mexico's computer industry is the key to Mexico becoming a viable market contender. *Id.*

Mexico without significant tariff reform[95] as they were reluctant to export to Canada because of the Canadian tariff.[96] For example, Apple Computer, Inc.[97] claims that a lower tariff will have a significant impact on Apple's business in Mexico, especially when such tariffs increase the cost of U.S. products in Mexico by ten to twenty percent.[98] Without NAFTA, there is no assurance that Mexico will ever lower the tariff.

Further, just as Canada needed U.S. computer products and services to increase its own computer production,[99] Mexico has an even greater need for U.S. technology and modernization.[100] Computer products in Mexico are comprised of primarily foreign components.[101] In addition, the technical quality and creativity of Mexico's computer industry is largely inferior to that of the United States and Canada.[102] If Mexico eliminates the import tariff, U.S. computer companies will dramatically increase exports into Mexico, and Mexico will be able to share the newest technology with the United States.[103] This will also make the NAFTA region more competitive with other commercial trading blocs.

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95. *Supra* note 14 and accompanying text.

96. *Supra* note 85.

97. The perspective attributed to Apple Computer, Inc. is grounded in the statement of William Fasig, manager of international government affairs and trade at Apple Computer, Inc. *Id.*

98. *Id.*

99. *Supra* note 92.

100. *Supra* note 94. As Mexican industries modernize, Mexico's demand for computer equipment and services increases. *Report Says Free Trade Pact Would Create Jobs in California as Exports, Investments Grow*, BNA INT'L TRADE DAILY, June 4, 1993. The main computer users in Mexico are banks, telecommunication companies, and the government's oil, gas, and electric power industries. *Id.*

101. Most of the computer manufacturers in Mexico import the bulk of their components either directly from their counterparts in the United States or from their suppliers. *Mexico - Computers/Periph/Software/SVCS*, *supra* note 14. Components include semiconductors, metal parts, cables, screws, resistors, power supplies, and packaging materials, among others. *Id.* The reader should also be familiar with the term, "maquiladora." Maquiladoras are export-oriented assembly plants under special Mexican restrictions. *Mexico - Economic and Trade Policy*, *supra* note 9. In particular, the inexpensive and large labor supply of Mexico is used by a U.S. company that sets up a plant in Mexico to assemble or produce products. MUNOZ, *supra* note 13, at 9. The products sent by the U.S. business to its Mexican plant do not have to pay customs or duties. *Id.* When the finished or partially finished product is exported from the plant to the U.S., customs charges are only on the value added by the Mexican labor to the materials sent into Mexico. *Id.* By 1988, maquiladora industry plants in Mexico employed 350,000 workers in 1,500 plants, and had grown 14% annually since 1978. ISAAK, *supra* note 10, at 208.

102. *Supra* note 94.

103. *Id.*

B. NAFTA Improves Mexico's Environment for Copyright Protection

United States computer exports to Mexico will increase dramatically if Mexico improves its standards for copyright protection.[104] Mexico can do this in two ways. First, Mexico must issue injunctions[105] in order to stop illegal copying of computer software.[106] Second, Mexico must enforce stronger penalties against copyright pirates.[107]

NAFTA ensures that Mexico will increase its standards for copyright protection. First, NAFTA provides for injunctions[108] and damages[109] in the case of copyright infringement.[110] Second, NAFTA provides for strict criminal procedures and penalties for copyright piracy on a commercial scale.[111]

NAFTA mandates that Mexico must take effective action to ensure adequate copyright protection.[112] However, U.S. computer industries are concerned about flaws in the Mexican law.[113] The first of these

104. In spite of improvements in its copyright law, Mexico has failed to enact sufficient enforcement. *Enforcement of Copyright Protection Still Faulty, Subcommittee Told,* INT'L TRADE REP., Sept. 30, 1992. It is estimated that U.S. industry losses to Mexico stand at $150 million annually. *Id.*

105. "Injunction" in this Comment refers to an order forcing a party in a copyright infringement proceeding to desist from such infringement. NAFTA, art. 1715(2)(c).

106. The illegal copying of computer software is referred to as software counterfeiting. *Deadlines Approach for Two GATT Airbus Complaints, Boeing Official Tells ABA,* INT'L TRADE REP., Nov. 6, 1991. Mexico does not have any form of injunctive relief against software counterfeiting. BNA INT'L BUS. DAILY, Oct. 25, 1991.

107. Damage awards in the case of intellectual property rights violations in Mexico are considerably lower than in the U.S. and Canada. *Id.*

108. NAFTA, Article 1715(2)(c) provides that each country's judicial authorities shall have the power to order a party in a proceeding to refrain from an infringement. This includes preventing entry into channels of commerce of imported goods that involve the infringement of an intellectual property right.

109. NAFTA, Article 1715(2)(d) provides that each country's judicial authorities shall have the power to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury, where the the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity.

110. Copyright infringement, as referred to in the NAFTA text, includes the illegal copying of computer software. *See supra* note 58 (decribing works protected under the Copyright Section of NAFTA). An infringer of a copyright is anyone who violates any of the exclusive rights of the copyright owner. 17 U.S.C. 501.

111. NAFTA, Article 1717(1) provides that each country shall provide criminal procedures and penalties for copyright piracy on a commercial scale, including imprisonment, monetary fines, or both. In addition, NAFTA, Article 1717(2) states that each country must provide, in the appropriate cases, the power of judicial authorities to order the seizure, forfeiture, and destruction of infringing goods.

112. *Id.*

113. Computer executives have admitted that the Mexican law provides less protection than they had hoped. *Copyright Law Aids Software, Sound Recordings,* BUS. LATIN AM., Aug. 5, 1991. For example, it permits users to make backup copies of software, but limits

flaws in the Mexican law is the lack of injunctive relief.[114]

Presently, injunctive relief is not available under the Mexican legal system.[115] In the United States[116] and in Canada,[117] the preliminary or interlocutory[118] injunction is a crucial means of stopping copyright infringement soon after it is discovered, and the injunction may resolve the dispute without further proceedings.[119] In particular, the injunction is important in civil settings because civil litigation in Mexico is much slower and more complicated than in the United States and Canada.[120] As a result, U.S. computer companies stand to lose millions of dollars to software pirates until Mexican legal procedures have been exhausted.[121] Under NAFTA, Mexico must provide its judicial authorities with the power to issue injunctive relief.[122] Thus, under NAFTA, Mexico must provide injunctive relief in order to adequately protect computer

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penalties for unauthorized copying to cases where copying is done for a lucrative purpose. *Id.* Therefore, a firm's internal use of protected software would consitute copying for a lucrative purpose and would be penalized, but it may not apply to copies made by students, technical institutions, or the government. *Id.*

114. *ABA Meeting Looks at NAFTA and Intellectual Property Rights*, *supra* note 48, at 724 (report issued March 30, 1992 by the U.S. Trademark Association's Task Force on the North American Free Trade Agreement citing shortcomings in the Mexican system, including widespread infringement and counterfeiting, as well as the lack of injunctive relief).

115. *Intellectual Property Enforcement Issues to Play Major Role in NAFTA Talks*, INT'L TRADE REP., Oct. 23, 1991. Mexico's industrial property legislation allows for administrative seizure of infringing goods, but this remedy can be blocked if the owner of the infringing good elects to have the case heard by an "amparo" action. *Id.* This "amparo" procedure is comparable to the U.S. or Canadian system of judicial review of the constitutionality of the decisions of judges or administrators. *Id.*

116. *See generally* 17 U.S.C.A. § 502 (1992) (copyright infringement and remedies including authority of court to grant temporary and final injunctions in order to restrain infringement of a copyright).

117. *See generally Her Majesty The Queen v. 401986 Ontario Ltd.*, 1987 ONT. C. A. LEXIS 102, 102-105 (Ontario 1987) (Section 25 of the Canadian Copyright Act providing for seizure of illegal copies of a work . . . Copyright as contemplated by the Copyright Act incorporates the sole right to do and to restrain from doing certain acts . . .). Section 25 of the Canadian Copyright Act provides for interlocutory injunctions as well. MELVILLE B. NIMMER & PAUL E. GELLER, INTERNATIONAL COPYRIGHT LAW AND PRACTICE 90 (1988).

118. An interlocutory order is one which is not final, but only decides some intervening matter related to the cause of action, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits. BLACK'S LAW DICTIONARY 815 (6th ed. 1990)

119. *USA: An Overview of Intellectual Property Law*, EUROMONEY SUPPLEMENT, May 8, 1991.

120. *See NAFTA/Intellectual Property*, INT'L BUS. DAILY, Oct. 25, 1991. (discussing differences in Mexico's system of protecting intellectual property from that of the United States and Canada).

121. *See supra* note 115 for a discussion of Mexico's lack of injunctive relief.

122. *Supra* note 109.

software programs.[123]

The second flaw in the Mexican law that concerns U.S. computer manufacturers is the lack of strong penalties for copyright infringers.[124] Under Mexico's civil law, there is a maximum fine for copyright infringers of two thousand dollars.[125] This is considerably higher than the four dollar maximum fine before Mexico enacted the Law for the Promotion and Protection of Industrial Property.[126] However, it is remarkably lower than that of the United States and Canada. United States' Copyright Laws now provide for the recoveries of up to $100,000 in damages for infringement of any one work.[127] Canada's maximum allowable fine for charges arising under its Copyright Act is $25,000 on each count.[128] High penalties in the United States and Canada for violations of intellectual property rights, deter further infringement.[129] However, Mexico's penalties for copyright infringement are too low to effectively deter infringement. Clearly, Mexico must dramatically increase its maximum fine for copyright infringement.

Further, under Mexico's criminal law, prison sentences for copyright infringement are no longer limited to two to six years.[130] Yet, Mexican courts rarely enforce any kind of sentence because offenders are rarely brought to trial.[131] For example, in over sixty anti-piracy raids by the Mexican authorities in the last year, not one pirate has been brought to trial.[132] Mexico must enforce stronger penalties to combat the piracy of computer programs and to deter further infringements. Mexico must send a stronger message to software pirates.

NAFTA sends this message. NAFTA mandates that Mexico start enforcing stronger penalties against copyright pirates. In particular NAFTA calls for strict criminal penalties for copyright piracy on a commercial scale.[133] Mexico must heed NAFTA's call in order to be a via-

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123. *Id.*

124. *Mexico Overhauls Copyright Law By Protecting Recordings, Software*, *supra* note 48. Mexico's recent Law for the Promotion and Protection of Industrial Property increases the fine for most piracy infractions from a maximum of $4.00 to $2,000. *Id.* However, it is still not as high as U.S. and Canadian manufacturers would like. *Id.*

125. *Id.*

126. *Id.*

127. *USA: An Overview of Intellectual Property Law*, *supra* note 119.

128. *Record Copyright Fine*, THE FIN. POST, Oct. 14, 1991. A Markham, Ontario, company, Laserlite F/X Inc., received this maximum allowable fine for piracy of two computer programs owned by Laser Media Inc. of Los Angeles. *Id.*

129. *See* NAFTA, art. 1714(1) (effective enforcement procedures must be available under domestic law to prevent infringement and to deter further infringement).

130. *Mexican Senate Approves Intellectual Property Law*, BUS. LATIN AM., May 27, 1991, at 169, 175.

131. *Mexico Leads Region in Halting Pirates*, *supra* note 49, at 9.

132. *Id.*

133. *Supra* note 111.

ble market for U.S. computer exports, and a leading competitor in the global economy.

IV. CONCLUSION

The United States must stand ready to meet the challenges and demands of a new world order, and a rapidly expanding global economy. NAFTA gives the United States that opportunity. Together, the United States, Canada, and Mexico have the labor, technology, capital, and energy to compete aggresssively in the international arena. Together, the NAFTA countries can take the lead.

The computer industries of the United States and Mexico need NAFTA. NAFTA eliminates two major risks of exporting into Mexico: high tariffs and inadequate protection of intellectual property. NAFTA mandates that tariffs on computers and peripherals must be phased out within five to ten years. In addition, NAFTA mandates the availability of injunctive relief and heavy damages for copyright infringement, and strong penalties for copyright piracy on a commercial scale. Therefore, NAFTA ameliorates the two main trade barriers which currently hinder U.S. vendors and manufacturers of computers from exporting products and services to Mexico. This is why NAFTA is essential to Mexico becoming a viable market for increased United States computer exports. Further, when United States computer companies increase exports to Mexico, Mexico will be able to share in the newest technology with the United States. This will allow all three NAFTA countries to effectively compete in the global economy. This will make the NAFTA trading bloc an economic jewel in the crown of competition.

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