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## **Cross-Border Movement of Goods: Development in U.S.-Mexico Customs Procedures**

### **The New Customs Role**

**By**

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The purpose of this short essay is to give you a personal vision on what will be the Mexican customhouse in a period of five years from now; this is, by the year 2003, in comparison with the situation of 1985, or rather before the opening of the Mexican economy and its inclusion to GATT, and what it is today. Three stages: yesterday, today and tomorrow.

The customhouse reflects what happens in trade policy and in the country's foreign trade. At the same time, the role of the custom brokers and trade lawyers must correspond to the development of those parameters.

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## 1. The Mexican Customhouse in 1985

In 1985, Mexico lived intensely the change of a protectionism policy to one of economic opening.

In those days the economy was closed or tightened heavily in the domestic market. Imports and exports of goods represented one fifth part of the GDP. The external sales of crude represented more than one half of the total exports. Likewise, exports of manufactured goods added hardly a little more than one third of total trade, and among them *maquiladoras* exports absorbed around fifty percent.

Until 1985, the only used instruments to regulate imports were the high tariffs (very scattered), the official prices and the import permits. With the exchange control imposed in the late 1982, nearly all trade operations required import permits. Thus, regulation of imports was practiced and executed by the Ministry of Commerce. The technical standards applied in the customhouses were few, and did not have transparency. Simplifying, the role of the customhouses was to collect tariffs and to monitor that the corresponding import permits existed. In that time, tariffs to foreign trade represented more than 15 percent of the tax revenue of the federal government, regardless of the collected VAT.

1985 was a year of great change. In that year, import permits began to be substituted by import tariffs, situation that was accelerated in the following years. The change was of such magnitude that Mexico converted in little time into one of the most open economies of the world. Mexico entered GATT and signed several of its “*Conduit Codes*”. Mexico consolidated under GATT a ceiling tariff of 50 percent, which was later decreased to 35 percent. Furthermore, we executed the new tariff nomenclature system (HS). Official prices started to be eliminated and at the beginnings of 1988 were totally cancelled. New import and export programs were designed and were put into practice in order to stimulate exports, such as PITEX, ALTEX and others. The antidumping system was also established a couple years later against unfair international trade practices. Since then, the Mexican AD/CVD system has been dynamic.

Later on, Mexico participated in the multilateral trade negotiations of the Uruguay Round and we are now Members of the new WTO. We converted additional import permits into tariffs. Today, very few goods continue to operate under an import permit scheme. We negotiated NAFTA with U.S. and Canada, with a general tariff reduction program of ten years. With this, we established under our legal system sophisticated rules to apply preferential treatment. Furthermore, Mexico initiated and concluded additional free trade agreement negotiations with several Latin America countries. Application of technical standards for a number of goods was made obligatory in the customhouses. The aleatory import system was implemented. A Computer language system (SAAI) was implemented in the

customhouses and with the customs brokers. The Customs and Foreign Trade legislation was also modified. The customs functions in the Ministry of the Treasury were restructured. In the end, in very few years, the framework, functional, structural and trade policy changes list is so long, that we should better omit it.

In respect to foreign trade growth, the increase of imports and exports has been impressive. The increase has been, —depending on the year basis that is taken into account and of the time periods considered— of around 10 to 20 percent annually; this is, higher than the increase of GDP and of the growth of world trade. As a result, today the sum of imports and exports of goods is equivalent to more than 55 percent of the GDP, one of the topmost indices in world level. In respect to exports, we depend much less of crude. On the other hand, manufactured goods exports are the main source of exports, representing close to 90 percent of the total, including those of the *maquiladora* industry. Today we can import anything we wish to import, if customs obligations and regulations are complied.

Thus, Mexico has converted into one of the most dependent economies of its foreign trade. For example, as a proportion of its GDP, Mexico is above important and very open economies of the world such as the United States, Japan, United Kingdom, France, Spain, Brazil, China and several more.

The fact is that in the course of a little more than one decade, Mexico's foreign trade and its customs practice changed dramatically. With this change,

responsibilities of customs officials, customs brokers, importers, customs lawyers and trade consultants also changed.

## **2. The Mexican Customhouse Today**

If we take a photograph of what the Mexican customhouse is today, we have the following, in contrast with the situation that existed a few years ago when the economic opening and other structural changes of the Mexican economy had not taken effect:

**Every day, the customhouse is less import tariff collector.-** For example, pursuant to the Federal Income Law for this fiscal year, the taxes to foreign trade (import, exclusively) will hardly represent 5 percent of the total collection. In the eighty's, the collection for that concept was more than 15 percent of the total. Thus, import taxes is much less important that it was a few years ago, this nevertheless that foreign trade has converted into the most dynamic activity of our economy, representing 55 percent of the GDP.

It could seem strange that while foreign trade grows, less is obtained from import taxes. The explanation, however, is simple: the low tariff levels, tariff preferential treatment with our trade partners, mainly to United States with NAFTA, —country with which we carry out more than 75 percent of our foreign trade— tariff exempt temporary imports and other exemptions have reduced dramatically the

tariff rate (average) on imports. Today we have in practice an average import tariff of less-than two percent of the total value of all imports, including temporary imports, and excluding VAT.

With the foregoing we can preliminary conclude: with the changes in trade policy, customhouse have lost almost completely its collector function. Now it has other more important functions, as we will point out later.

**Determination of import tariffs is increasingly complex.-** Although only four tariff levels exist (5, 10, 15 and 20 percent *ad valorem*), in contrast with a great tariff dispersion that previously existed, in practice we face multiple tariff columns by virtue of the preferential treatment that have been negotiated under FTAs with third countries. Furthermore, the tariff levels change on a yearly basis according to the preferential calendars with each trade partner. For the same product, we can have five, ten or more tariffs depending on the country of origin. Tariff preferential treatment is not only negotiated at tariff item number but also on specific products. Today, the Import Tariff Law is changed every year, in addition to the periodic modifications that are normally made. Furthermore, in order to know what tariff to apply it must be considered if the product complies with the rule of origin and is eligible for preferential treatment based on its certificate of origin. The customs valuation of merchandise issue is another chapter.

**More regimes and special custom procedures exist.-** Each day, customs practice has more exceptions to the general regime, between them temporary imports of companies operating under PITEX program, the customs accounts, the regime of *maquiladora* industry, the tax warehouse regime, automotive industry, the transitory regime of the frontier region, estimated prices, automatic notices, specific import records, in addition to others that I better not list. Our common frontier with United States gives import operations higher complexity.

**Antidumping duties are a recent instrument of more ample application.-** Since 1987, this trade instrument initiated its application in support to the domestic production. Every day more HTS items and products are subject to AD orders. The managing of the duties is complex because these are established differently for each specific product - given country - and - individual exporter. We could say that we have another import tariff law with the antidumping duties. But there is more: there are many products that without being covered by the order are affected because these must demonstrate that they are originating in a third country in order to avoid an AD duty payment. Importers must comply with special certificate of origins even though they are not requesting preferential treatment. In 1993, antidumping duties were established to a number of goods from the People's Republic of China. In consequence, an increasing number of imports from other countries have been affected without having been accused of unfair practices.

**There is more regulation and non-tariff restrictions.-** Independently to the import tariff payment, every imported merchandise must comply with new regulations and non-tariff restrictions. With the opening of Mexican economy, the compliance of such regulations and restrictions has converted into a complex matter and at the same time important for the custom clearance of goods. As it is known, there are regulations and sanitary restrictions, phytosanitary, metrology, industrial and labeling standards, intellectual property restrictions and several more. Meanwhile many of these regulations and restrictions protect the national and end-consumer, they also serve in practice as trade barriers; therefore are also known as "non-tariff barriers" to protect the national producer of the foreign competition. SECOFI publishes and updates a notice of the technical standards that should be met before customs clearance of goods. The list is increasingly large. As it happens in other countries, as in the United States, this type of non-tariff barriers are more important than import tariffs to regulate foreign trade.

**New custom figures.-** In a relative little period of time new terms and concepts have enriched the customs legal language as never before: aleatory selection, export records, warehouse records, customs accounts, automatic notices, exclusive product certificates, custom attorney-in-fact, warehouse attorney-in-fact, PITEX companies, ALTEX companies, EXEC companies, virtual operations, origin *in-situ* visits, and much more. This makes of our trade and customs system a unique legal specialty.

**Informal economy in the customhouses.-** In this *express* vision of the Mexican customhouse, I would not want to put aside a reference to the consequences of the phenomenon of the informal economy that overwhelms Mexico and that is also made present in Mexico's foreign trade. The economic crisis that the country suffers and the consequences of the economic policy direction has been a detonative of the informal economy. It is a reality that the informal economy feeds in part from the customhouses. The problems of undervaluation or double invoicing, falsification of certificates of origin and other illegal practices, and even contraband has been reported by various industrial sectors. Such illegal actions constitute one of the biggest problems that must be overturned by the Mexican customs officials.

**Making a summary of what has been said:** As of today, tariffs have lost the importance as the original customs function that had in the past. Long ago, import tariffs were established in the Ministry of the Treasury. From 1977, it is responsibility of the Ministry of Trade, because of a very simple reason: its purpose is not collection of taxes but of foreign trade regulation and of trade policy. Independently of the foregoing, there are other governmental agencies different to the Treasury Ministry generating regulations and non-tariff restrictions that must be applied in the customhouses, such as the Health, Agriculture, Environmental, Communications and Transportation and Trade Ministries. For all the above, the customhouses function today is a task of enormous complexity. Its function today

is to monitor the compliance of regulations and non-tariff restrictions, to apply them and to administer the customs legal framework.

### **3. The Customhouse at the Beginning of the Century**

Briefly, I will address what changes can be expected for the next five years in the trade policy, foreign trade and consequently in the Mexican customhouse.

- Mexico will continue an open trade policy and to enter new bilateral, sub-regional and regional free trade agreements. Of course, the FTAA is not in this horizon: we must think of it a long term. Foreign trade will continue its dynamic growth. Mexican trade law will also be affected by new changes that will respond to international commitments and modernization.
- By the year 2004, will would have disappeared almost every import tariff to originating goods of North America, due to end of NAFTA's transition period.
- Before, by the year 2001, temporary import programs will disappear, due to NAFTA's obligations. Thus, maybe, we will not longer be able to speak of temporary imports of the companies operating under PITEX programs and *maquiladora* regimes. Perhaps, this programs will be substituted by other modern procedures.

- The tariff reduction process will continue, in part to compensate the elimination of PITEX and other temporary import programs for the manufacture and export of goods, and in part by virtue of new free trade agreements.
- The free trade agreement negotiations with the European Union would have ended and we will begin to apply elimination of import tariffs and preferential tariffs to imports of that origin.
- Rules of origin will be of vital importance in two cases: in one part, because an important part of our external purchases will enjoy (already are enjoying) preferential tariffs, and on the other hand because there will be two different rule of origin systems: the one provided in NAFTA and other free trade agreements with southern countries, and those of the European Union. There will be a need to create a rules of origin specialty or masters degree.
- The antidumping duties will be applied to new products, though this will not mean a great change with the current situation.
- Restrictions and non-tariff regulations will increase in number and will be more sophisticated and complex. There will be a need to create a specialty or masters degree in this area.

- The Income Service will continue to loose collection of import tariffs. If today these only represent 5 percent of tax revenue, do not be surprised if by the year 2004 they only represent as low as 3 percent.
- Given the specialty of the customs function —so different of the taxation function, the government must consider the need to take this function away from the administrative structure of the income service and to create a specialized autonomous agency. There will also be need to do this in the judicial remedy system: customs and trade law matter controversies should be reviewed by a specialized Court, such as the Court of International Trade (CIT).
- Customs authorities must be prepared for the changes to come, they should assume their responsibilities with independence and transparency; in other words, to be more technical and objective in its resolutions or findings. The premise that every importer tries to cheat, or wrongfully or falsely declares must be forgotten; that is to say, act technically but reasonably in the principle of legality.
- Concerning custom brokers, they must take firm steps to make its service one excellence. The custom brokers are a bridge between the interest of the importers and exporters, and the national interest of the government.

- Finally, but not least, custom and trade lawyers and consultants must participate in the modernization of the customs legal framework and practice. It is of utmost importance to up-date our criteria and studies in order to put our knowledge in benefit of the economic agents and of the country. In particular, trying to demonstrate all branches of the Federal government that there is excellence among private practitioners and that we are also part of the great foreign trade change.