

HOW CUSTOMS LAW REFORMS WILL AFFECT MAQUILADORA'S OPERATIONS

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The Mexican government announced on December 1, 1998 (to enter into effect on January 1) important reforms to the Customs Law¹ that will affect Maquiladora's operations. This short essay pretends to identify and examine the reforms having an affect on Maquiladoras.

Sales Between Maquiladoras and PITEX Companies, And Sales to Maquiladoras and PITEX Companies

For purposes of the Customs Law, goods which are subject of sales between Maquiladoras and PITEX companies must be considered as exported by the seller and imported temporarily by the purchaser when issuing the export manifest^{2 3}.

Notwithstanding the above, according to the reforms to the Added Value Tax Law published as on December 31, 1999, such merchandise will not be considered as exported in its totality for the VAT purpose. Thus, the good will only be considered as definitively exported for the VAT Law in the proportion established under article 29(VIII) of that VAT ordinance.

In other words, even when the totality of the goods covered by the Export Manifest is be considered as exported by the Maquiladora or the PITEX company for purposes of the Customs Law, for purposes of the VAT Law, only a certain proportion of the good will be considered as exported. It must be said that the mechanism to determine the applicable proportion is the same method used by the residents in the country selling to Maquiladoras and PITEX companies.

Persons which do not count with a Maquiladora and PITEX program, will any more be able to consider as exported those goods sold to companies operating under these

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¹ Published in the Diario Oficial de la Federación of December 31, 1998 (Segunda Sección, pp 56-80).

² *Constancia de Exportación*.

³ Article 108 of the Customs Law.

programs. For this reason, these persons will need to transfer the VAT, even when Maquiladoras issue the correspondent export manifest.

Temporal Importation of Maquiladoras

For the first time, Customs Law reforms establish a serious limitation as to that Maquiladoras (as well as PITEEX companies) will only be allowed to temporarily import the merchandise included in their authorized program.⁴ This reform was made because there was great difficulty to fine in terms of the Customs Law those temporal imported goods not covered by the programs. To comply the above, Maquiladoras will now be subject to Title II (Of Moral Persons) of the Income Tax Law.

Additionally, incorporated in the Customs Law are the maximum schedules of permanency for the temporal imports made by Maquiladoras, which were previously in the Foreign Trade Rulings. Notwithstanding, these schedules have been reduced in the following form:

Up to 18 months, lubricants, fuel and consumables used in the production process of the good to export; raw materials, parts and components; packages, labels and brochures. The aforementioned in order to limit the deferral of the import tax and to assure that the change of regime will be made by covering the applicable taxes.

Up to two years, containers and railroad boxes.

Up to five years or the term provided in the Income Tax Law for its depreciation⁵ (when this is higher), machinery and equipment used for the production process, tools, instruments and molds; equipment for contamination control; equipment for research, training and industrial security; telecommunication and computer equipment; quality control and metrology equipment; office and paper equipment; apparatus and equipment used in the management of the materials directly related with the export goods.

Change of Import Regime of Temporal Imported Goods for its Transformation made by Maquiladoras

Before the Customs Law reforms, it was allowed to change the import regime of temporal imported merchandise to be transformed by companies operating under a

⁴ Article 108 of the Customs Law

⁵ Articles 44 and 45 of the Income Tax Law, term which can reach up to 10 years.

Maquiladora program, by covering the antidumping or countervailing duties in effect at the change of regime, and the up-dated import tax in conformity with Article 17-A of the Federal Fiscal Code. Today, with the reform, in order to change the import regime of the goods temporarily imported after January 1, 1999, it must also be paid an “equivalent quantity” to the surcharges which correspond in conformity to Article 21 of the Federal Fiscal Code.^{6 7} The reform is silent as to the legal nature of the “equivalent quantity”, silence which may have an impact as to the way in which it will be exigible by the tax authorities.

Change of Regime of Fixed Asset Goods Temporarily Imported by Maquiladoras

Between the options to make the change of import regime of fixed asset goods there was possibility to up-date the import tax and cover the corresponding surcharges from the date of temporal importation until the date of change of import regime. For such purposes, before the reform, it the value of the merchandise could be reduced in the proportion which represented the number of days that the merchandise had spent in the Mexican territory in respect to the number of days in which such merchandise could be depreciated.

Notwithstanding, for the merchandise imported temporarily after January 1, 1999, said proportion will be additionally reduced in the percentage in which the merchandise was used to produce the goods destined for the domestic market.⁸

As the reform reads, to determine the real value of the fixed asset goods at the moment of change of import regime, there will be a need for Maquiladoras to have a strict control over the percentage of the produced goods destined to the domestic market that was produced by the subject equipment. This control will represent a burdensome expense for Maquiladoras. Likewise, this provision will need to be clarified in the Foreign Trade Rulings due that the reform does not contemplate a procedure to follow for the calculation of such percentage.

Internal Transit for Maquiladoras

A new provision is set for Maquiladoras (and PITEX companies) by which the Clearance Customhouse may send by internal transit, temporal imported merchandise under

⁶ Up-dating taxes not paid in the applicable term and method of calculation.

⁷ Article 109 of the Customs Law.

a Maquiladora program for its return abroad to the Departure Customhouse. This will allow Maquiladoras to clear customs from their closest Customhouse in their merchandise return.⁹

Embargo of Maquiladora's Merchandise

The reform establishes that starting May 1, 1999, when Maquiladoras concede in respect to the content of the embargo deed for the excesses in not declared merchandise, the custom authority may determine the antidumping or countervailing duties and omitted taxes with its accessories. Additionally, once the company complies with the determined amount, the customs authorities will order the devolution of the embargoed merchandise.

In this form, Maquiladoras will be allowed to promptly overturn the possibility of loosing the merchandise in benefit of the Federal tax authorities without need of exhausting legal remedies, in turn of paying the determined taxes and accessories therein.¹⁰

Infractions Related with Importation and Exportation

A very serious reform is made in respect to the infractions related to the imports and export of goods. Imports made by Maquiladoras not authorized in their program, will be considered as imports of prohibited merchandise. This situation is highly exaggerated due that imports of prohibited merchandise is one of the most serious faults under foreign trade provisions. Thus, a fine of 100 to 130 percent¹¹ of the commercial value of the merchandise will be imposed when Maquiladoras (and PITEX companies) temporarily import merchandise which are not covered by their program.¹²

This reform will obligate Maquiladoras, either to be very careful at the time of importing merchandise under the temporal regime, or to include in their program additional merchandise that could be eventually imported on a temporal basis.

⁸ Article 110 of the Customs Law.

⁹ Article 125(III)

¹⁰ Article 153 of the Customs Law

¹¹ This fine is even higher than the fine for importing prohibited merchandise (70 to 100 percent).

¹² Article 178(III) of the Customs Law.