

FOREIGN TRADE*

September 2004

This **Foreign Trade Report** is an executive summary of the main foreign trade reforms in Mexico published in the Federal Official Gazette in September 2004, which also contains general foreign trade news that will impact Mexican foreign trade. For further information on the topics addressed in this paper or for any questions arising from it, please write to Adrián Vázquez Benitez, adrian@vazqueztercero.com, or to Verónica Vázquez Bravo, veronica@vazqueztercero.com.

1. Law on the Approval of International Economic Treaties

On September 2, the Ministry of the Economy (SE) published in the Federal Official Gazette the Law on the Approval of International Economic Treaties, which is a public law and has the purpose to regulate Article 93 of the Constitution as regards the Senate's constitutional authority to request information to the cabinet Secretaries, heads of department and directors of the competent decentralized bodies in connection with the negotiation, execution and **approval of treaties for the trade of goods, services**, investments, technology transfers, intellectual property, double taxation, economic cooperation. Provisions on unfair trade practices include:

- a) Promote free concurrence and seek sound competitive practices, and
- b) Provide and promote mechanisms to counter the effect of unfair trade practices from countries with which transactions are carried out;
 - Encourage the removal or reduction of unnecessary trade barriers that are incompatible with the law and international agreements;
 - The provisions of the treaties must take into account the differences and imbalances between the parties, as well as the relevant actions to set them off, and
 - The other purposes relevant to the nature of the treaty.

2. Sunset review of the antidumping duty on bicycles

On September 13 the SE published in the Federal Official Gazette the Determination declaring the self initiation of the sunset review of the antidumping duties imposed on the imports of bicycles, which are currently included in tariff classifications 8712.00.01, 8712.00.02, 8712.00.03, 8712.00.04 and 8712.00.99 of the Tariff of the General Import and Export Tax Law, originating from the People's Republic of China. As in many cases involving unfair trade practices from China, our Firm will be representing the Mexican bicycle industry.

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3. Third Amendment to Foreign Trade Rules

On September 20, the SHCP published in the Federal Official Gazette the Third Amendment to General Foreign Trade Rules for 2004, including :

- ✓ **Regularization of goods subject to temporary importation**
Goods subject to temporary imports and wastes entering the country before June 1, 2003 (before June 1, 2002) can be submitted for regularization.
- ✓ **Regularization of machinery and equipment subject to temporary importation**
This rule was added in order to establish the guidelines for the regularization of goods (Fixed Assets) whose legal stay in Mexico cannot be proven by Maquiladora and PITEX companies, provided that the following conditions are complied with:
 - Submit in the automated selection mechanism of the relevant customs house, the final importation form (it is not necessary to bring the goods physically or to activate the random selection mechanism for a second time).
 - Attach the importation form with the documents proving compliance with non-tariff regulations and restrictions (those applicable to the date of payment).
 - Documentation proving that the goods were acquired at least 10 years before the date of intended regularization and that such goods have since been operated in a maquiladora or PITEX company.
 - Pay the applicable taxes (taking as the taxable basis the commercial value of the goods at the time of making the payment).

This can be done even after the authority has started its review, to which end the customs authorities must be informed in writing of the intent of making the final import of the goods, with a term of 30 business days from the date of submission of the letter of intent to submit the import form. No preferred treatment may be applied under this rule.

- ✓ **Advanced Electronic Signature**
All customs agents, their principals, the customs representatives and the representatives of bonded warehouses and final or manufacturing automotive companies must have an advanced electronic signature certificate or as of January 1, 2005 they will not be able to make and convey SAAI orders.
- ✓ **Suspension of the general importers' registry and specific sector importers' registry**
Suspension will be immediate when the cause for suspension is detected during a cabinet review or a facility call.
- ✓ **Authorization to import abandoned goods**
The owners or consignees of goods deposited with customs, who have been informed of the abandonment thereof, may make a final importation of the goods even if the term for removal has expired, by requesting authorization from the General Customs Administration (in the past, authorization had to be requested from the General Legal Administration). This amendment will be effective on the ninetieth day of the publication of this Resolution.

- ✓ **Automated selection mechanism**
As of September 15, it is not necessary to activate the mechanism for a second time for the customs dispatch of goods for importation using the "Express" lanes.
- ✓ **Tariff Classification**
Maquiladora and PITEEX companies that state a wrong tariff classification in temporary import forms will only be imposed a fine for data misrepresentation, provided that they submit an amendment to the order within 15 calendar days from the date of the final briefing in the case of facility calls and from the date of the remarks notice, in the case of desk inspections.
- ✓ **Legal importation, stay or holding of modified goods**
Additions were made to this rule to provide that in the event of machinery and equipment subject to temporary import by maquiladora or PITEEX companies, that have been adapted or modified with engines, parts or devices, its legal importation, stay or holding shall be proven by submitting the temporary import form together with the tax documents proving the acquisition of the goods included by reason of the adaptation or modification made to the machinery.
- ✓ **Temporary imports by individuals under a maquila or PITEEX programs**
Individuals that made temporary imports of goods after January 1, 1999 under a maquila or PITEEX program, must prove before the customs authorities that they have returned or changed the regime for those goods in order not to be imposed the penalties provided under the Customs Law.
- ✓ **Temporary imports of test vehicles**
Authorized dealers of foreign brands established in Mexico may make temporary imports of test vehicles, which may remain in the country for up to one year provided that at the time of requesting the prior import permit they prove to be authorized dealers with a letter issued by the foreign vehicle manufacturer.
- ✓ **Return to Mexico of goods temporarily exported to Uruguay**
It is provided that the goods temporarily imported to that country may return to Mexico without paying the general import tax, provided that at the time of return it is proven that the goods were not submitted to any operation or process that destroys their essential features or that turn them into a good or commercially different good.
- ✓ **Customs patents authorized in the importers' registry**
Holders in the importers' registry of an amount of customs patents larger than authorized (10 for individuals and 30 for entities) are granted until September 30 to submit the revocation of surplus patents or the reason to hold them; otherwise, as of October 1 they will not be allowed to make imports under SAAI.
- ✓ **Merger or spin-off of maquiladora or PITEEX companies**
A term until October 31, 2004, is granted for maquiladora or PITEEX companies that were created on or before May 27, 2004 as the result of a merger or spin-off, to formalize the transfer of goods derived thereof.
- ✓ **Return of goods temporarily imported under A1 orders**
A term until October 31 is granted to rectify the code of forms processed before May 27 2004 under code A1 instead of J1 and J2. Likewise, as of November 1, rectification can only be made within the two months following the date on which the form to be rectified was processed.

4. Draft Official Mexican Standard NOM-144-SEMARNAT-2004

On September 24, SEMARNAT published in the Federal Official Gazette the Draft Official Mexican Standard providing for internationally accepted phytosanitary measures for wood packagings used in the international trade of goods and merchandise, for public consultation. A term of 60 calendar days as of the date of publication was granted to issue any comment thereon. Our Firm played an important role in making this Project. ■