

FOREIGN TRADE*

December 2004

This **Foreign Trade Report** is an executive summary of the main foreign trade reforms in Mexico published in the Federal Official Gazette during December 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. Decree that amends PROSEC

On December 2nd, the Ministry of Economy published the **Decree that amends a previous decree whereby several Sector Promotion Programs (PROSEC) are established** in the Federal Official Gazette. The following provisions are of interest:

An exemption is provided on import tariffs provided by article 5 in connection with certain sectors of the shoe, capital goods, leather and fur, and textile and apparel industries, for products such as plastic, rubber, leather, wood, common metal manufactures, zippers, chemical product mixtures, certain dresses and automotive parts.

Several items, sub-items and tariff classifications, such as, liquid pumps, weighing apparatus, transformers, signaling apparatus, shoes, costume jewelry, precious gems, bird feathers, toys, leather manufactures, paper, textiles, dress-making, condensers, electrical cables, and some chemical products are incorporated to articles 4 and 5 relevant to the sectors of the shoe, miscellaneous, electronic, furniture, toy, capital goods, photography, chemical, rubber and plastic, steel, leather and fur, automotive and auto-parts, and textile and apparel industries.

The preferential tariffs of article 5 relevant to certain sectors of the toy, shoe and chemical industries are eliminated, such as, petroleum or bituminous mineral oils, plastic manufactures, furs and leathers, and compounds with amine function. **It is important to indicate that this provision shall enter into force one hundred and eighty days after the date of its publication in the Federal Official Gazette.**

On the other hand, on December 28 the Ministry of Economy published the **Decree that amends a previous decree whereby several Sector Promotion Programs (PROSEC) are established** in the Federal Official Gazette. The amendments refer to the Decree published in the Federal Official Gazette on August 2, 2002, with the purpose of reducing tariffs on certain materials related to the sectors of the shoe, wood, and leather and fur industries.

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2. Fifth and Sixth Amendments to Foreign Trade Rules for 2004

Fifth Resolution on amendments to the General Rules on Foreign Trade for 2004 and its Exhibits:

On December 22, the Ministry of Finance and Public Credit (SHCP) published the **Fifth Resolution** in the Federal Official Gazette, where the following provisions are highlighted:

✓ Set-off of favorable balances

As of January 2, 2005, submission of the "Notice on the set-off of foreign trade taxes and rights" shall no longer be required within the five days following the date on which the taxpayer applies the set-off of the General Importation Duty or Antidumping Duties, since such Notice shall be attached to the import filing for which the set-off is applied.

✓ Customs Operating Hours

The operating hours of maritime customs houses where the importation of apples, beans, corn, fish, sugar and petroleum and bituminous mineral oils may occur is provided to be extended until 6:00 p.m. as of January 6, 2005 (previously until 2:00 p.m.).

✓ Sector-Specific Importer Registry

On January 2, 2005, the following amendments went into force:

- Registration application

Taxpayers that are registered on the importer registry that wish to be registered on the registries by sector shall not be obligated to submit the document that evidences the mandate granted to the customs broker.

- Registration of *maquiladoras* or PITEX

These companies are permitted to consider strategic bonded warehouses as storage houses for goods that will be definitively imported. On the other hand, provision is made to that they be exempted of the obligation to submit product samples and a use or commercialization license in force, as well as consent from the holder of the patent, when they intend to register in the sector-specific importer registry of Electronics with the purpose of importing virgin or recorded compact discs or burners.

- Opinion of Chambers or National Associations

When the opinion requested by the Central Administration for Accounting and Commentaries from Chambers or Associations of the relevant sector is unfavorable, such opinion must be duly based on the causes for denial of registration in such registries.

- Causes for denial of registration

The limitation on indicating a house or apartment that is also used as a residence as the registered tax domicile of the taxpayer is eliminated. On the other hand, commercialization companies that are authorized in three sector registries may not apply for registration in other registries unless they have the endorsement of COMCE, CONCAMIN, CONCANACO, ANTAD, CANACINTRA, ANIERM, CNA or the Chamber of Commerce, Services and Tourism of Mexico City. In this regard, provision is made to indicate that such endorsement shall be free, and shall contain at least the following information: the company's stockholders' equity, number of jobs it

generates, distribution system (transportation), client portfolio, purpose and use of the goods, and whether the goods shall be sold or destined for use in productive processes.

- **Term for response to applications**

Registration applications shall be resolved within 14 business days after the date on which the application was filed. In case such registration was applied for simultaneously with application for registration in the general importers' registry, such term shall begin as of the date of registration with the general registry.

- **Persons not obligated to register**

Certified companies, or those individuals or entities that import goods in accordance with the bonded warehouse regime of the final automotive or vehicle manufacturing industries shall not be obligated to register.

- **Bonded Warehousing**

The possibility of destining goods classified pursuant to the tariff classification listed in Exhibit 10 (*Anexo 10*) without the need to be registered in the importers' registry or in specific sector registries is extended until April 1, 2005.

✓ **Suspension from registries**

Those individuals or entities that are obligated to do so, but do not renew their insertion within the general and sector specific importers' registries for beer, wines and spirits, cigarettes, alcohol, denaturalized alcohol and uncrystalized honeys, shall be suspended from both registries.

✓ **Import of goods by rail**

As of January 2, the transportation company that imports rail cars into the country that are loaded with goods, but does not have the import petition that relates to such goods and has not paid taxes, may spontaneously return them, provided payment of a penalty of \$2,049 to \$3,073 is made, and such goods are not products that derive from poultry, beef, goat meat, fish, beans, corn, apples, sugar, wines and spirits, cigarettes, petroleum and bituminous oils, textiles, shoes and toys.

✓ **Abandonment of goods**

Owners or consignees of the goods indicated in the previous paragraph, as well as those goods classified in tariffs for "sensitive" goods listed in Exhibit 28, or those goods classified in chapters 50 through 64 of the Tariff of the General Import and Export Law (TIGIE), may not enjoy the benefit of importing them definitively although they may have been notified of their abandonment after the term for withdrawal from customs has expired.

✓ **Definitive importation of "Pick Ups"**

Mexican individuals or entities may conduct the importation provided the "pick up" has a total weight, including load, of less than or equal to 3,200 kg, whose vehicle identification number (serial number) or model year is at least 10 years prior to the importation, and such vehicles originate from the USA, Canada or the European Union, as long as they comply with requirements such as, submission of a document that evidences property of the vehicle and payment via importation petition of the relevant taxes.

✓ **Automated selection mechanism**

A second activation of such mechanism is exempted in the case of operations that are carried out at customs house or section that does not have the infrastructure necessary to conduct such activation, or in

the case of operations that result from goods that are transported by rail. As of January 2, 2005, such mechanism shall not be required to be activated in the case of bonded warehouse operations carried out by the final automotive or vehicle manufacturing industries.

✓ **Mandate granted**

As of January 2, 2005, the persons who are not registered in the importers' registry and conduct operations for which registration in such registry is not required, or when they have requested an authorization to import goods without being registered, must furnish the customs broker with the document that evidences the mandate granted without need to submit it to the General Customs Administration.

✓ **Importation by minor taxpayers**

As of January 22, 2005, individuals that pay taxes according to the minor taxpayers regime for the purpose of Income Tax shall be authorized to conduct the importation of goods that do not exceed 3,000 Dollars or its equivalent in national currency through the use of a simplified petition, provided several requirements are complied with, *inter alia*: i) use of a petition with code L1, ii) indicate HTS 9901.00.01 as tariff classification in the petition, iii) calculate and pay taxes by applying a global rate of 17% on the commercial value of the goods. However, this option shall be applicable to goods that are subject to non-tariff regulations or restrictions other than Mexican Official Standards (*Normas Oficiales Mexicanas*) and antidumping duties, or taxes other than the General Importation Tax and Value Added Tax.

✓ **Certified companies**

- They are exempted from the obligation of registering in the sector-specific importers' registry; thus, as of January 2 they will be able to carry out the definitive importation of goods without being required to register therein.
- Maquiladora or Pitex companies that are authorized as certified companies may tax actual delivery of goods that are temporarily imported at a rate of 0% VAT, when such are conducted for companies that are resident in the country, even when they are delivered in the same state they were imported.
- They are exempted from activating the automated selection mechanism for a second time when they conduct importations through "express" lanes.
- They may import goods within the normal operating hours of customs houses, even in the case of products that derive from poultry, beef, goat meat, fish, beans, corn, apples, sugar, wines and spirits, cigarettes, petroleum and bituminous oils, textiles, shoes and toys.

✓ **Return of trailers, semi-trailers or container transports that are temporarily imported.**

As of January 2, 2005 such operation may be conducted through a customs house or booth other than that where its temporary importation was certified.

✓ **Destruction of waste through incineration**

Maquiladora and Pitex companies that intend to destroy waste of goods that were imported temporarily through the use of incineration processes, may transport their waste to a company that renders such services, provided the relevant destruction notice has been submitted, and the goods may not be used for the purposes that gave rise to their importation.

✓ **Companies of the auto-parts industry**

These companies may deem national inputs incorporated to the parts and components that are indicated in sections B and C of the transfer documents issued by the companies of the final automotive and auto-transportation vehicle manufacturing industries as exported.

✓ **Electronic Quota Letter**

As of January 2, correction of the fields relevant to the amount and units of measurement shall be permitted, when due to customs review or exercise of verification powers, the customs authorities determine the existence of tariff classification that is different from what it states in the import petition.

✓ **Companies of the final automotive and auto-transportation vehicle manufacturing industries.**

They may destine the racks, pallets, separators or empty containers they import into the country by rail in double-decked containers to the bonded warehouse regime, and to that effect they shall state in the relevant petition a value equivalent to one Dollar, among other requirements.

✓ **New cases of internal transit for importation purposes**

Transportation of foreign goods from the Nogales customs house to the "Ignacio Pesqueira" international airport in Hermosillo, Sonora, dependent of the Guaymas customs house, as well as from the customs section of the Guanajuato international airport in Silao, Guanajuato to the customs section of León, Guanajuato, both dependent of the Querétaro customs house, shall be deemed as internal transit.

✓ **Definitive importation of samples**

As of January 22, 2005, companies that carry out definitive importation of industrial samples that are destined to analysis, testing or research process, or of protocol medicines for research, must declare the tariff classification that is relevant pursuant to the TIGIE, attach a copy of the commercial invoice or purchase receipt that indicates they are goods without commercial value to the import petition, and submit the "Notice of importation of industrial samples" form.

Exhibits 1, 3, 4, 7, 10, 13, 18, 21, 25 y 29 were issued on December 24 by the Ministry of Finance, and the following provisions are highlighted:

✓ **Exhibit 1 (Returns, notices and forms)**

Form 18 "Spreadsheet for the determination of the customs value of imported goods" is amended, and the following form 41-B "Notice of the importation of industrial samples" is added in connection with rule 4.3.

✓ **Exhibit 3 (Payment amounts for the rendering of second review services)**

It is totally amended to update the amounts that must be deemed as payment for the rendering of second customs review services, and as transferred value added tax for the rendering of such services, for the period from August 2004 through January 2005.

✓ **Exhibit 4 (Customs Operating Hours)**

The operating hours of the Lázaro Cárdenas customs house are amended, and the operating hours of the Puerto Morelos customs section, dependent of the Cancún customs house are moved forward.

✓ **Exhibit 7 (Tariff classifications that identify input related to the agricultural and livestock sector)**

It is amended to add tariff classification 9406.00.01 related to pre-built constructions (solely hydroponic greenhouses).

✓ **Exhibit 10 (Tariff sectors and classifications)**

It is amended to add certain classifications to the Rubber, Locks and Electronics sectors.

- ✓ **Exhibit 13 (Authorized bonded warehouses)**
The types of storage facilities of some of the warehouses provided by this exhibit are amended.
- ✓ **Exhibit 18 (Identification data for goods)**
This exhibit is amended in connection with the individual identification data of certain goods.
- ✓ **Exhibit 21 (Customs stations authorized to dispatch certain goods)**
Section A) of this exhibit is amended in connection with the customs dispatch of goods that are imported into the country in order to be used for the definitive and temporary importation customs regimes, as well as for bonded warehousing.
- ✓ **Exhibit 25 (Places of review)**
This exhibit is amended in connection with the places of review at certain booths.
- ✓ **Exhibit 29 (Goods that are subject to certain hours for customs dispatch)**
Tariff classification 1002.90.03 was eliminated from numeral 7 regarding corn.

Sixth Resolution on amendments to the General Rules on Foreign Trade:

On the other hand, on December 28 the Ministry of Finance and Public Credit issued the **Sixth Resolution** for 2004 in the Federal Official Gazette, which entered into force on the day following its publication. The following are relevant provisions:

- ✓ **Animal Health Certificate**
As of January 1, 2005, taxpayers shall be deemed to comply with the requirement of obtaining certification in connection with agricultural and livestock health when they obtain and submit an animal health certificate in those cases when so required by the non-tariff regulations and restrictions applicable to the importation of goods indicated in the Federal Duties Law (article 86-A, section IV), since such fact implies that the procedures and requirements prior to such certification have been met.
- ✓ **Internal transit between Monterrey International Airport and the customs station of that same state.**
Transfer of foreign goods between the "customs section of *Aeropuerto Internacional del Norte*, in Apodaca Nuevo León" and the "customs section of the Monterrey International Airport" shall be deemed internal transit.
- ✓ **Exhibit 1 (Returns, notices and forms)**
The following forms are issued: "Notice on the introduction and extraction of goods from a strategic bonded warehouse" and "Notice of the transfer and receipt of goods from a strategic bonded warehouse".
- ✓ **Exhibit 21 (Customs stations authorized to dispatch certain goods)**
The customs house of Salina Cruz is added as a customs house that is authorized to conduct the customs dispatch of goods, such as, beer, meat preparations, apples, textiles, petroleum and bituminous oils. On the other hand, the Reynosa customs house is eliminated from the customs dispatch of apples.

3. Notice on antidumping duty sunset reviews

On December 24, the Ministry of Economy published in the Federal Official Gazette the Notice on the sunset clause of antidumping duties, whereby national producers and any interest person is notified that during 2005 the antidumping duties imposed on the following goods shall be reviewed under the sunset clause: hot-rolled steel sheet from Russia and Ukraine; bovine meat from the USA; methylic parathion from Denmark; caustic soda from the USA; denim cloth from Hong Kong; corrugated steel bars from Brazil; pommel locks from China; PVC from the USA; iron rods or un-alloyed steel from Ukraine; seamless steel tube from Japan; machinery, apparatus and electrical material and their parts from Japan; and, bicycle tires from India, in order to determine whether elimination of the duties would give rise to continuation of dumping and injury.

4. Resolution on the suspension agreement on apples from the USA

On December 29 the Ministry of Economy published in the Federal Official Gazette the Resolution whereby the price undertaking proposed by apple exporters from the USA were accepted, and the review proceedings on the antidumping duties imposed on the importation of apples (Red Delicious and Golden Delicious) were suspended, goods classified in tariff classification 0808.10.01 of the TIGIE, from the USA, which shall enter into force on February 28, 2005.

The foregoing assumes both the suspension of the administrative review initiated by publication in the Federal Official Gazette dated October 21, 2003, as well as suspension of collection of the antidumping duty of 46.58% in light of the fact that American exporters authorized by SAGARPA and USDA to conduct exports of such products from USA to Mexico agreed to sell apples at Mexican border that equal to or greater than a reference price. Thus, if the apples are submitted to Mexican customs at a price that is below the reference price, the Ministry of Finance and Public Credit may collect from the importer the difference between the export price and the reference price. Payment of such difference shall not exceed the dumping margin of 46.58% provided by the final determination of the antidumping investigation published in the Federal Official Gazette on October 12, 2002.

5. Amendment of tariffs in the TIGIE

On December 30, the Ministry of Economy published in the DOF the Decree whereby several tariffs contained in the Tariff of the General Import and Export Law with the purpose of reducing the tariff on the importation of input, goods and products from countries with whom Mexico has not executed commercial treaties. The tariff reduction is greatly due to a correction on the tariff distortion between final consumption products and intermediates, thereby generating a greater competitiveness ratio for national production. There is mainly a reduction of 3% and 10% on the tariff rates of some tariff classifications (except rates for Chapters 02, 04, 10, 11, 12, 15, 19, 53, 60, 61 y 62) ■