

FOREIGN TRADE *

March 2005

This **Foreign Trade Report** is an executive summary of the main foreign trade reforms in Mexico published in the Federal Official Gazette during March 2005, 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. European packaging regulations

As of March 1, 2005, the European Union will require that all new, repaired or recycled wood packaging be thermally treated or fumigated, and branded officially in accordance with NIMF No. 15, except for wood that is less than 6 mm thick, and wood that is processed with glue, heat, pressure or any combination thereof, in order for entry into its territory.

European regulations provide that no later than February 28, 2005, Member States shall adopt and enact the legal, regulatory and administrative provisions that are necessary to comply with Directive 2000/29/EC, that relates to safeguards against introduction into the EU of organisms that are harmful to vegetables or vegetable products, and against their spreading within the EU. Accordingly, EU Member States undertook the obligation to apply such provisions as of March 1, 2005.

Based on the foregoing, it is recommended that the packaging that contains exports to the European Union:

- a) Be subject to an oven drying process, with an adequate time and temperature program, until a degree of humidity of less than 20% is achieved, expressed as a percentage of dry matter, which will be evidenced by stamping the legend "kiln-dried" or "K.D.", or any other internationally acknowledged marking that is placed on the wood or on its packaging, pursuant to current commercial practice;
- b) Be subject to adequate thermal treatment in order to achieve a minimum central temperature of 56° C during at least 30 minutes, which will be evidenced by stamping the mark "HT" on the wood or on the packaging, pursuant to current practice, and
- c) Be subject to pressurized chemical impregnation with an approved product.

2. Agreement on goods that are subject to a prior permit requirement by the ME.

On March 4, the Ministry of Economy (ME) published in the Federal Official Gazette the Agreement that modifies a similar agreement that establishes the classification and codification of goods the importation and exportation of which are subject to a prior permit requirement by the ME, in order to subject goods such as, drumsticks, thighs or thighs and drumsticks attached, powdered or pilled milk, fresh cheese (un-matured), including that from lactose serum and buttermilk, fresh eggs for human consumption, to such requirement,

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provided they are imported pursuant to the Free Trade Agreement between Mexico and Uruguay and they are destined to the customs regimes of definitive or temporary importation or tax warehousing.

3. Decree that amends tariffs, establishes PROSEC, Northern Border Strip and Border Region schemes and amendments to the GIT rate that is aplicable during 2005.

On March 17, the ME published in the Federal Official Gazette the Decree that amends several tariffs headings of the Tariff of the General Import and Export Taxes (TIGIE), the Decree that provides for the establishment of several Sector Promotion Programs (PROSEC), various decrees that provide the scheme for importation to the Northern Border Strip and the Border Region, and other decrees that amend the rate for the General Importation Tax that is applicable during 2005 for goods that originate from countries with whom Mexico has entered into commercial treaties and agreements. The salient issues are as follows:

Amendment to tariff headings of the TIGIE

Tariff headings for the following goods are created: tuna, crab, chemical products from Chapter 29 (items 29.21 and 29.33), some mixtures of item 38.24, tubing from item 73.06, pumps, cells and batteries, sound reproducers for "MP3" formats, cards known as "memory sticks", "PC card", "secure digital", "compact flash", virgin compact discs, and goods from items 87.14 and 87.16.

PROSEC

Article 4, section XV, relevant to the Transportation Industry Sector, with exception made to the Automotive and Auto-parts Industry Sector is amended to add sub-item 8716.31 and 8716.80 (except for tariff heading 8716.80.03) relative to other non-automotive vehicles and their parts.

Northern Border Strip and Border region

The tariff headings that relate to cells and storage (car) batteries are eliminated.

GIT applicable rate for 2005

The aforementioned newly created tariff headings are included, as well as those of item 27.10 that relate to petroleum or bituminous mineral oils (except for crude oils), and 73.04 relevant to hollow seamless (unwelded) tubes and pipes, made from iron or steel.

4. Eighth Resolution on Amendments to the Foreign Trade Rules, and exhibits 3, 4, 10, 21 and 22.

On March 18, the Ministry of Finance and Public Credit (SHCP) published in the Federal Official Gazette the Eighth Resolution on Amendments to the Foreign Trade Rules (FTR) for 2004 and its exhibits 3, 4, 10, 21 and 22. The salient issues are as follows:

Customs Security Accounts

Companies that are dedicated to the disassembly of used cars shall not be required to establish customs security accounts pursuant to articles 84-A and 86-A of the Customs Law when they conduct definitive importations, in accordance with the Decree for the border strip and region that was published on December 31, 2002, provided they are registered before the ME, and they fill in the petition code C1 and identifier CF.

Regularization of "pick-ups"

The restriction of importing solely one vehicle per person is eliminated. On the other hand, provisions are issued that establish that the individuals that own a "pick-up" with a total loaded weight of 3,200 kilograms, whose vehicle identification number or year and model is 1995 or prior, that originate from the USA or

Canada, which are located in national territory, may conduct their definitive importation during the period comprised from March 15 through 31, 2005, provided the authorities have not initiated the exercise of their inspection authority, and VAT is paid at a rate of 15%.

International transshipment of goods

In order to maintain the customs preferences derived from several commercial treaties and agreements, when delivery does not occur directly from the country of origin, provision is made of the documents that are necessary to prove that goods in transit through third-party countries, with or without temporary transshipment or warehousing, were always maintained under the surveillance of the competent customs authority of the transit countries.

Industrial samples

Entry into force of the provisions that relate to definitive importation of industrial samples that are to be destined to analysis, trial or research processes, is extended until April 1, 2005 (it was previously February 15, 2005).

Exhibit 3 (Amounts that should be considered as payment for the rendering of second customs inspection and as transferred VAT for such services)

The amounts for the period comprised from February through July 2005 are updated.

Exhibit 4 (Customs Operating Hours)

The operating hours for the Altamira Customs Station is changed to 9:00 a.m. through 8:00 p.m.

Exhibit 10 (Specific Sectors Registry)

Tariff heading 4011.50.01 (Tires of the type used on bicycles) is eliminated from Sector 10 "Rubber".

Exhibit 21 (Authorized Customs Stations)

Section XXI on Wines and Spirits is added to the Tampico Customs Station.

5. Tenth Resolution on Amendments to the Miscellaneous Tax Provisions for 2004

On March 25, the Ministry of Finance published in the Federal Official Gazette the Tenth Resolution on Amendments to the Miscellaneous Tax Provisions for 2004, from which the following foreign trade provision is highlighted:

Import Purchases

Purchased goods that were imported under the temporary import regime or the tax warehouse regime, as well as those that were maintained abroad, and that as at December 31, 2004 had not been deducted, may not be included in base inventory, and deducted during the fiscal year when they are: returned abroad or sold, returned abroad or withdrawn from tax warehousing; or, sold abroad, respectively. These purchases shall not be a part of the cost of sales. Whoever opts to accrue the inventory held as at December 31, 2004, and have import purchases for fiscal years 2003 and 2004, may valueate such inventory at the price of the last purchase recorded during 2004, provided the amount of inventories imported during 2004 is greater than those imported during 2003.

6. Foreign Trade Rules for 2005.

On March 23, the Ministry of Finance and Public Credit published in the Federal Official Gazette the Foreign Trade Rules for 2005, which shall be in force from **April 1, 2005** to **March 31, 2006**, except as provided by the transitory articles. Of these the following are worth noting:

- ✓ General Provisions.

On spontaneous payment due to regularization of goods

Term for virtual return of goods imported temporarily

The term for virtual return of past-due goods is extended until March 31, 2006.

Term for virtual return of waste generated by goods imported temporarily

The amendment consists in that virtual return of waste may be carried out regardless of the date of importation of the goods that generate them.

- ✓ Entry and exit of goods, and on the powers of the customs authority

On Registries

Application for registration in the Importers Registry and/or in the Specific Sectors Importers Registry

It is provided that the application for authorization to import goods for one time only, or because registration with the sector registry is being processed, shall be submitted to the Central Legal Administration for Major Taxpayers (*Administración Central Jurídica de Grandes Contribuyentes*), when applicable. On the other hand, the term for devoting goods subject to specific sectors to the tax deposit regime is extended until August 31, 2005, even when the importer is not registered with the registries.

On the clearance of goods

Regularization of "pick-ups"

The term for conducting the definitive importation of vehicles that are located in national territory, that originate from the USA or Canada, and the model year of which is prior to 1995, is extended until June 15, 2005. The foregoing shall be applicable to the extent the tax authorities have not initiated the exercise of their inspection powers, and, provided, further, that only one vehicle is imported by an individual.

- ✓ Customs Regimes

On temporary importations for manufacturing, transformation or repair

Transfer of temporary goods due to merger or spin-off of companies

Any *maquiladora* or PITEEX companies that no longer exist as a result of a spin-off or merger (with another *maquiladora* or PITEEX company) that occurred prior to May 27, 2004, must formalize the transfer of the balances of goods that were imported temporarily to the *maquiladora* or PITEEX company that prevails or that was created as a result of the foregoing legal actions. The term for this was extended until June 1, 2005.

Substitution of import requests A1 for J1 or J2

Taxpayers shall have a term of two months as of the date of submission of the import request labeled as A1 to substitute them with codes J1 or J2, provided temporary goods that are returned abroad are dealt with.

Likewise, the term for substituting A1 code requests derived from the return of temporary goods that occurred prior to May 27, 2004, is extended until May 31, 2005.

On value added tax

Printed legend on the withholding of VAT

The possibility of including in the relevant invoice the legend on withholding of VAT by hand or stamp that was available for transactions by a national vendor with *maquiladoras*, PITEX, ECEX or final automotive industry companies or auto-transportation vehicle manufacturing companies or auto-part manufacturing companies, was eliminated. Hereafter, the legend must be printed on the tax-compliant invoices.

7. Amendments to the estimated price mechanism

On March 31, the Ministry of Finance published in the Federal Official Gazette the Resolution that amends another resolution that establishes the mechanism for guaranteeing payment of taxes on goods that are subject to estimated pricing by the Ministry of Finance, as published on March 29, 2002, which shall enter into force on the date following its publication. It issued this resolution in order to add tariff heading 8523.90.02, relative to un-recorded writing discs with a diameter of 120 mm, with a nominal capacity of 80 min/735 Mb.

8. Mexico-Japan Free Trade Agreement

On March 31, the Ministry of Foreign Affairs published the Mexico-Japan Free Trade Agreement (*Decreto Promulgatorio del Acuerdo para el Fortalecimiento de la Asociación Económica entre los Estados Unidos Mexicanos y el Japón*) in the Federal Official Gazette, that will enter into force on April 1, 2005. Such "free trade agreement" seeks to enhance the "strategic alliance" between both countries, and their economic, investment and trade relations are diversified. Publication of the free trade agreement also includes tariff reduction periods and customs preferences applicable for the current year.

Customs Rules

Transshipment of goods in non-member countries

The evidentiary documents that are necessary for the transit of goods through the territory of a country that is not a member of the Agreement with Japan, with or without transshipment, are indicated.

Issuance of the Certificate of Origin

It must be issued, duly sealed and signed by the competent governmental authority, in addition to being signed by the exporter or producer.

Future application of preferential treatment

Whoever cannot take advantage of customs preferences during the time of the relevant importation due to a lack of a certificate of origin, may do so if within the year following the importation he/she clarifies the import request and submits a valid certificate of origin with the legend "ISSUED RETROSPECTIVELY".

Term of validity of the certificate of origin

Its validity shall be one year as of the date of issuance.

Validity of the certificate of origin

The most important causes of non-validity of the certificate of origin are:

- ✓ Submitted in a form that is different to the authorized form.
- ✓ Lacks signature and authorized stamp.

- ✓ The description of goods is incorrect pursuant to the format's instructions.

On the other hand, some reasons for NON rejection of the certificate of origin are provided:

- ✓ Typing errors
- ✓ That the information container exceeds the spaces allotted, or
- ✓ That the information contained in the certificate and the import request or its exhibits, present minor disparities, provided the description of the goods provided by the certificate corresponds in detail with that of the import request.

Exception to the certificate of origin

No certificate of origin will be required when the value of the imported goods does not exceed \$1,000.00 Dollars or its equivalent in any other currency. In this case, a sworn statement that certifies that the good qualifies as original, signed by the exporter or producer, or by the importer, shall suffice when placed on the commercial invoice. ■