

FOREIGN TRADE *

August 2005

This **Foreign Trade Report** is an executive summary of the main foreign trade reforms in Mexico published in the Federal Official Gazette during August 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. First Amendment to the Foreign Trade Rules for 2005

On August 8, the Ministry of Finance and Public Credit (SHCP) published in the Federal Official Gazette the First Resolution on Amendments to the General Foreign Trade Rules for 2005, and its exhibits 1, 4, 10, 18, 21, 22 and 27. The following is particularly relevant:

- ✓ **Registry of companies that are exempted from complying with the guarantee customs account.**
A registry is created for companies that are exempted from having guarantee customs accounts, and it is provided that if the goods authorized according to this scheme originate from the USA, and are transported by land, the customs application should provide for codes "IT" and "EX", and the Internal Transaction Number (ITN) should be transferred electronically to the Automated Customs System (SAAI). It is important to mention that submission of data in connection with the ITN shall come into force as of October 1, 2005.
- ✓ **Update of fixed assets**
Manufacturing companies may update the machinery or equipment that do not have the necessary documentation to prove its legal presence in the country, even when the authorities are exercising their supervisory powers. In the case of Pitex and *maquiladoras*, the update shall be take place through the use of virtual applications for return or importation, respectively; and, in all other cases it shall occur through the use of definitive importation virtual applications code A3.
- ✓ **Sector Registry**
The term for issuance by the authorities of a favorable opinion is increased from 14 to 30 business days. The existence of a presumption of approval (*positiva ficta*) is also indicated.
- ✓ **Freight Consolidation**
Freight may be consolidated for the exportation or importation of goods that are the property of different importers and exporters, when contained in the same vehicle. Customs brokers that participate in these transactions shall be responsible for the acts or omissions committed when the authorities identify excess or non-declared goods in the consolidated applications, and the identity of the person who committed the infraction cannot be determined. Operations that occur at border or interior customs stations must be submitted in the form called "List of customs applications for freight consolidation" (*Listado de pedimentos de consolidación de carga*). This provision shall enter into force on August 31, 2005.

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✓ **Registry of Certified Companies**

The amount that must be imported during the preceding semester is decreased to \$300 million for entities that wish to obtain registration as a certified company. Likewise, strategic tax warehouses shall be allowed to obtain registration.

✓ **Infractions related to the submission of documents.**

The document that proves the origin of the goods shall be deemed valid even when the tariff classification indicated is different than that determined by the customs authorities, provided the description of the goods that is contained in the referenced document allows full identification of the imported goods, and a correction of the import or export application is filed within a certain period of time, and the taxes probably omitted are paid, without submission of a new origin document. In case the correction is not filed within the aforementioned term, the authorities may determine the amount of taxes payable without the existence of seizure of the goods.

The customs broker may amend the import application within a certain term to the extent the customs authority determined a tariff classification that is different than that stated. This shall apply provided, (i) the description of the goods in the application and its physical aspects correspond to the tariff classification that was determined by the authorities; (ii) there is no difference in the taxes payable and the non-tariff regulations and restrictions that are pending compliance; or, (iii) no customs administrative proceeding (PAMA) have been commenced.

When the documents that evidence compliance with non-tariff regulations and restrictions are not attached to the importation or exportation applications, and free withdrawal from customs applies, these may be submitted even when the date of issuance of the document is later than the date of activation of the automated selection mechanism.

The foregoing shall enter into force on August 31, 2005.

✓ **Technical meeting to resolve any differences in tariff classification that may exist between the importer or exporter and the authorities.**

When as a result of the exercise of its supervisory powers, the customs authorities determine a tariff classification that is different than that which is stated by the customs broker, and provided there is no official criteria for tariff classification, the customs broker, or importer or exporter, may submit the elements it deems necessary so that during the next 3 business days a technical meeting takes place. If the authorities determine that the tariff heading used by the importer or exporter is correct, they will issue a favorable resolution to the interested party, seizure shall be suspended, and the goods shall be delivered.

✓ **Transfer of goods from the border region or strip to other parts of Mexico.**

A new procedure is provided for Pitex and *maquiladora* companies located on the border strip or region, so that they may transfer goods to locales, warehouses or plants that are registered in their respective program, or to *maquiladora* subcontractors (*submaquiladores*) located in other parts of Mexico. Such procedure shall be applicable to both transfers of goods from the border to other parts of Mexico, and vice versa. This shall also be applicable to transfer between different parts of the border. This provision enters into force on October 1, 2005.

2. Tariff amendment and quota for the importation of toys.

On August 17, the Ministry of Economy (SE) published in the Federal Official Gazette the Decree whereby several tariffs headings of the Tariff of the General Importation and Exportation Taxes Law (TIGIE) were amended, particularly Chapter 95 that refers to toys, and provides for a tariff quota. On August 18, an agreement that informs of the quota for imports of goods classified under Chapter 95 of the TIGIE was published, as regards importation of toys, recreational and sporting goods and their parts. The quota may be applied for by manufacturing entities that comply with the requirements provided by the Agreement. Likewise, companies that comply with such requirements may be assigned an annual US dollar amount of the finished toy, equivalent to 40% of the average of their sales income for national production for the last two years. Such amount may not exceed 9 million dollars. Assignment shall occur through the General Bureau of Foreign Trade (*Dirección General de Comercio Exterior*) through use of form SE-03-011-1. These provisions shall enter into force on August 19, and shall remain effective until December 31, 2007.

3. Byrd Amendment

On August 17, the SE published in the Federal Official Gazette the Decree that temporarily amends article 1 of the Decree that provides the Applicable Rate of the GIT during 2003 for goods that originate from North America, as published on December 31, 2002, as regards certain wines, dairy products and chewing gum from the USA. The foregoing shall come into force on August 18, 2005 and shall cease to apply once the SE informs through publication in the Federal Official Gazette that the USA has complied with a decision of the WTO Dispute Settlement Body in connection with the Byrd Amendment.

4. Conditions for definitive importation of used vehicles.

On August 22, the SHCP published in the Federal Official Gazette a Decree that provides the conditions for the definitive importation of used automobiles. Of particular importance is: a) liberalization of importations of used automobiles that are 10 to 15 years old; b) regularization of the same type of vehicles that are within Mexico as illegal vehicles; and, c) total or partial exemption of the ISAN (New Automobile Tax) for new automobiles up to a certain price.

5. Transitional Safeguard Mechanism provided by the Adherence Protocol of China to the WTO.

On August 23, the SE published in the Federal Official Gazette the Agreement that provides the administrative provisions for implementation of the transitional safeguard mechanism provided by the Adherence Protocol of the People's Republic of China to the World Trade Organization (WTO). The foregoing was provided with the purpose of establishing the manner in which the SE will review and resolve the aforementioned investigations and, if applicable, shall propose the imposition of the relevant transitional safeguard measures to the President.

Applicability:

- a) When importations of goods that originate from China are similar to or directly compete with nationally manufactured goods, are imported into Mexico in an amount and pursuant to conditions such that cause or threaten to cause market disruption; or
- b) When a measure adopted by China or by a WTO Member to prevent or repair a market disruption, causes or threatens to cause an important deviation of trade towards the Mexican market.

Standing of national producers:

Once a period of consultations has been ended, and when these have not given rise to an agreement, the matter shall be submitted to the administrative review process of the SE. Applicants must prove that they represent at least 25% of national manufacturers of goods that are similar to or that directly compete, as produced by a branch of national production.

Term:

In case the measure is imposed due to market disruption, it shall only be in force during the time that is necessary to prevent or cure the market disruption. China shall have the right to suspend equivalent concessions if the measure applied by Mexico exceeds two years. If the measure is adopted as a consequence of an absolute increase in importations, China shall have the right to suspend the application of equivalent measures, if the measure is maintained during more than three years. In case the measure is imposed due to a material deviation of trade, it shall be suspended no later than 30 calendar days after the expiration of the measures adopted by China or by the WTO Member in order to face market disruption.

6. Technical amendments to Exhibit 4-03 of the México-Chile FTA.

On August 25, the SE published in the Federal Official Gazette the Agreement whereby technical amendments are adopted for Exhibit 4-03 of the FTA between the United Mexican States and the Republic of Chile, in order to update specific Rules of Origin to amendments to the harmonized tariff classification system of 2002, pursuant to a resolution of the Free Trade Commission of such Treaty. ■