

FOREIGN TRADE*

December 2005

This **Foreign Trade Report** is an executive summary of the main foreign trade reforms in Mexico published in the Federal Official Gazette during December 2005, which also contains general foreign trade and taxation 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

Antidumping Duties

1. Notice on the term of antidumping duties.

On December 1st, the Ministry of Economy (SE) published in the Federal Official Gazette the Notice on the expiration of the five-year term of the antidumping duties on the importations of iron and steel valves, synthetic styrene butadiene rubber, rolled steel plate and texturized polyester textile filament, in order to inform on the elimination of such antidumping duties in case the domestic manufacturers of such goods do not express in writing their interest in maintaining such duties at least 25 days prior to expiration.

2. Elimination of antidumping duties.

On December 9th, the SE published in the Federal Official Gazette the Final Determination on the Sunset Review of the Antidumping Duties imposed on the importations of crystal polystyrene from the European Union, which declared the proceedings concluded and eliminated the definitive antidumping duties as of September 24, 2004.

On December 13th, the SE published in the Federal Official Gazette the Resolution whereby it is stated that as of December 7th, 2005, the definitive antidumping duties of 116% imposed on the importations of bicycle tires from the Republic of India are eliminated. Domestic manufacturers expressed no interest in applying for the extension of the term of the antidumping duties.

Likewise, on December 13th the SE published in the Federal Official Gazette the Resolution that complies with the sentence issued by the Seventh Collegiate Court of the First Circuit for Administrative Matters, dated August 24, 2005, regarding the *Amparo* suit submitted by International Paper Company in connection with the final determination of the sunset review of the antidumping duties imposed on the importations of cut bond paper from the USA, as published on November 17, 2004, and that revoked as of October 29, 2003 the 11.61% antidumping duties imposed on the importations of such goods by said company.

3. Confirmation of antidumping duties on pencils from China.

On December 9th, the SE published in the Federal Official Gazette the Final Determination on the Sunset Review of the Antidumping Duties imposed on importations of Pencils from the People's Republic of China, which goods are classified under tariff heading 9609.10.01, and declared the proceedings concluded and resolved the continuation of the term of the 451% antidumping duties for an additional five years, as of October 19, 2004.

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4. Preliminary determinations that conclude the antidumping investigations on Pork Legs, Leather Goods and Toothbrushes.

On December 21st, the SE published in the Federal Official Gazette the Preliminary Determination that concludes the antidumping investigation on the importation of pork legs from the USA, and declared the investigation proceedings based on price discrimination concluded without the imposition of antidumping duties on the importations of fresh, refrigerated and frozen pork legs (front, hind and their pieces) in light of the fact that market circumstances had changed.

On December 21st, the SE published in the Federal Official Gazette the Preliminary Determination that concludes the antidumping investigation on the importation of leather goods and similar products from the People's Republic of China, and declared the investigation proceedings concluded without the imposition of antidumping duties in light of the fact that the investigating authority did not find sufficient industry representation.

On December 28th, the SE published in the Federal Official Gazette the Preliminary Determination that concludes the Antidumping Investigation on the importation of Toothbrushes from the People's Republic of China, which goods are classified under tariff heading 9603.21.01 of the TIGIE, without the imposition of antidumping duties due to impossibility of determining the existence of substantial harm to domestic manufacturers.

In all three cases, our firm successfully represented parties to the investigations: a number of American pork exporters; a group of handbag importers; and, a group of toothbrush importers.

5. Initiation of antidumping investigation on tires for light trucks from China.

On December 23rd, the SE published in the Federal Official Gazette the Resolution that accepts the application by interested party and declares the initiation of an antidumping investigation on importations of diagonal construction tires (conventional tires) for light trucks from the People's Republic of China, which goods are classified under tariff heading 4011.20.03 of the Tariff of the General Importation and Exportation Taxes (TIGIE). The investigated period is set as that comprised between January 1st, 2004 and March 31st, 2005, and a term of 28 business days for appearance is granted as of the date of publication of the resolution for any party that deems to have interest in the result of the investigation.

6. Tariff headings that are subject to antidumping duties and safeguards.

On January 3rd, 2006, the SE published in the Federal Official Gazette the Notice that informs the tariff headings of the TIGIE that comprise the classification of goods the importation of which is subject to the payment of antidumping duties and safeguards. This list entered into force the day following that of its publication. This Notice substitutes the one that was published on March 25, 2002.

Customs and Foreign Trade Matters

7. Decree on the amendment of tariffs of the TIGIE, Sector Promotion Programs, Northern Border Strip and Border Region, as well as GIT rate applicable during 2005 for goods that originate from Trade Treaties and Agreements.

On December 7th, the SE published in the Federal Official Gazette the Decree whereby several tariffs of the Tariff of the General Importation and Exportation Taxes (TIGIE), of the Decree whereby several Sector Promotion Programs are established, and of the several decrees whereby the mechanism for importation into the Northern Border Strip and the Border Region, are amended, as well as the several decrees that establish the

rate applicable during 2005 for the General Importation Tax (GIT) for goods that originate from certain countries with which Mexico has entered into trade treaties and agreements. The following provisions are of relevance:

- ✓ Tariffs are reduced for: Zirconium Dioxide and the Oil-base resin of *zempasuchitl*, which are necessary inputs for the preparation of coloring, as well as porcelain tubes for high voltage fuses, or aluminum scrap for the manufacturing of electrical fuses.
- ✓ Specific tariffs are set for renovated tires for trucks.
- ✓ The tariff heading for tableware and other table services products is amended.

8. General Rules for proceedings before COFEPRIS

On December 8th, the Ministry of Health (SS) published in the Federal Official Gazette an Agreement whereby it announced the general rules for the conduct of proceedings through electronic communication media applied by the SS, through the Federal Commission for the Protection against Health Risks (COFEPRIS). These rules have the purpose of establishing the provisions that will govern both the SS, acting through COFEPRIS, as well as individuals interested in conducting the relevant proceeding for the submission of applications through electronic communication media.

9. Provisions regarding Pitex, *Maquila* and PROSEC

On December 19th, the SE published in the Federal Official Gazette the Agreement that informs on several provisions in connection with resolutions on PITEX, *Maquila* and PROSEC programs in order to establish that the resolution for the approval, extension, amendment or cancellation of such programs shall be evidenced in an official communication that may be signed by the General Director of Foreign Trade, the Federal Delegate or Assistant Delegate (*Delegado o Subdelegado*) of the SE or by any other officer that is so authorized pursuant to the Internal Regulations of the SE, pursuant to an update of delegation of authority.

10. Criteria for the seizure of containers, goods and products.

On December 20th, the Federal Consumer Protection Bureau (PROFECO) published in the Federal Official Gazette the Agreement that provides the criteria for the seizure of containers, goods and products the commercialization of which adversely affects or may affect the life, the health, the security or the economy of the any consumer activity.

When as a result of the analysis conducted on samples obtained it is found that the products or goods adversely affect or may affect the life, the health, the security or the economy of consumers, seizure may take place at the sales floor, warehouse and/or at places where they are stored or distributed, within the facilities where the products are found and where the proceedings take place. The supplier who has suffered the seizure of containers, goods or products may request that PROFECO lift the precautionary measure through submission of a form called "Request for lifting of precautionary measure", and in so doing must prove compliance with the applicable provisions, or that the causes that motivated the imposition of the precautionary measure have ceased. This Agreement came into force on December 21st.

11. Amendment to prior permits by the SE.

On December 20th, the SE published in the Federal Official Gazette the Agreement that amends a similar agreement that provides for the classification and codification of goods the importation and exportation of which is subject to prior permit by the SE, thereby amending article 2 of such Agreement, as published on November 9, 2005, to read as follows: "For the purposes of the authorization referred in Rule 8 of the Additional Rules for the application of the TIGIE, the goods comprised within the following tariff headings of the TIGIE shall be subject to

a prior permit by the SE solely when they are destined to the customs regimes of definitive or temporary importation: ...”

12. Fourth Resolution on Amendments to the Foreign Trade Rules for 2005

On December 29th, the Ministry of Finance (SHCP) published in the Federal Official Gazette the Fourth Resolution on Amendments to the Foreign Trade Rules for 2005, as well as their exhibits 10, 19, 21, 22, 27 and 29. The following provisions are highlighted:

- ✓ Importers of compact disc burners and unrecorded compact discs with the capability of storing audio, images and data, must attach a current license for use or commercialization thereof to their form of application to the Sector Registry (*Padrón Sectorial*), which license shall also be necessary at the time of importation.
- ✓ Several amendments are made to the definitive importation of vehicles in order to continue adjusting the procedures relevant to their customs processing, importation application codes, identifiers, requirements, terms, customs stations, etc.
- ✓ The model-year of pick-up trucks that may be imported is broadened, provided it is between ten and fifteen years prior to the year of their importation. The obligation to pay the tax on the possession or use of vehicles is eliminated. Likewise, the table that provides for the value of vehicles according to their model-year is amended.
- ✓ As regards the obligations of individuals that are authorized to operate within Strategic Tax Precincts, they may now conduct actual delivery of goods in Mexico to other companies that are residents of Mexico.
- ✓ In the case of periodic destructions, it will no longer be necessary to indicate the number, letter and proportion of the goods that are destroyed, provided the official communication notice indicates the reasons for such omission.
- ✓ The global rate applicable to importations by minor taxpayers through the use of a simplified application was reduced from 17% to 15% in the case of goods the value of which does not exceed US\$3,000.
- ✓ Exhibit 21 was amended to include customs stations that are exclusively authorized to process certain types of goods.
- ✓ Exhibit 27 was amended as regards the importation tariff headings that are not obligated to pay VAT from the chapter relevant to the chemical industry.

13. Amendment to Exhibit 1 of the Resolution that provides the mechanism for estimated prices.

On December 30th, the SHCP published in the Federal Official Gazette the Resolution that amends Exhibit 1 of a similar resolution that provides the mechanism for guaranteeing payment of taxes on goods that subject to estimated prices by the SHCP. This resolution adds the tariff headings relevant to tableware and other table services products (6912.00.02), refrigerated water dispensing machines (8418.50.04 y 8516.10.02).

Legislative Matters

14. Federal Law for Administrative Procedure

On December 1st, the Ministry of the Interior (SEGOB) published in the Federal Official Gazette the Decree that enacts the Federal Law for Administrative Procedure (*Ley Federal de Procedimiento Contencioso Administrativo*). Such law came into force on January 1st, 2006; however, it shall be applicable solely to legal actions submitted as of January 2, 2006. As of the effective date of the Law, several provisions of the Federal Tax Code (*Código Fiscal de la Federación*) that relate to the administrative court procedure called “annulment

suit" (*juicio de nulidad*) are repealed. These amendments shall affect legal actions related to taxation and international trade and customs matters.

Some of the novel aspects of this law include the following:

- ✓ An administrative procedure may be initiated against, in addition to the administrative resolutions indicated by the Organizational Law of the Federal Tribunal for Tax and Administrative Justice (*Ley Orgánica del Tribunal Federal de Justicia Fiscal y Administrativa*) (the Tax Court), against administrative acts, Decrees and Agreements, that are generally applicable, other than Laws and Regulations, when such enactments are self-applicable or when the individual parties contest them based on their first act of application.
- ✓ Contested authorities may now claim payment of costs when resolutions are contested with a notorious purpose of delaying application thereof, i.e., when the arguments submitted contesting such resolutions notoriously lack merit or a legal basis. Likewise, individuals may now claim indemnification when the authorities commit a grave omission or action when issuing the contested resolution.
- ✓ Members of the Tax Court shall now be liable for the commission of undue acts in their official capacity.
- ✓ A chapter is included that provides for precautionary measures, which may be ordered so as to maintain the status quo, or with the purpose of avoiding that a contested resolution may render the legal action without merit or cause irreparable harm to the plaintiff, except in those cases when public interest provisions or the public tax interest are harmed.
- ✓ In case the illegality of a resolution is claim based on the lack of formal requisites or procedural omissions, certain legal assumptions are provided whereby the individual's defenses are deemed not affected nor the intention of the resolution is deemed altered.
- ✓ The types of sentences previously provided by Article 239 of the Federal Tax Code are also broadened to include: acknowledgement of a right in favor of the plaintiff, or ordering the compulsory performance of an obligation; grant or restitute the plaintiff the enjoyment of his affected rights, without invalidating the acts of enforcement that adversely affect the plaintiff.
- ✓ The new law contains an article that provides the cases when a sentence is deemed to be final; for instance, when no recourse or further process is admitted.
- ✓ Finally, the Federal Tribunal for Tax and Administrative Justice may comply with letters rogatory, notification actions or, if applicable, evidentiary proceedings, even those that must occur at a region that is different from the location of the chamber where the suit is submitted. Notice actions or, if applicable, evidentiary proceedings that must occur abroad, shall be entrusted to the Mexican Consulate that is nearest to the city where they must occur.

15. Addition to Article 31 of the VAT Law.

On December 8th, the Ministry of Finance (SHCP) published in the Federal Official Gazette the Decree that amends Article 31 of the Value Added Tax Law (VAT) in order to provide that foreign nationals that travel to the country as tourists may obtain a refund of value added tax that was charged during the purchase of goods, provided they comply with the requirements of such article. This Decree shall enter into force on July 1st, 2006.

International Matters

16. Sixth WTO Ministerial Conference, held in Hong Kong.

On December 13th, the Chief Executive of Hong Kong, Donald Tsang, formally inaugurated the Sixth WTO Ministerial Conference under the framework of the Doha Round, and the ministers began consultations on market access for non-agricultural products. By the second day, the first consultations on agriculture, market access for non-agricultural products and matters related to development demonstrated the existence of differences regarding several issues, as was informed by the ministers in charge of such matters to the

delegation heads during an evening meeting held on December 14, 2005. By December 15th, certain progress was reached on matters related to less developed nations. Finally, by the end of the Conference, the ministers adopted a ministerial declaration that "returns the Round to its course".

In sum, the Hong Kong meeting ended with mediocre results: a commitment that agricultural subsidies shall be terminated by 2013, without setting mechanisms to that effect nor reduction amounts, with three bands for reduction; as regards cotton, goods from developing countries may be imported into developed countries without payment of taxes nor countervailing duties. ■