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Foreign Trade Report February 2006

This Foreign Trade Report is an executive summary of the main foreign trade reforms in Mexico published in the Federal Official Gazette during February 2006, 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 contact any of the following:

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Legislative Amendments

1. Amendments to the Customs Law

On February 2nd, the Ministry of Finance (SHCP) published the Decree whereby several provisions of the Customs Law are amended, including the following:

- ✓ Valuation Methods (Article 78)
Application of "reconstructed value" (the last of the customs valuation methods, which serves as a basis for calculation of foreign trade taxes, including VAT), may be made based on the documents that prove operations carried out abroad.
- ✓ Duty Free sales for passengers that arrive into Mexico (Article 121, Section I)
Duty Free shops may now sell goods to passengers that arrive from abroad via air, sea or land, and such purchases shall be exempted from payment of tariffs and duties. The amendment also provides for the administrative requirements that shall be met for control of such purchases.
- ✓ Customs-related administrative proceedings (PAMA) (Articles 150, 152 and 153)
 - The causes for posting notices on the customs station wall instead of delivering them personally: for instance, when the importer does not indicate an address; when it indicates an address that is not its own or that of its representative; when it vacates its address without giving notice to the relevant authorities; when it ceases to exist after the authorities have begun exercising their investigative authority, or when the individual opposes the notification proceedings by refusing to sign the relevant documents.
 - The holding of a technical meeting for definition of the correct tariff classification in case this subject is the basis for a controversy with the authorities. In case the result of the meeting is favorable to the individual, the PAMA shall be terminated. Technical meetings shall not be deemed an official proceeding; thus, if the result thereof is adverse to the individual, he/she must contest the official communication through a revocation

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proceeding (*recurso de revocación*) or through an annulment suit (*juicio de nulidad*). This meeting must be proposed within the ten day period available for the submission of evidence or arguments, and must be held within the three days following the date on which it was proposed.

- In case the authorities determine the existence of unpaid taxes, antidumping duties and penalties, and a temporary attachment is not applicable, such authorities shall proceed to obtain payment thereof. The interested party shall be afforded 10 business days for the submission of evidence and arguments, which shall be submitted pursuant to Articles 123 and 130 of the Federal Tax Code. The customs authority shall issue a resolution within a term that shall not exceed four months as of the day following that on which the *file is duly integrated*. This occurs when the authorities have conducted and concluded the procedures necessary for the analysis of the evidence offered.
- In case a temporary attachment is applicable, the information transmitted through the electronic system used for customs processing shall be granted full probative value. Likewise, the customs authority shall issue a resolution within a term that shall not exceed four months as of the day following that on which the *file is duly integrated*. See previous paragraph.

Customs and Foreign Trade Matters

2. Amendment to Annex 1 of the estimated prices mechanism

On February 8th, the SHCP published the Resolution that Amends Annex 1 of a similar resolution that establishes the mechanism for guaranteeing payment of taxes for goods subject to estimated prices, thereby amending the commercial unit to kilograms (kg) for tariff heading 6912.00.02 relevant to *tableware and other table service products*. The foregoing came into force the day after its publication, and for the purposes of Article 56 of the Customs Law (the date on which the tariffs, taxable basis and other issues apply), goods classified under this tariff heading that were imported into Mexico as of December 31st, 2005 may be subject to the provisions thereof.

3. Request for review of the Preliminary Resolution that concludes the Antidumping Investigation on Pork Legs from the USA.

On February 8th, the Ministry of Economy (SE) published a Notice of the First Request for Review of the Preliminary Resolution that concludes the Antidumping Investigation of the importation of Pork Legs from the USA, which goods are classified under tariff headings 0203.12.01 and 0203.22.01 of the Tariff of the General Importation and Exportation Taxes (TIGIE), as submitted by Consejo Mexicano de Porcicultura, A.C. (the Mexican Pork Council). Accordingly, the Mexican Section of the Secretariat of the North American Free Trade Agreement has assigned this for Panel Review under Chapter XIX of NAFTA, under file MEX-USA-2006-1904-01. This Notice is preceded by the claims that the Parties must have filed by February 20, and the Motions for Appearance that are due by March 6, 2006.

4. Clarification to the Annex to the Notice of the TIGIE of goods which importation is subset to antidumping duties and safeguard measures

On February 16th, the SE published a Clarification to the Annex to the Notice of the TIGIE Tariff Headings that contain goods the importation of which is subject to antidumping duties and safeguard measures, as published on January 3, 2006, so as to correct the following:

- ✓ As regards antidumping duties imposed on table apples from the USA, it is explained that these shall be subject thereto, "*... if it is proven the origin of the goods is different than the orchards that were purchased by Washington Fruit and Produce Co., or that having been authorized, come from companies other than Washington Fruit and Produce Co.*"
- ✓ The importations of pools, including children's pools, classified under tariff heading 9506.99.06 of TIGIE are not subject to payment of antidumping duties, and, thus, such tariff heading is deleted from the annex.

5. NOM-004-SCFI -2006

On February 14th, the draft of "NOM-004-SCFI-2006, Commercial Information – Labeling of Textile Products, Garments and their Accessories" was signed and its publication was ordered in the Federal Official Gazette pursuant to Articles 47 of the Federal Law on Metrology and Standardization (*Ley Federal de Metrología y Normalización*) and 33 of its Regulations. The draft shall be subject to consultations during the 60 calendar days following its publication, and any interested party may submit comments to the National Consulting Committee on Standards for User Safety, Commercial Information and Trade Practices (*Comité Consultivo Nacional de Normalización de Seguridad al Usuario, Información Comercial y Prácticas de Comercio*) located at Av. Puente de Tecamachalco No. 6, Col. Lomas de Tecamachalco, Sección Fuentes, Naucalpan de Juárez, CP. 53950, Estado de México, Telephone 57 29 93 00, ext. 4125, Fax 55 20 97 15. Our firm participates in this Comité on behalf of our clients.

6. Sole Registry of Accredited Persons (*Registro Único de Personas Acreditadas*) (RUPA)

Companies that are a part of any export development program authorized by the SE, or of any Sector-specific Program (Prosec) are reminded that they will not be able to submit their annual operations report until they have registered with the Sole Registry of Accredited Persons (RUPA). ■