

INDEX

Customs and Foreign Trade Matters

1. Amendments to tariff headings that are subject to NOMs
2. Final determination on the sunset review of antidumping duties on methyllic parathion from Denmark
3. Compliance order on the Amparo suit filed by Trading Specialties, in connection with the final determination on the antidumping investigation of hand tools from China
4. Decision No. 12 of the FTA between Mexico, El Salvador, Guatemala and Honduras
5. Final determination on the antidumping investigation of mushrooms from Chile and China; initiation of the sunset review of antidumping duties on synthetic butadiene rubber (SBR) from Brazil; and, the preliminary determination on the antidumping investigation of tires from China
6. Quotas for the importation of dairy products
7. Response to comments on PROY-NOM-004-SCFI-2003
8. Final judgment of the annulment action (juicio de nulidad) on the elimination of antidumping duties on garments from China
9. Criteria for granting of prior permits

Legislative Matters

10. Tax amendments

WTO Matters

Foreign Trade Report May 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: **Adrián Vázquez Benitez**, adrian@vazqueztercero.com, **Horacio A. López-Portillo Jaso**, horacio@vazqueztercero.com, or **Verónica Vázquez Bravo**, veronica@vazqueztercero.com

Customs and Foreign Trade Matters

1. Amendments to tariff headings that are subject to NOMs

On May 3rd, the Ministry of Economy (SE) published an Agreement that amends a similar instrument that identifies the tariff headings contained in the Tariff to the General Import and Export Taxes (TIGIE), which provide for classification of the goods that are subject to compliance with Official Mexican Standards (NOMs) at their point of entry into Mexico, and at their point of departure. This Agreement had the purpose of amending the nomenclature provided by NOM-066-SCFI-2005 (previously, NOM-066-SCFI-1994) in order to avoid confusion in the importation and exportation of Tequila, since such goods are subject to compliance with said NOM.

2. Final determination on the sunset review of antidumping duties on methyllic parathion from Denmark

On May 11th, the SE published its final determination on the sunset review of antidumping duties on the importation of methyllic parathion from the Kingdom of Denmark, which goods are classified under tariff headings 2920.10.02 and 3808.10.99 of the TIGIE, and declared the proceedings concluded and continuation for an additional five years as of May 31, 2005 of the specific antidumping duty of \$0.70 Dollars per kilogram.

3. Compliance order on the Amparo suit filed by Trading Specialties, in connection with the final determination on the antidumping investigation of hand tools from China

On May 12th, the SE published a resolution whereby it complies with the judgment rendered in *Amparo* suit number 1135/2002, filed by the company called Trading Specialties, S.A. de C.V., and with a resolution dated April 17, 2006, issued by the Fifth District Judge for Administrative Matters with jurisdiction in the Federal District, in connection with the final determination on the antidumping investigation of the importations of hand tools from the People's Republic of China, regardless of their origin, as published on November 11, 1994, which goods were classified under headings 8201, 8203, 8204, 8205 and 8206 of the former TIGI. As a result of

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this compliance order, the foregoing company obtained revocation of the antidumping duty of 312 per cent which had been imposed upon it.

4. Decision No. 12 of the FTA between Mexico, El Salvador, Guatemala and Honduras

On May 17th, the SE published the Agreement that informs on Decision No. 12 of the Administration Committee of the FTA executed by the United Mexican States and the Republics of El Salvador, Guatemala and Honduras, regarding adoption of Annexes 6-03 (Specific Rules of Origin), 6-20 (Mandate of the Committee on the Regional Integration of Inputs) and 6-26 (Rules of Origin that are applicable to Temporary Flexibility Levels) along with the clarifications that are the result of the Third Amendment to the Harmonized System of Merchandise Designation and Codification, 2002 version. The foregoing shall enter into force on June 1, 2006.

5. Final determination on the antidumping investigation of mushrooms from Chile and China; initiation of the sunset review of antidumping duties on synthetic butadiene rubber (SBR) from Brazil; and, the preliminary determination on the antidumping investigation of tires from China

On May 17th, the SE published the final determination on the antidumping investigation of the importation of *agaricus* variety mushrooms from the Republic of Chile and the People's Republic of China, which goods are classified under tariff heading 2003.10.01. The resolution declared the proceedings concluded as regards price discrimination, and imposed antidumping duties in accordance with the following:

- a) Of 0.1443 Dollars per kilogram net, on importations from Chile that originate from the company Inversiones Bosques del Mauco, S.A.
- b) Of 0.4484 Dollars per kilogram net, on importations from China that originate from the company Calkins & Burke Limited, and for all other exporters from such country.

Our firm was able to substantially reduce the antidumping duty that is applicable to Calkins & Burke Limited.

On that same date, the SE also published the resolution that declares the automatic initiation of the sunset review of antidumping duties imposed on the importations of synthetic butadiene rubber (SBR) from Brazil, which goods are classified under tariff heading 4002.19.02 of the TIGIE, and sets the period of the sunset review from January through December 2005. Likewise, the resolution indicates that the duties shall continue to apply as long as these proceedings are pending, and a term of 28 days is granted as of the date following that on which the resolution was published, for national manufacturers, importers and exporters, as well as foreign companies interested in appearing during these proceedings.

Lastly, on May 26th, the SE published the preliminary resolution on the antidumping investigation on the importation of diagonal construction tires (conventional tires) for wagons (light trucks) from the People's Republic of China, which goods are classified under tariff heading 4011.20.03 of the TIGIE. This resolution provides for continuation of proceedings without the imposition of temporary antidumping duties.

6. Quotas for the importation of dairy products

On May 26th, the SE published the Notice that places at the disposal of applicants the resolutions on quotas for the importation of dairy products (powdered milk and milk-based preparations) that are the result of the fact that during the past months the conditions for the national production of liquid milk presented an increase that is inherent to the productive cycle of our country's cattle-milk system. Consequently, on March 15, 2006, an Agreement whereby several quotas for the importation during 2006 of powdered milk and milk-based preparations was published in the Federal Official Gazette with the purpose of differing the second period for receipt of applications from the private sector, in order to conform with the stationary performance of national milk production. As a result of the foregoing, it is considered that once the market conditions existed for the possibility of placing national production of liquid milk into the marketplace, it was necessary to inform applicants of quotas on powdered milk and milk-based preparations of the relevant assignments available for the first period.

7. Response to comments on PROY-NOM-004-SCFI-2003

On May 30th, the SE published the Response to comments received in connection with the Draft Official Mexican Standard PROY-NOM-004-SCFI-2003, Commercial information-Labeling of textile products, garments and their accessories, published on October 1, 2003.

Our firm participated in the preparation of this Draft on behalf of the Mexican Association of Infant Products (*Asociación Mexicana de Productos Infantiles, A.C.*)

8. Final judgment of the annulment action (*juicio de nulidad*) on the elimination of antidumping duties on garments from China

On May 30th, the SE published a Resolution whereby it complies with the final judgment issued by the First Section of the Superior Chamber of the Federal Court on Tax and Administrative Justice (*Primera Sección de la Sala Superior del Tribunal Federal de Justicia Fiscal y Administrativa*) regarding the annulment action filed by Distribuidora Liverpool, S.A. de C.V., Sears Roebuck de México, S.A. de C.V., El Palacio de Hierro, S.A. de C.V. and Corporación Control, S.A. de C.V., against the resolution that declares without merit the revocation action submitted by claimant against the final determination of the examination for determination of consequences of the elimination of definitive antidumping duties imposed on the importations of garments and other textile products from the People's Republic of China, which goods are classified under headings 6101 to 6117, 6201 to 6217 and from 6301 to 6310 of the TIGI, which once again confirms the antidumping duty.

9. Criteria for granting of prior permits

On May 31st, the SE published the Agreement that provides the criteria for granting prior permits to several goods that are subject to such requirement, in accordance with the Agreement that provides for the classification and codification of goods the importation or exportation of which is subject to the requirement of prior permit from the SE, as published in the Federal Official Gazette on November 9, 2005, and its amendments. The following are of relevance: used pneumatic tires, used garments, used vehicles, cheeses imported pursuant to the FTA between Uruguay and Mexico, and cigars from Cuba or Panama. These criteria shall enter into force 15 days after its publication.

Legislative Matters

10. Tax amendments

On April 27th, 2006, the Mexican Senate sent the President its draft resolution on amendments to several tax provisions, “for constitutional purposes”. We believe the following are the salient issues of this draft legislation. However, we remain at your disposal should you wish to discuss the full draft legislation.

A. Federal Tax Code (*Código Fiscal de la Federación*)

- Rules are provided for deeming residence in México for tax purposes; also providing that the status of Mexican resident shall not be lost by individuals that are Mexican nationals and who prove new tax residence in a country or territory where his/her income is subject to a preferential tax regime (tax haven).
- No informal mandate shall be acknowledged during administrative procedures. Therefore, it is shall be necessary to prove authority and representation to act on behalf of individuals and companies before the tax authorities.
- The rules applicable to tax refunds are amended, including the fact that the right to demand those that are a result of an undue payment based on an act of authority shall arise as of the date such act is annulled.
- Reference is made to the fact that when an application for the refund of a favorable balance or of an undue payment is submitted, the tax authorities shall pay the taxpayer the interest that accrues as of the expiration of the term therefor when the refund is paid beyond the term provided by the Code.
- The rules for set-off are established, and it is provided that the tax authorities may automatically set-off the amounts taxpayers are entitled to receive against their own tax debts or those that are a result of withholdings to third parties when such are final for any reason. Likewise, it is provided that set-off shall also apply for tax credits the payment of which has been authorized in installments.
- The criteria set by Mexico’s Supreme Court is adopted as regards the fact that one of the requirements for the validity of an administrative act is that such must indicate the place and date of issuance of such act.
- The authority of the tax authorities to carry out verification visits to prove the information submitted to the Federal Tax payers’ Registry is provided.
- The rules that apply to verification visits are amended, and the fact that visits shall take place during a maximum term of twelve months, as well as the elimination of extending such visits, are provided.

- The obligations of public accountants that are certified for the preparation of tax reports are amended.
- Accountants, attorneys or any other tax advisers that do not warn the recipient of the opinions drafted by them of the fact that the criteria expressed therein may differ from those held by the tax authorities shall be deemed subject to sanctions.
- It is clearly stated that the statute of limitations is tolled as a result of the exercise of the verification powers of the tax authorities.
- When a penalty is paid within the 45 days following the date on which the relevant notice thereof is effective, its amount shall be reduced by 20%.
- In order to encourage compliance with tax obligations, new provisions are added whereby in case as a result of a non-compliance or breach of any tax provision, taxes are omitted, the applicable penalty could be from 75% to 100% of the unpaid taxes.
- Some of the cases when contraband is deemed to exist are defined clearly, and a new case of contraband is added, i.e., when the taxpayer inexactly declares the description and tariff classification of the goods, and as a result thereof taxes and countervailing duties are not paid, except when the customs broker or representative strictly complied with the obligations of the taxpayer, as provided by the customs and foreign trade provisions that are applicable. Likewise, several cases that may be deemed similar to contraband are clarified.
- Provisions are added which shall govern compliance by the authorities of orders issued as a result of a revocation action (*recurso de revocación*); and the term is reduced from forty-five to thirty days for the submission of further arguments when the taxpayer argues that he was unaware of the administrative act. Likewise, the term for compliance with a resolution that is favorable to the taxpayer is reduced from four to three months.
- Clarification is made of those cases when an attachment of goods is applicable, and a few are added that provide for causes of sequestration.

B. Income Tax Law.

A new obligation is added for taxpaying entities which consists in that they must now present before the tax authorities the person or persons who are in charge of the office of the chief executive, chairs of the Board of Directors, general managers or sole managers, as well as statutory auditors, members of the surveillance committee or any person or persons who are in charge of the surveillance of the relevant entity.

C. Value Added Tax Law.

A new obligation is added for taxpayers, whereby they must now inform the tax authorities on a monthly basis of the payment, withholding, credit and transfer of value added tax for transactions conducted with their vendors, with separation of amounts for the value of the acts or activities per applicable rate at which the tax was transferred to or by the company, including activities for which it is not obligated to pay this tax.

D. Law of the Special Tax on Production and Services.

- Manufacturers, producers and bottlers of alcohol, denatured alcohol, un-crystallized syrups and of alcoholic beverages, in addition to reporting the characteristics of the relevant equipment, must now also report the characteristics of the containers for the storage of such goods regardless of the equipment.
- Taxpayers must now be registered at the Alcoholic Beverages Taxpayers Registry (*Padrón de Contribuyentes de Bebidas Alcohólicas*) of the Ministry of Finance in order to be able to request seals and labels.

WTO Issues

On May 8th, Pascal Lamy, Director General of the WTO, stated that the WTO is at risk of entering into a stagnation period if during the next few weeks agreement is not reached to open trade even more, and he stated further that he trusts the Doha Round of negotiations may be able to conclude successfully, while warning of the risk of potential failure in case negotiations are not concluded this same year. Likewise, he added that by mid-June a solution must be found for agricultural and industrial tariffs.

On May 30th, the WTO called upon the ministers of Trade of its member countries to meet towards the end of June in order to attempt to salvage the Doha Round of negotiations, and the purpose of such meetings shall be to agree on the reduction of the customs duties applied to agricultural and industrial goods, which is the most delicate issue of the Round launched in 2001, which has now been pending for over 18 months.

On another note, the Secretariat of the WTO informed that antidumping measures continue to decrease, as evidenced by the 82 new investigations initiated by 16 countries during the last semester of 2005, vis-à-vis the 106 investigations that occurred during the same period of the previous year. In this regard, China was first among those who utilized this WTO prerogative against the importations of its trade partners, with 13 investigation requests. By the same token, its exports were the subject of 33 antidumping investigations between July and December, 2005. Mexico is among the fifteen countries who applied some 76 antidumping measures versus 93 last year. ■