

International trade and customs Newsletter December 17th, 2018

Amendments to the Customs Law

On June 25, 2018, the "Decree amending, adding and repealing various provisions of the Customs Law" was published in the Federal Official Gazette, which will enter into force 180 calendar days after the day of its publication, this is, December 22, 2018.

The most relevant amendments, by topic, are:

Control

Article 36-A: establishes the possibility of declaring the number of the transport document in the *pedimento*, in addition to the possibility of declaring the transmission receipt.

Article 52: establishes that the holder of goods is also responsible for the payment of foreign trade taxes and compliance with Non-Tariff Regulations (RRNAs) and that, unless there is proof to the contrary, it shall be deemed that it carried out the introduction or extraction of such goods.

Article 53: establishes that holders and transferees of goods imported temporarily by residents abroad will be jointly liable for the payment of contributions and antidumping duties.

Infringements and Penalties

Article 5: establishes that in the case of fines based on omitted contributions, the authorities must consider the base without being updated.

Articles 135-B, section II; 151, section II; 176, section II and 178, section IV: determines that RRNAs are those established by the Foreign Trade Law, including Mexican Official Standards (NOMs).

Article 177, section XII: adds as a presumption of infringement declaring in the *pedimento* a value less than 50% of the transaction value of identical or similar goods, in the case of import operations under a tax deferral regime.

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Article 178:

Specifies the infraction for failing to provide evidence of compliance with RRNAs applicable to vehicles and updates the fine to \$12,850.

Establishes a fine of 130% to 150% of the foreign trade taxes and antidumping duties in case of undervaluation pursuant to section XII of article 177.

Article 183-A:

- Establishes the exception to the fine for not complying with RRNAs for those related to animal and plant health, public health, environment or safety.
- Specifies that vehicles failing to comply with RRNAs will become property of the State, in terms of section II of article 178

Articles 183-A, section II; 184 section I, VI and VII; 185 section VI: include infractions and penalties related to new technologies such as filing the printed *pedimento*, technological device or electronic means upon customs clearance.

Article 199:

- Amends the term to challenge a resolution from 45 to 30 working days according to the Federal Tax Code and the Federal Law of Administrative Contentious Procedure.

Establishes a reduction of 50% in case of direct fines without administrative procedure under the last paragraph of Article 152 of the Law.

Legal Certainty and Control

Article 15: establishes terms and deadlines for the compensation against the fee that must be paid by authorized parties or concessionaires of tax precincts (*recinto fiscalizado*) for the handling, storage and custody of seized goods.

Article 17: establishes the issuance and cost of the electronic badge to access tax precincts (*recinto fiscal/fiscalizado*).

Articles 29, 32 and 34: abolish the power of the Tax Administration Service (SAT) to sell assets and establishes that it may only assign, donate or destroy those.

Articles 47 and 48: specifies that tariff classification rulings can be requested by confederations, chambers or associations, and those can be filed before, during and after customs clearance; and reduces the term to issue a resolution from four to three months.

Article 79: is amended to include a reference regarding digital tax receipts, and includes the possibility of demonstrating the value of the goods with an equivalent document expressing the value of the goods.

Article 100-A: establishes that the registration of certified companies shall be as Authorized Economic Operators (AEO), and the possibility for any person or company participating in the logistics chain, to register as service provider for the entry and exit of goods.

Article 100-B: includes the benefit of fines reduction and spontaneous compliance with obligations during customs clearance, or during verification procedures for AEO companies.

Article 106, letter f): establishes that goods bound for research, imported by national and foreign public agencies and companies considered as non-taxpayers authorized to receive donations, may be temporarily imported for one year.

Article 119-A: authorizes general storage facilities to provide the service of bonded warehouse storage and causes for cancellation.

Auditing

Article 45: determines that samples may be taken during the verification procedures in addition to the customs examination.

Article 153-A: establishes that the authorities may "extend the customs clearance of the goods through partial records".

Powers of the authority

Article 78-A, section IV: entitles the authorities to reject and determine the value of the goods, whenever the information of the foreign supplier or the tax domicile of the importer are false, non-existent or are not located.

Article 144: includes the following powers related to the "customs agency", being the most relevant:

- Review of compliance with electronic clearance requirements.
- Verification of foreign trade goods regarding the transport, legal importation or holding of goods in tax precincts (*recinto fiscal*).
- Power to grant, disable and cancel the customs agencies' authorizations.
- In the case of joint customs clearance, the authority may share facilities and carry it out in national and foreign territory.
- Power to suspend registries.
- Power to detain foreign trade goods whenever the existence of copyright and industrial property provisions infringement is presumed.

Article 144-A: establishes the power to cancel the authorizations and concessions granted by the SAT, if the services for which they were granted are not rendered within 180 calendar days.

Article 145: sets forth the power to assign foreign trade goods to the State's productive enterprises by the SAT.

Article 157: establishes the power of disposal of dangerous seized goods in customs facilities, without the need to carry out the Customs Procedure in Administrative Matters (PAMA), and it specifies that the compensation of goods sold by the authority will be determined based on the price those were sold.

Facilitation

Article 2: provides a wider definition of "electronic document" and "digital document" to include other technological means.

Article 14-A: includes the possibility for estates adjacent to a tax precinct (*recinto fiscal/fiscalizado*), through a confined route, or inside or adjacent to a port precinct, to request the authorization to render handling, storage and custody services.

Article 43:

- Recognizes other forms of customs evaluation pursuant to International Treaties and Interinstitutional Agreements.
- Includes the possibility to activate the automatized selection mechanism with technological devices, electronic means, a *pedimento* or consolidated declaration.
- Determines that the cases where customs evaluation may be carried out within tax precincts, without being exhibited to the automatized selection mechanism, will be established in the administrative guidelines.

Article 50: eliminates the obligation of passengers to exhibit the official form to declare excessive merchandise in their luggage, as well as the obligation to activate the automatized selection mechanism, except for the cases set forth in the administrative guidelines.

Article 59:

- Section III: substitutes the obligation of physically keeping the "value declaration" to do it digitally.
- **Section V: establishes the obligation to keep an electronic record of each operation, including its annexes and the corresponding evidence of electronic filing, for 5 years.**

Article 61: extends the term to verify the compliance of RRNAs by the authorities (10 days) for goods donated, bound for the attention of basic requirements of subsistence related to feeding, dressing and healthcare, housing, education and civil protection requirements, in order to be imported

Article 89: establishes the impossibility to rectify *pedimentos* when a verification procedure has initiated or such goods are subject to customs review, and irregularities in the information declared on such *pedimentos* have been detected, except for the cases set forth in the administrative guidelines.

Articles 150 and 152:

- Determines that the approval of the customs administrator is not required to personally notify by notices (*estrados*) in case of transport verification of goods.
- Eliminates the limitation to challenge a resolution, imposing penalties without omitted contributions nor precautionary seizure of goods, by "administrative appeal" only by substituting it with "defense mechanisms".

Article 153: establishes that citizens may accept fault and request a provisional resolution in which the authority determines the omitted updated contributions and fines, in the case of precautionary seizure of goods exceeding or not declared in greater amounts than 10% during the customs review or transport verifications, in order to pay and request the return of the goods.

Energy Sector

Articles 16-C and 36-A:

Establishes that the SAT will authorize companies to:

- Verify the goods' weight, volume and any other characteristics that may affect the determination of contributions payable upon foreign trade operations.
- Certify the equipment, systems and specialized devices used by the companies carrying out the verification mentioned above.

Establishes the requirements to obtain such authorizations, such as the payment of a governmental fee upon their granting.

Consequently, it includes the obligation to electronically file the document or certificate issued by the authorized entities upon importation

Foreign Trade Operators

Article 16-A: establishes that data electronic prevalidation services must be rendered by legal entities (not people) and clarifies that it is a procedure prior to the customs clearance process.

Article 16-D: establishes the requirements to obtain the authorization for manufacturing and importing official or electronic locks for vehicles and containers used in the customs clearance of goods.

Article 174: amends the requirements to be a customs appraiser (modifications to the exams, elimination of the parentage and affinity with the customs administrator limitation).

Article 53:

- Eliminates the legal representative's joint responsibility for the payment of foreign trade contributions in case of importing or exporting directly.
- Establishes that the customs broker, engaged in an operation where the customs agency is jointly liable, will have subsidiary liability.

Article 160:

- Determines the requirements that customs brokers must meet, such as having a main business office in Mexico, independently from his/her residence, providing an electronic address for notifications, file notices regarding opening and closing branches, etc.
- Eliminates the requirement to send statistical information of *pedimentos* and the percentage of operations he/her handles through the electronic customs system.

Article 162: specifies the documents and information required in the electronic record that the customs agents must keep for each clients' operation.

Customs Brokers Agencies: creates this figure as a legal entity, with at least one customs broker, which may represent importers and exporters for customs clearance purposes. In this sense:

Eliminates articles related with legal entities created by customs brokers.

Adds sections XX and XXI in article 2 to define the customs brokers and the customs agency

Creates articles 167-D through 167-N to establish the requirements and restrictions for the authorization and operation of the agency, obligations, authorized actions and causes and procedures of suspension and cancellation.

Partners and customs brokers may only be part of one agency.

Establishes that in case of suspension of a customs broker's patent, it will only affect such patent; consequently the agency may continue operating with the rest of the patents.

Determines that in case of death, voluntary withdrawal or permanent incapacity, 2 authorized customs assistants (*mandatarios*) or directive partners may participate to obtain the patent.

Establishes a twelve-month period to issue the general administrative guidelines regarding mechanisms, forms and means for customs agencies and operation.

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