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X. Imports and exports from Mexico

One of the priority objectives of Mexican foreign trade policy is to promote exports, especially non-petroleum exports. Achievement of this goal has been made possible through the adoption of several programs which grant additional advantages to exporting industries.

Applications to participate in these programs are issued by the Ministry of Economy within a term of 15 working days for PITEX, (IMMEX) 20 working days for ALTEX, 15 working days for *maquiladoras*, (IMMEX) 15 working days for ECEX and 20 working days for PROSEC. The aforementioned acronyms will be described herein. As it is elaborated herein, PITEX and In-Bond Programs have been integrated as of november 2006.

A. Foreign trade companies (ECEX)

The ECEX program may be adopted by entities whose corporate purpose is the promotion and commercialization of exports. The program is divided into two categories: companies called export consolidators, and companies called export promoters. To be eligible for the first category, it is necessary to have a fixed capital of approximately US\$190,500 and to export goods manufactured by at least five different companies. To comply with the second category, companies need a fixed capital of approximately US\$19,000 and must export goods manufactured by at least three different companies. Foreign trade companies have ready access to ALTEX registration and IMMEX programs.

B. High-Export companies (ALTEX)

To be eligible for this program, applicants must demonstrate direct exports of at least US\$2,000,000 or 40 percent of the company's total annual sales; or, they must demonstrate indirect exports of at least 50 percent of their total annual sales.

ALTEX companies are granted benefits such as special treatment before administrative authorities, customs advantages such as simplified procedures, and access to the value-added tax automatic refund system.

C. Import taxes drawback program

This program may be entered into by persons or entities performing direct or indirect exports. Companies within this program are eligible for a refund of import taxes paid for imported parts incorporated into the exported goods, and for those returned in the same condition as imported.

D. In-bond program, PITEX-IMMEX as the new regnne

1. In-bond program

Mexico's maquiladora program has been quite successful. *Maquiladora* plants are assembly plants -often referred to as *in-bond plants*- in which raw materials or component parts are temporarily imported for assembly in Mexico, and the assembled product is exported.

On June 1998, the Maquiladora Decree was published. The first amendment to the Decree was published on November 1998, and further amendments were published on October 2000, December 2000, May 2003, and October 2003.

The Decree is designed to achieve five primary goals: (i) create sources of employment,

(ii) strengthen Mexico's trade balance and foreign reserve levels, (iii) increase the international competitiveness of Mexican industry, (iv) improve the quality and training of Mexican labor, and (v) promote the transfer of technology to the country.

Under the Maquiladora Decree, *maquiladoras* are industrial enterprises engaged in the assembly, transformation, or manufacture of foreign materials, temporarily imported free of general import tax and value-added tax (under certain conditions which are explained further in this section), and subsequently exported after having undergone assembly or processing. The Decree establishes two categories of authorized duty-free imports:

(i) Raw materials, components and parts, associated products, and packing materials, as well as fuel and lubricants used in the production process. These goods may not remain in Mexico for more than 18 months.

(ii) Containers and trailers. Cargo containers and trailer-truck may not remain in Mexico for more than 2 years.

These goods may be imported free of duties, provided they originate in a country with which Mexico has a free trade agreement. In the case of products which do not originate from a country that has entered into a free trade agreement with Mexico, the goods may, in some cases, be imported free of duties or with preferential duties, if the importer has a Sector Promotion Program (PROSEC).

If the imported goods originate from a country which does not have a free trade agreement with Mexico, and the finished product is exported to a country that does not have a free trade agreement with Mexico, then no import duties are levied. Furthermore, no duties are levied when temporarily imported goods are returned to their country of origin in the same condition as when they were imported.

a) Domestic sales

Consistent with NAFTA, the Maquiladora Decree originally authorized *maquiladoras* to sell a specified percentage of production in the domestic market. In 1994, 55 percent of the total volume of exports for the previous year could be sold domestically. These percentages increased 5 percent annually until the year 2000, when the percentage became 85 percent. As of 2001, the Mexican government has removed all restrictions on *maquiladora* sales in the domestic market.

Under the new Decree, an annual report of their foreign operations must be filed by the *maquiladoras* with the Ministry of Economy. This report must be filed by the last business day of May of each year.

Domestic sales have important tax consequences. When a *maquiladora* sells products in Mexico, these products are subject to the general import duty and countervailing duties (if there are any), and to the value-added tax on the foreign parts and components originally imported duty free.

b) Tax advantage of *maquiladoras*

The *maquiladora* program allows materials originating from countries with which Mexico has a free trade agreement (or materials from other countries, subject to the conditions mentioned above) to be imported duty free, and processed in Mexico. The program also applies the zero percent value-added tax rate for any invoicing to individuals or companies with residence outside of Mexico. The *maquiladora* entity in Mexico is subject to an income tax on its profits as normally determined, except that they are granted an incentive applicable against income tax that is not available for other companies.

In practice, many *maquiladoras* report minimum profits; however, tax legislation, as well as tax harbor rules, have now been enacted to regulate transfer pricing between affiliates.

2. Temporary import program for export (PITEX)

This program may be entered into by entities that directly or indirectly export goods. In order to be eligible, companies making temporary imports of raw materials and parts must have annual exports exceeding US\$500,000, or its equivalent in other currencies; or, annual exports must represent at least 10 percent of total annual sales of products inscribed in the PITEX program. Applications may be made for the total operations of a business enterprise, for an industrial plant, or for a specific export project.

For companies making temporary imports of machinery, equipment, raw materials, and parts, a 30 percent of imports on the total production is required to be eligible for inscriptions in the Pitex Program.

Exporters who adopt this program may be authorized to temporarily import the following products duty free: (i) raw and auxiliary materials, parts, components, packaging materials, bottles and containers, fuel and lubricants, used in the process of production, and destined to be incorporated into export goods; and (ii) trailer containers and transport containers. In order to be imported free of duties, these goods must originate from countries which have entered into a free trade agreement with Mexico. Products originating from countries with which Mexico does not have a free trade agreement may, in some cases, be imported free of duties, or with preferential duties under a PROSEC program.

When the imported goods originate in a country which does not have a free trade agreement with Mexico, and the finished product is exported to a country which does not have a free agreement with Mexico, no duties are levied; nor are duties levied when the goods imported are temporarily exported in the same condition as when they were imported.

As suggested above, both the In-Bond Program and the PITEX have been integrated in a single program called IMMEX. The decree which merged said programs maintained their respective benefits and level of duties. Furthermore the value added tax regarding former PITEX (now part of IMMEX) with respect to export services is subject to a zero-rate. On the other hand, the In-Bond Program (also part of current IMMEX) still remains with the benefits of income tax concerning non-residents in Mexico.

Finally, among the most important benefits of the new consolidated regime (IMMEX) is that, in order to be eligible, the companies which import in a temporary basis, raw materials, parts, machinery or equipment shall either have annual exports exceeding US\$500,000 or its equivalent amount in other currency, or have annual exports representing at least 10% of the total annual sales.

E. Sector promotion programs (PROSEC)

1. General comments

The Mexican government is aware that, for certain companies, components from outside of North America, or other countries with free trade agreements with Mexico are very important. Such merchandise is of importance because it may provide those companies with competitive customs tariffs. As a consequence, the Mexican government put into force "sector programs," which set up supply conditions for components to the export industry, and help to achieve national integration of certain export industries.

In November 1998, two decrees relating to the "sector programs" for the electrical and electronics industries were published. In 2000 several "sector programs" were implemented according to the needs of the Mexican export industries. Thus, the export industry will keep international competitive standards. "Sector programs" permit companies importing components from NON-NAFTA countries to continue this practice by applying reduced custom tariffs or, as in the electronics industry, by establishing a zero percent tariff.

2. Tariff calculation

When raw materials, parts, associated products, and packing materials are imported from a country which does not have a free trade agreement with Mexico for manufacture and export, to a country that has a free trade agreement with Mexico, the custom tariffs are calculated as follows:

1. It is necessary to work out customs tariff payments related to goods that imported temporarily to Mexico and are integrated into the goods to be exported. The temporarily-imported goods are classified as if they had been permanently imported, taking into consideration the customs tariff and the exchange rate applicable on the date of export.

2. It is necessary to determine the customs tariff paid for merchandise in the country of final destination with which Mexico has a free trade agreement.

3. The customs tariffs payable in Mexico will be the amount resulting from subtracting the customs tariffs payable in the country with free trade agreement of final destination, from the Mexican tariffs applicable to the final importation of the goods into Mexico. An illustration of the tariff calculation related herein is described in the following table:

| Customs tariff in Mexico for component "X" imported from India. | Customs tariff paid in USA for final product "Y" assembled in Mexico. | Amount paid in Mexico for component "X" imported from India. |
|---|---|--|
| 11 | 2 | 9 |
| 5 | 6 | 0 |

The general import tax, which was calculated as described hereinabove, must be paid within 60 days from the date of export of the finished product, taking into account tariffs and exchange rates applicable on the date of export.

In order to work out the general import duty, exporters are allowed to use a preferential tariff as described in the "sector programs" above. However, this formula cannot be applied to the temporary imports listed in Appendix 6, Annex 300-B of NAFTA, related to textile goods and clothing.

The companies will pay the general import duty, as if the goods were definitely imported, without taking into account their origin. This rule will apply to the following goods:

1. Tools, equipment and accessories for research, industrial security, the products used for hygiene, control and prevention of environmental pollution from productive plants, as well as work for manuals and industrial plans, telecommunications, and computing equipment; and

2. Machinery, devices, instruments and spare parts necessary for the production process, laboratory equipment, measuring and testing devices for their products, as well as devices that may be required to control quality, train their employees, and develop company administrative programs; the latter of which is applicable to the installation of new industrial plants.

According to the Value-Added Tax Law, final imports are subject to VAT, while temporary imports are VAT exempt.