Reliable Companies and Strategic Bonded Areas

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Mexican customs has been working on different programs in order to attract foreign investment to Mexico, maintain that investment in Mexico, and assist both medium and small companies in their trajectory through Mexican customs law. The trajectory takes them through the procedures and requirements—such as the payment of required taxes and customs duties and obligations—that a company must comply with when importing goods through Mexican customs. These new programs enable companies to become more profitable by decreasing the time required for them to import goods through Mexican customs. The purpose of the new customs facilitation program is to automate the import processes by expanding the use of high-tech equipment, and more importantly, simplify customs procedures. To simplify customs procedures it is necessary to shift the focus of the government’s auditing procedures from auditing dishonest companies to auditing customs procedures that companies are not following correctly.

One of the benefits of these new customs programs is that companies will be exempt from certain import restrictions. Normally, goods are imported through a special customs office. However, under the new customs programs, companies are allowed to import any type of goods through any customs office. Another benefit is that the new registration requirements expedite the registration of industry into an import customs program. Under the new customs system, companies registering with Mexican customs will automatically be registered under an import program and be permitted to immediately begin importing goods into Mexico.

Another important benefit of the new customs import program is the extent of customs inspections performed on imports. Currently the average customs inspection in Mexico requires the inspection of 10% of the total cargo. Under the new customs import program, customs officers will inspect only 2% of imported cargo.

Clearance procedures for imported and exported goods will also be expedited. Under the former customs program, it was difficult for a company to receive a clearance at its own address. With the new register, companies can request that the Mexican customs authority go out to the site and clear the goods on the company’s premises. This will expedite the customs clearance procedures and shorten the amount of time a company will need to wait in order to have its imported goods cleared for import into Mexico.

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1. Mexican customs law prescribes import/export requirements, duties and values, rules for different types of operations, ports and free trade zones, the powers of the customs service, fines and penalties imposed, and the rights and obligations of importers, exporters, carriers and custom house brokers. *Tráfico, Inc., Mexican Customs Overview: Appendix A*, at http://www.trafico-inc.com (last visited April 7, 2004).
2. Id.
3. Id.
4. In common practice this percentage has been revised by Mexican Customs since the implementation of the random selection method, which is now called the automated selection method.
Another benefit provided by the expedited export and import clearance procedures for cargo is the immediate clearance of imported goods at ports. For example, under the old customs program, when cargo was received through the airport it had to be introduced into a bonded warehouse. The cargo would be held there for several days before it could be cleared. Under the new customs programs, cargo received at an airport can be cleared immediately at the airport, thus shortening the number of days the goods have to be stored waiting for clearance. Additionally, the process has been simplified for the return of goods that are placed in a bonded warehouse through the use of a *pedimento* by simply notifying the customs office that the goods are to be returned.

Import duty exemption benefits will be provided for equipment that is temporarily imported into Mexico. This benefit exempts companies from customs processing fees for equipment imported into Mexico temporarily by *maquiladora* companies. However, the equipment cannot be altered while it is located in Mexico. Additionally, companies will be provided the opportunity to legalize temporary imported goods when the importation period has already expired. All other requirements for temporary importation must be met.

Currently there are severe penalties, including the seizure of goods, when the goods are not declared on the *pedimento*. Under the new customs programs, companies will be provided the opportunity to make several corrections without penalties or with lowered penalties. Companies will be allowed to increase the declared quantity of imported goods without penalty if the declaration is made within 30 days after the goods have been cleared. Changes on the *pedimento* will be allowed even if the authorities have already cleared the goods for import. The new customs import program also gives companies the opportunity to return goods that were not declared accurately on a *pedimento*. Failure to make those disclosures is now subject to lower penalties. These new benefits are available to all final import companies, not just to companies under the *maquiladora* program.

In order to improve Mexico's import programs, the government has established a program called certified companies. Companies interested in applying for the new register must meet several requirements. First, the company must be incorporated in Mexico. These companies must have financial statements that have been audited by an authorized accountant and must have a clean tax record. Next, these companies must meet the volume of imports requirement. The volume of imports requires that companies must have imported a customs volume earned of no less than U.S.$5.3 million in the previous semester, prior to filing the petition for the registry. When *maquiladora* or PITEX companies join as a holding group, the

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9. *Id.*
13. Chevez, Ruiz, Zamarripa, and Cía, *Informative Flash: Fourth Amendment to the Foreign Trade Rules*
group must jointly have earned U.S. $5.3 million in the previous semester, prior to filing. Finally, if a maquiladora or PITEX company wants to apply for the register as an individual, the individual must have earned U.S. $2 million during the last semester. Since October 2002, 290 applications were received, and 165 of those 290 companies were approved. These 290 companies represent 33.82% of the total import volume. However, these requirements have been criticized as favoring large companies. In time these requirements may be relaxed so more medium-sized and smaller-sized companies can qualify as a certified company.

In response to the criticism of the volume of imports requirement, foreign import companies and maquiladora companies have requested that a new and independent program be structured so that smaller companies may qualify for the registry as certified companies. This new requirement is called the fulfillment level. The fulfillment level requirement does not require that the volume dollar amount be met in order to become a certified company. However, before implementing this new requirement, the customs authorities will have to analyze each company's application, examine their internal operation policy, review their production processes for internal fulfillment controls, install the necessary machinery and equipment, develop import and export reports, and determine the number of employees and inspection visits necessary for the operation.

The fulfillment level program applies first to maquiladora and PITEX companies, and later it will apply to other import companies. A written request must be made by the company directly to the Mexican Customs Agency in order for a company to register under the fulfillment level requirement. The company must designate an authorized customs broker, or in-house broker, and an authorized carrier to operate the system for the company. Authorization to import must be issued to the company by the Mexican Customs authorities within 40 days after the receipt of the application. The company will be deemed automatically authorized to import goods into Mexico if the company does not receive authorization within this period of time. This guarantees that issuance of a registry is approved in a reasonable period of time. Authorizations are renewed and updated each year requiring a fee of 15,240 pesos. At that time, the customs office reaffirms that the company has maintained a clean record with the Mexican Customs office. This new register is a positive solution for companies that do not meet the volume of imports requirements.

Another program implemented by the Mexican Customs Agency in order to simplify customs procedures and improve logistics for companies while allowing Mexican Customs to maintain efficient control is the strategic bonded areas
program. This new program is similar to the free trade zones used in the United States and is designed to promote exports and attract foreign investment. One difference from the free trade zone program is that this new program basically consists of allowing national or foreign goods into the country for a limited period of time. Tariff regulations and restrictions for goods are waived; however, these goods still could be subject to handling, storage, safe-keeping, sale, distribution, manufacturer and transformation fees. Companies can take advantage of these importation benefits for a period of two years. The benefits provided by this program include allowing the introduction of goods into Mexico exempt from customs duties, value-added taxes, special taxes on products and services, and some compensatory fees. There is an exception to the non-tariff regulations and importation of goods when the imports raise concerns of animal and vegetable health safety, public health safety, and national security issues. In the past, the pedimento has been used both for control and for the collection of statistical information. Customs now provides an option to use an automated system or to use the pedimento. The automated system will provide information electronically while the pedimento will be used whenever goods leave these bonded areas and are introduced into Mexico. National products that are introduced into the strategic bonded areas are going to be considered exported. However, these products can be stored only in a strategic bonded area for a period of no more than two years. After goods are removed from the bonded areas, they can be delivered to their final destination, returned to their country of origin, delivered to some other destination, or returned to the domestic market. These products will be exempt from customs duties until they leave the bonded areas. When the goods are removed from the bonded areas they must meet the importation requirements like any other imports or exports. The introduction of these goods to strategic bonded areas is intended to simplify and facilitate the administration of them until they are delivered to the rest of the national territory as if they had been delivered to a bonded area at the border.

There are two different requirements that must be met to become a strategic bonded area. Each bonded area must have one administrator and one operator. The administrator establishes and manages the Recinto Fiscalizado Estratégico (RFE), while the operator manages the bonded area by carrying out the program. In a United States free trade zone, the operator is the same person as the administrator.

21. Through NAFTA, the United States and Mexico agreed to liberalize access for cross-border truck and bus services. Luis Ernesto Derbez, Mexico and the Free Trade Area of the America (October, 2002), at http://usinfo.state.gov/journals/ites1002/ijec/ftaa-derbez.html (last visited April 7, 2004).
22. Id.
Another requirement for operating a strategic bonded warehouse is that the company administering the area be legally incorporated in Mexico, however, foreign investment is allowed. There must be an area or building located close to the customs facilities, but these facilities may be located at seaports, airports and railway facilities. One side manages the bonded area while the other side operates the bonded area. This requirement allows the Customs Authority to have better control over these bonded areas.

The Customs Authority establishes the procedures for the new strategic bonded area programs and also establishes procedures for the management, supervision and control of each of these bonded areas. However, the companies that administer these bonded areas must provide their own facilities since the government does not have the budget to provide them. However, the government is providing other services and developing procedures that facilitate or simplify the processes.

Currently, there are few regulations governing the administrators under this program, but additional regulations will be issued later. The aim is to encourage companies to establish operations in Mexico and to promote imports and exports by providing more efficient import and export methods. The Mexican government hopes that simplified procedures will encourage more companies to locate their businesses in Mexico.

27. LEY Aduanera, supra note 11; Reglas de Carácter General, supra note 10.