

## **Amendments**

### **Rule 2.2.4 Causes that merit suspension from the importers' registry and the sector specific importers' registry**

For the purposes of article of article 59, item IV of Mexico's Customs Law (Ley Aduanera), the suspension from the importers' registry and/or the sector specific importers' registry will be effective in conformity with the following:

- A. For the purposes of the importers registry and the sector specific importers' registry, when:
1. The taxpayer submits a cancellation notice before the Federal Taxpayer's Registry (Registro Federal de Contribuyentes – RFC).
  2. The taxpayer submits a notice of suspension of activities before the RFC.
  3. The taxpayer changes its business address (domicilio fiscal) and does not submit the corresponding notices to the Local Collection Division in accordance with article 27 of Mexico's Tax Code.
  4. The taxpayer does not register before the RFC the premises where he (she) performs foreign trade activities.
  5. The taxpayer's business address does not exist or the taxpayer cannot be located at the business address he (she) provided.
  6. The taxpayer changes its filing status and does not update the Importers' Registry in accordance with Rule 2.2.3 of this Decree.
  7. The taxpayer has payable tax credits that are not guaranteed (*creditos fiscales exigibles no garantizados*) for transgressions other than the ones listed in numeral 8, for more than \$100,000.00 Mexican pesos.
  8. Pursuant to a resolution, a tax credit is issued on behalf of the taxpayer because of the following infringements foreseen in articles 176, 177, 179 and 182, item II of Mexico's Customs Law, through the omission of payment of taxes and countervailing duties for more than \$100,000.00 Mexican pesos, and such omission represents more than 10 percent of the total taxes and countervailing duties that should have been paid, and such payable tax credit is not endorsed.
  9. The Taxpayer has not submitted the corresponding federal tax statements.
  10. The taxpayer does not carry out import procedures for more than twelve months as of the date he registered with the Importers' Registry or of his last procedure, unless he presents a written notification to the Administracion Central de Contabilidad y Glosa (ACCG) of Mexico's General Customs Administration (Administracion General de Aduanas – AGA), explaining the situation before the 12 month period expires.
  11. The immigration form (submitted by the legal representative or an individual from a foreign nationality that seeks to register before the Importers' Registry) is not renewed before its expiration date, the legal representative or individual fails to notify its renewal to ACCG by presenting a copy of the immigration form, or there is failure to notify any changes of the legal representative.

12. The taxpayer does have proper records, inventories, accountings in accordance with tax and customs regulations; also in the event the taxpayer hides, alters or destroys any of these records or inventories partially or completely.
13. The taxpayer does not have the proper documentation that certifies foreign trade operations.
14. The taxpayer refuses to show proof to customs authorities of his foreign trade operations.
15. The taxpayer disregards AGA's notifications for the submission of the documentation and information that proofs he is in conformity with its tax and customs obligations.
16. The name or business address of the supplier or producer; end-user or buyer abroad, as indicated in the official shipping document (pedimento) or the invoice, are false or nonexistent or when in the business address the supplier or producer; end-user or buyer abroad cannot be found.
17. The taxpayer presents for two consecutive years its tax statements showing no profits without including the pre-operative period (*periodo preoperativo*).
18. The taxpayer does not comply or has not comply with its obligations established in the Maquila, PITEEX or ECEEX programs<sup>1</sup> authorized by the Mexican Ministry of Economy or such Ministry has initiated a procedure to cancel those programs.
19. When the Ministry of Economy has cancelled the corresponding Maquila, PITEEX or ECEEX program. When dealing with the Maquila or PITEEX program, when the taxpayers have failed to request their subscription to the program in accordance with Rule 2.2.1 of this Decree.
20. A taxpayer registered in the importers' registry allows another taxpayer no longer registered before the Registry to continue carrying out foreign trade operations; or it is found that the taxpayer uses its registry before the importers' registry or before the sector specific importers' registry to be used by unauthorized taxpayers.
21. The taxpayer alters records or documents that authorize foreign trade operations, or these show irregularities that prevent him to conduct foreign trade operations.
22. In the case of definitive exportation or returned merchandise to foreign countries, it is found that such merchandise did not exit the country or it is determined that the return of at least 90 percent of the declared merchandise in the customs forms did not take place.

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<sup>1</sup> **Maquila** is the program established under the Decree for the Promotion and Operation of the Export Maquila Industry, published in the DOF on June 1, 1998 and its amendments;

**PITEEX** is the program established under the Decree creating the Temporary Import Program to Produce Export Goods, published in the DOF on May 3, 1990, and its amendments;

**ECEEX** is the program established under the Decree for the Establishment of Foreign Trade Companies published in the DOF on April 11, 1997.

23. When conducting their inspections, customs authorities find weapons or psychotropic substances without the proper documentation in compliance with established regulations or non tariff restrictions, or prohibited merchandise.
24. When conducting inspections customs authorities find that the taxpayer carries cash amounts (in either domestic or foreign checks), or any other negotiable credit instruments up to the equivalent of US\$10,000 in any currency and fails to declare this amount at the port of entry.
25. The amount declared in the official import shipping document (pedimento de importación) is 50 percent below the price of those identical or similar merchandises imported 90 days before or after the date of the operation, in conformity with articles 74, item II and 151, item VII of Mexico's Customs Law.
26. The taxpayer fails to comply with the obligations foreseen in the authorized program in terms of the PROSEC program authorized by the Ministry of Economy or the Ministry has initiated a procedure to cancel the program.
27. The taxpayer submits false documentation or documentation with false information.
28. The taxpayer vacates the premises of his business address without issuing the proper address change notification, after the notification of an "inspection order" (orden de visita), or after the taxpayer received notification of a tax credit, and before this credit has been endorsed or paid.

**B.** For the purposes of the sector specific importers' registry, when:

1. The taxpayer does not carry out the importation of merchandise for which he obtained authorization by the sector specific importers' registry during more than twelve months as of the date it subscribed to the registry or it carried out its latest import procedure, unless he submits a notification to the ACCG of the AGA, in which it explains this situation before the 12 month period expires.
2. The taxpayer has a legal representative or partner who is member of a company that has been suspended from the sector specific importers' registry by any of the reasons stated in this Rule and he fails to disclose them.
3. The renewal of their registration before the sector specific importers' registry of the following sectors: beer, wine and liquors, cigarettes, alcohol unnatural alcohol, and un-crystallize honeys, does not take place in conformity with item b), numeral 5 to B of Rule 2.2.1 of this Decree.
4. For those taxpayers registered in the sector specific registry for the wine and liquor industries, that were dropped from the registry.

The ACCG will notify taxpayers of the reason(s) that caused suspension from the importers' registry or the sector specific importers' registry, or from both, and grant 10 calendar days as of the date that such notification of suspension takes place to contest the determination by submitting evidence and legal arguments. In the event the taxpayer presents evidence during the specified period, ACCG will submit the evidence to the corresponding agency that suspended the program so that it determines whether the suspension was justified. In the event the taxpayers does not submit evidence or legal arguments within the 10 calendar day period, the ACCG will proceed to the

suspension of the program and will notify the taxpayer in conformity with article 134 of Mexico's Tax Code. This procedure is not applicable when the reasons for the program's suspension became known during the evidentiary procedures as established under article 42, item II and III of Mexico's Tax Code or the reasons for suspension established in numerals 1, 2, 3, 4, 5, 6, 7, 8, 10, 14, 17, 18, 19, 21, 22, 23, 24, 25, 26 or 28 of item A and numerals 1, 2 and 4 of item B, in these two cases the suspension will be effective immediately.

The following are considered as grounds for definitive suspension:

- a) As established in numerals 1, 12, 14, 20, 21, 22 or 28 of item A of this Rule.
- b) When the taxpayer is suspended in more than three occasions from the importers' registry or the sector specific importers' registry, in a five-year period as of the date of the first suspension, for any of the reasons stated under this Rule that it is different from the ones established in item a).

**Rule 2.2.5 Situations where the taxpayer cannot request its reincorporation to the importers registry or to the sector specific importers' registry.**

For the purposes of articles 78 and 79 of Mexico's Foreign Trade Law Regulations, taxpayers whose registration has been suspended by the importers Registry and/or the sector specific importers' registry, can request the invalidation of such suspension by submitting a request form (*i.e., solicitud de autorizacion para dejar sin efectos la suspension en el padron de importadores y/o en el pordon de sectores específicos*) which is found in item A of Annex 1 of this Decree, before ACCG. Taxpayers must provide the documentation specified in item A, numeral 1, items a) and b) and when necessary, item c) of Rule 2.2.1 of this Decree, in addition to a copy of the documentation that demonstrates the suspension is ineffective by the corresponding authorities.

The request form can be submitted to ACCG at Ave. Hidalgo 77, Modulo IV, first floor, Col. Guerrero, Delegacion Cuahtemoc, 06300, Mexico City, or in the case of the importers registry by courier mail to delivery address stated in item A, numeral 1, paragraph II, item b) of Rule 2.2.1 of this Decree.

For the purposes of those requests that seek to invalidate the suspension notice by the importers' registry or the sector specific importers' registry, the ACCG will evaluate the request. If ACCG finds the invalidation request proceeds, it must do so within a maximum of 30 days or 10 days when dealing with perishable goods.

For the purposes of this Rule, the taxpayers will not be able to request the invalidation of the suspension notice by the importers' registry or the sector specific importers' registry when the taxpayer has incurred in an infringement that merits a definitive suspension as established in the penultimate paragraph of Rule 2.2.4 of this Decree.

**Rule 2.6.3 Adjustments to the invoicing procedure by third countries pertaining to the Latin American Integration Association (ALADI) in conformity with ALADI's resolution No. 252.**

When merchandise is imported under preferential treatment in conformity with the certificates of origin issued in conformity with Mexico's trade agreements within the ALADI framework, and the commercial invoice attached to the official import shipping document (*pedimento de importacion*) is issued by an entity different from the exporter

or producer that has issued the certificate, and is located in a country that is not party to the corresponding agreement, the certificate of origin will be valid provided that:

1. The number of the commercial invoice that certifies the importation of merchandise into Mexico is indicated in the field corresponding to the commercial invoice of the certificate of origin.
2. The merchandise invoiced in a third country are indicated in the observations field of the certificate of origin. The name, status, and business address of the person or entity that issues the commercial invoice and certifies the importation of merchandise goods into Mexico must be included in the observations field.

In the event the exporter or producer, at the time of issuing the certificate of origin, does not know the number of the commercial invoice, the corresponding field must not be filled and the importer must annex to the official import shipping document (*pedimento de importacion*) a statement that certifies the merchandise declared in the certificate of origin corresponds to the one stated in the commercial invoice that certifies its importation. The importer must include the number and date of the commercial invoice issued by the entity located in the third country that is not party to the corresponding agreement and the date and number of the certificate of origin that certifies the importation.

For the purposes of this Rule, the issuance date of the certificate of origin can be prior to the date of issuance of the commercial invoice that certifies the importation.

**Rule 3.3.3 Obligation to comply with the inventory control system for companies with an export promotion program**

For the purposes of Articles 59, item 1, 108, 109 and 112 of Mexico's Customs Law and Rule 3.3.3, maquiladora and PITEX companies that import merchandise under their respective programs and EXEC program must put in place an automated inventory control system, by using a First In, First Out (FIFO) ("*Primeras Entradas Primeras Salidas*") methodology. These companies can also opt for the guidelines established in Annex 24, item A of this Decree.

For the purposes of Articles 59, item I, 185-A and 185-B of Mexico's Customs Law and of this Rule, it will be understood that maquiladora, PITEX and ECEX companies that have an automated inventory control system will be in compliance with this requirement when their inventory control system includes at least the records and catalogs established in Annex 24, item C of this Decree.

**3.3.11 Conditions for transferring merchandise temporarily imported**

**3.3.11.** .....

1. To present the official shipping documents with code V6 in conformity with Appendix 2 of Annex 22 of this Decree before the automated selection mechanism. The official shipping documents must certify the electronic operations of returned merchandise, which must include the company's name that makes the electronic transfer and the end user's name that receives the merchandise, without the need to show physical proof of the merchandise. Electronic official shipping documents for returned merchandise and definitive importation as referred in this paragraph can be

presented at different ports of entry. When dealing with the transfer of merchandise of the textile classified under chapters 50 to 63 of Mexico's Harmonized Tariff Schedule (HTS), the electronic official shipping document for returned merchandise must be submitted to the port of entry where the maquiladora or PITEX company that makes the transfer is located while the official shipping document for definitive importation must be presented to the port of entry where the end-user that receives the merchandised is located.

For the purposes of the previous paragraph, the official shipping document for definitive importation must be submitted to the automated selection mechanism on the day the transfer of merchandise takes place, while the electronic official shipping document for returned merchandise can be submitted to the automated selection mechanism no later than a day after the official shipping document for definitive importation has been submitted to the automated selection mechanism. In the event the electronic official shipping document for returned merchandise is not submitted within the specified term, the document can be submitted to the corresponding port of entry within the next month after the company submitted the official shipping document for definitive importation, provided that the company pays the corresponding fines for delayed submission as referred in article 183, item II of Mexico's Customs Law.

**3.3.14 Donation of waste, machinery and obsolete equipment by maquiladora and PITEX companies**

**3.3.14.** .....

**1.** .....

For the purposes of the previous paragraph, the official shipping document for definitive importation must be submitted before the automated selection mechanism the day in which the donation of merchandise takes place, while the electronic official shipping documents for returned merchandise can be submitted before the automated selection mechanism no later than a day after the submission to the automated selection mechanism takes place. In the event the electronic official shipping document for returned merchandise is not submitted within the specified term, the document can be submitted within the next month after the company submitted the official shipping document for definitive importation, provided that the company pays the corresponding fines for delayed submission as referred in article 183, item II of Mexico's Customs Law.

**3.3.17 Sale of parts or components imported under a temporary import program**

Companies of the auto parts industry with PITEX or maquiladora programs can buy parts and components imported temporarily in conformity with article 108 of Mexico's Customs Law, as well as the parts and components that provide inputs temporarily imported under these programs to manufacturers of the automotive or truck industries that use them to assemble and manufacture vehicles, provided that they comply with Rules 3.3.18 and 3.3.24 of this Decree and they pay the corresponding import value added tax (VAT) as established under Chapter II of the Mexico's VAT Law.

Those companies that fail to comply with the above mentioned Rules will be subject to the corresponding fines for not complying with their tax obligations.

**Additions**

**2.8.1 Registration as “certified company” for “comercializadoras”<sup>2</sup> of maquiladoras and PITEX companies**

**2.8.1.** .....

**A.** .....

**1.** .....

**d)** Sector to which the company belongs to.

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**C.** For maquiladora and PITEX companies and their “comercializadoras”, that belong to the same group and have carried out imports for at least US\$400 million in the semester prior to their registration as certified companies, provided that they meet the requirements in numerals 1 and 2 of item A of this Rule and submit the application form indicating their registration as “certified companies” to the corresponding program. To credit the amount of imports, the sum of imports of all companies that belong to the same group can be used. In this case, in addition to the application form soliciting the registration as certified company, it must be provided a list of all the companies that make up the group, as well as their names, business addresses and the amount of imports each company carries out.

**D.** .....

**3.** Copy of the document that certifies the company has machinery and equipment fixed assets, in the equivalent amount in Mexican pesos to US\$250,000.

Maquiladora and PITEX companies that show proof of machinery and equipment fixed assets in the equivalent amount in Mexican pesos of US\$10,000,000 when they submit their application, will not be obliged to certify the number of workers specified in numeral 2 of item 3.

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**2.8.5.** .....

**d)** For maquiladora and PITEX companies that are already registered as certified companies in conformity with item D or Rule 2.8.1 of this Decree, they will have to present a document issued by an authorized entity as established in Rule 2.3.6, that proves they are in compliance with their customs obligations in the year prior to the date they present their application to renew their registration as certified companies.

**2.8.6. National Auto Parts Industry**

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<sup>2</sup> Comercializadoras are authorized companies that can import merchandise into Mexico.

When dealing with companies of the auto parts industry, the National Auto parts Industry, A.C., will be the one in charge of issuing the official document mentioned in the above paragraph in conformity with AGA.

**2.12.2 Transgressions when declaring official shipping documents**

**2.12.2.** .....

**B.** .....

- 6.** It will be also considered an infringement when the tariff heading declared is different from the one being authorized to the maquiladora and PITEX company within their programs, provided that the following conditions are met:
  - a)** The tariff heading declared in the official shipping document corresponds to merchandise description the document certifies.
  - b)** The description of the merchandise specified in the official shipping document corresponds to the authorized merchandises in the program of the maquiladora or PITEX program; and
  - c)** The merchandise has been destined to any of the authorized aims in articles 108, 109, 111 or 112 of Mexico's Customs Law.

To this end, the importer will submit a copy that shows the extension of the corresponding program that includes the tariff heading declared in the official shipping document.

When dealing with inspection visits, observation notifications, or act notifications, the importer will have 15 days as of the next date the transgression takes place and the authorities issue the proper notification in conformity with article 46 of Mexico's Customs Law to deliver the information mentioned in the above paragraph to customs authorities.

It will not be considered a transgression when the difference between the tariff headings is due to the publication in the DOF a Decree was published in the DOF by which tariff heading were created, modified or suppressed and those tariff headings are incorporated to the PITEX, EXEC and Maquila programs without authorization by the Ministry of Economy.

**3.3.27 (Paragraphs 3rd and 4th) Elimination of the requisite to present a consolidated official shipping document (pedimento consolidado)**

**3.3.27** .....

**b)** .....

- 9.** The requisite to present the consolidated official shipping document (pedimento consolidado) is eliminated for packaging materials and crating materials for transportation in accordance



with article 303 of the North American Free Trade Agreement (NAFTA) (articles 37 of Mexico's Customs Law and 58 of this rulings).