



Dear Readers,

The **Customs Bulletin** newsletter purports to bring our clients and other interested parties up to date on the important issues being discussed and decided within the scope of the Judiciary, Legislative and Executive branches.

In this 3rd issue, we address 7 different issues related to Jurisprudence, Legislation and Answer to Inquiries.

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Souza, Schneider, Pugliese and Sztokfisz Advogados law firm is at the disposal of our clients to clarify any questions about the issues addressed in this publication.

We wish you a good reading!



Jurisprudence

CARF - Impossibility of beneficial retroaction when a more severe penalty is not replaced with a less severe one when the same offense is committed.

“SUBJECT: GENERAL TAX LAW RULES

Date of the triggering event: 12/3/2007

TAX LAW. APPLICABILITY. BENEFICIAL RETROACTION. NON-EVENT. We should not mention beneficial retroaction when a more severe penalty is not replaced with a less severe one when the same offense is committed.

The decision at hand constitutes a special divergence appeal filed by the National Treasury, in order to amend the panel decision handed down the 2nd Ordinary Panel of the 1st Chamber of the 3rd Section of the Administrative Council of Tax Appeals (CARF), which partially granted the appeal from the taxpayer to reduce the penalty imposed based on straw purchasing in foreign trade at 10 (ten) percent of the customs value of the imported goods.

Upon inspecting the import carried out, the Brazilian Revenue Service argued that the parties that have actually been involved in the transaction were allegedly concealed, which characterizes a ‘straw purchase’, thereby applying a regulatory fine on the taxpayer at 100 (one hundred) percent of the customs value of goods, as provided for in paragraph 3 of Art. 23 of Decree-Law No. 1,455/1976.

Filing a voluntary appeal, the taxpayer pleaded the retroactive application of Art. 33 of Act No. 11,488/2007, which provides for a fine at the rate of 10 percent on the transaction value, the assignment of a corporation name is detected, including through the provision of its own documents, to carry out third-party foreign trade transactions aimed at concealing the actual stakeholders or beneficiaries; such argument was upheld by the Panel of Judges, which reduced the amount for the fine applied.

As the case was escalated to the Superior Chamber of CARF due to an appeal filed by the National Treasury, the Third Panel, by majority vote, understood that the challenged regulations indicate different conduct, and the penalty provided for in Art. 33 of Act No. 11,488/2007 applied to the improper assignment of a name for foreign trade transactions, while §3 of Art. 23 of Decree-Law No. 1,455/1976 is intended to punish schemes intended to conceal the true purchaser of foreign goods.

In this sense, the Panel of Judges stated that benign retroaction would not apply, and there are no means to replace a more severe penalty with an alternative, less severe and later penalty, since the penalties differ in factual matters.

The Rapporteur of the decision stated, further, that the infringements are not identical and may be applied even concurrently, if the practice of both categorized conducts is observed.



Legislation and Answer to Inquiries

CAMEX Resolution No. 04/2016 - Final reduction of the Import Duty rates for three industrial inputs

On 01/27/2016, CAMEX Resolution No. 4/2016 was published to determine the permanent reduction of tax rates for purchases made abroad of NCMs Nos. 2833.27.10 ("barium sulfate"), 2920.90.22 ("Propargite") and 2904.90.14 ("4-chloro- alpha,alpha,alpha-trifluoro-3,5-dinitrotoluene"), all industrial inputs.

Barium sulfate is used for the manufacture of paints, whose Common External Tariff ("TEC") was reduced from 10 (ten) percent to 2 (two) percent, while Propargite is used in acaricide formulas (substances to fight mites that feed on plants), whose Import Duty has been changed from 14 (fourteen) percent to 2 (two) percent. Finally, the last item is used for the manufacture of herbicides, whose rate for purchases made abroad was reduced from 14 (fourteen) percent to 2 (two) percent.

CAMEX Resolution No. 01/2016 - Reduction of the Import Duty rates for eight products

On 01/11/2016, Camex Resolution No. 01/2016 was published to order the reduction in the Import Duty rate relating to the NCMs Nos. 2924.19.22 ("Dimethylformamide - DMF"), 2929.10.10 ("Diisocyanate diphenylmethane - MDI"), 3909.30.20 ("Polymeric MDI"), 5504.10.00 ("Viscose fiber"), 7606.12.90 ("aluminum plates and strips, with clad"), 2823.00.10 ("titanium oxide") and 3002.10.29 ("RB09 anti-tumor peptide").

The reductions are valid for twelve months, except for polymeric MDI, which is valid for six months, and shall be based on the following parameters:

- 14 (fourteen) percent to 2 (two) percent for to dimethylformamide (DMF), diphenylmethane diisocyanate (MDI) and polymeric MDI;
- 12 (twelve) percent to 2 (two) percent for viscose fiber and aluminum plates, sheets and strips with clad;
- 10 (ten) percent to 2 (two) percent for titanium oxide;
- 2 (two) percent to 0 (zero) percent for antitumor peptide.

CAMEX Resolution No. 123/2015 - Reduction, for 180 days, of the Import Duty for the Import of detergent and paper industry inputs

On 12/31/2015, the aforementioned resolution was published in the Federal Official Gazette, where the Foreign Trade Chamber (CAMEX) reduced from 10 (ten) percent to 2 (two) percent the Import Duty rate for the "Anhydrous" product for a period of 180 days, and per the import quota of 455,000 metric tons, due to domestic shortages. The product is used for the manufacture of detergent powders by spray tower drying and by dry mix.



CAMEX Resolutions Nos. 116/2015 and 117/2015 - Approval of 796 ex-tariffs for industry investment cost reduction

On 12/18/2015, Camex Resolutions Nos. 116/2015 and 117/2015 were published to order the reduction of the Import Duty for foreign purchases of industrial machinery and equipment not manufactured in Brazil. This is intended to encourage global investments of \$2.678 billion in industries such as capital goods, mining, energy, graphic, wood & furniture and petrochemical.

Single Foreign Trade portal - Reducing bureaucracy and paper costs

The bureaucracy elimination in the export and import process started to gain adherents and consensus from the federal agencies involved in customs procedures in December 2015, with the release of the Single Foreign Trade Portal (“Portal Siscomex”), which will be officially launched in 2017, whose key objectives include eliminating the current paper bureaucracy and facilitate the Brazilian trade flow with the world.

The Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior, “MDIC”) estimates, for 2016, a significant reduction from thirteen (13) days to eight (8) days in the export process, and from seventeen (17) days to ten (10) days in the import process by 2017. In addition, the Ministry estimates the replacement of approximately ninety (90) metric tons of paper per year and a cost reduction by approximately 40 percent for international business transactions.



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