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DOMESTIC SCOPE

Issuance of General Foreign Trade Rules for 2023 ("GFTR").

On January 1st 2023, the General Foreign Trade Rules for 2023 (with certain exceptions), published in the Federal Official Gazette ("Official Gazette") on December 27, 2022, became effective. The most relevant updates to the GFTR are noted below:

- A new procedure is established by means of which registered taxpayers that are not suspended in the Specific Sectors Import Registry, may request, through a clarification that the registration of a sector in said Register be cancelled.
- Transfers from customs accounts to the Treasury of the Federation ("Mexican Treasury") must be notified to such agency and to different authorities of the National Customs Agency.
- Abandoned goods may not be recovered or placed under another customs regime when such abandonment is expressly state (in writing).
- The CFDI folio with the Consignment Letter ("Carta Porte") Complement will be necessary to comply with certain customs obligations as of August 1st, 2023.
- The amount of the customs pre-validation of each customs declaration was increased to an amount of MX \$310.00.
- Companies that have a Value Added Tax ("VAT") or Special Tax on Production and Services ("Special Tax") certification or guarantee and wish to request a new guarantee for such taxes on temporary imports, must comply with the obligations set forth in Annex 30 of the GFTR.
- A maximum term of 5 calendar days is established for the internal transit of goods from the customs offices of the International Airport of Mexico City, Cancun, Guadalajara, Lazaro Cardenas, Manzanillo, Monterrey, Queretaro, Toluca, Tijuana and Veracruz to the customs office of the International Airport Felipe Angeles and vice versa.
- The Value Manifestation format to introduce merchandise into national territory under GFTR for 2018 remains in effect, as long as it is updated on the SAT's website through the Digital Window. The new format will be enforceable 90 days after its publication.
- The obligation of companies that have a Manufacturing, Maquila and Export Services Industry Program ("IMMEX Program, for its acronym in Spanish") to guarantee the payment of taxes for the temporary importation of sensitive goods of Annex II of the IMMEX Decree, by means of a bond policy, will be enforceable until the Ministry of Economy publishes the corresponding Agreement in the Official Gazette, and it becomes effective.

On the same date, Annexes 1 and 2, which contain the formats for foreign trade procedures, and Annex 13, which contains the fines and updated amounts for customs matters, respectively, entered into force.

Publication of Annexes 6, 22 and 26 of the GFTR for 2023.

On January 5th, 2023, Annexes 6, 22 and 26 of the GFTR for 2023 were published in the Official Gazette, which refer to: (i) tariff classification and commercial identification number ("NICO, for its acronym in Spanish") criteria, (ii) instructions for filling out import declarations; and (iii) inaccurate or missed data of the Mexican Official Standards under rule 3.7.20 of the GFTR.

Decree that exempts the payment of import duties and grants administrative facilities to several goods of the families' food basket.

On January 6th, 2023, a Decree was published in the Federal Gazette exempting the payment of import duties and granting administrative facilities to several goods of the families' food basket ("Decree that grants facilities to the families' food basket"). This Decree is in effect until December 31, 2023.

The purpose of the Decree that grants facilities to the families' food basket is to continue implementing measures to counteract the effects of the inflationary trend, for which purpose it is in addition to measures previously adopted by the Executive Branch, the temporary exemption from the payment of import duties on products that enter under the definitive import customs regime and the establishment of administrative facilities in the import procedure of products that correspond to the families' food basket in Mexico, which are classified in 56 tariff items of the Tariff of the Law of General Import and Export Taxes ("TIGIE, for its acronym in Spanish"). In order to enjoy this benefit, importers of the goods contemplated in the Decree must register in the Registry of Importers of Food Basket Products.

Finally, this Decree abrogates the Decrees exempting the payment of import duties and granting administrative facilities to several basic food basket goods and inputs, published in the Official Gazette on October 19, and November 18, 2022, respectively.

Notice communicating the available amounts of the refined sugar export quota for the 2022-2023 sugar cycle.

On January 13, 2023, the Ministry of Economy published in the Official Gazette, having made available to the interested sugar manufacturers, sugar groups or consortiums the amount of 2,327.685 metric tons of raw value of domestic refined sugar for its allocation for export to the United States. According to the Notice, the interested sugar manufacturers or sugar groups or consortiums had to submit their request for additional allocation of refined sugar for export to the United States during the first five business days following the publication of the Notice in the Official Gazette and in the National Foreign Trade Information System ("SNICE, for its acronym in Spanish"). The Ministry of Economy will make the allocation in accordance with the criteria indicated in the Agreement.

Decree that amends the export tariff for white corn (flour) in the TIGIE.

On January 16, 2023, the Decree that amends the TIGIE was published in the Official Gazette, in order to temporarily modify the export tariff for white corn (flour). Under the terms of the Decree, a 50% tariff will be charged on exports of such product. This amendment became effective the day after its publication in the Official Gazette and will be in force until June 30, 2023.

Notice communicating the ordinary adjustment to the maximum quota to export sugar to the United States from October 1st, 2022 to September 30, 2023.

On January 16, 2023, the Ministry of Economy published in the Official Gazette, the Notice announcing the ordinary adjustment of December 2022 to the amount of the maximum quota to export to the United States sugar originated in Mexico, derived from sugar cane or beet of the sugar cycle. The Notice states that the amount for the sugar cycle from October 1st, 2022 to September 30, 2023 will be 1,072,219.847 metric tons raw value.

Decree that establishes the closure of the Mexico City International Airport "Benito Juarez" for cargo transportation service operations.

On February 2nd, 2023, a Decree was published in the Official Gazette that establishes that the Mexico City International Airport "Benito Juarez" will remain closed for the operations of concessionaires and permit holders that provide domestic and international scheduled and non-scheduled air transportation services to the public, exclusively for cargo.

Exempt from this measure are concessionaires and permit holders that provide combined passenger and cargo services, as long as the cargo is transported in the same aircraft as the passengers.

Concessionaires and permit holders that provide domestic and international scheduled and non-scheduled air transportation services exclusively for cargo, with the exception provided for, have a maximum period of 108 business days from the day following the publication of the Decree in the Official Gazette to relocate their operations out of the Mexico City International Airport "Benito Juarez".

Decree that establishes restrictions on the importation of genetically modified corn.

On February 13, 2023, the Ministry of Agriculture and Rural Development published in the Official Gazette the Decree that establishes rules and measures related to the trade and use of genetically modified corn in Mexico. This Decree abrogates the Decree published on December 31, 2020 in the Official Gazette, which established the measures that the departments and entities of the Federal Public Administration ("FPA") must take to gradually substitute the use, acquisition, distribution, promotion and importation of glyphosate and genetically modified corn seeds and grains.

The Decree states that the departments and entities of the FPA must abstain from acquiring, using, distributing, promoting and importing genetically modified corn, as well as glyphosate or agrochemicals containing glyphosate as an active ingredient, for any use. On the other hand, it states that the biosafety authorities will revoke and will abstain from granting permits and authorizations for the release into the environment in Mexico of genetically modified corn seeds and for the use of genetically modified corn grain for human consumption.

Although no specific prohibition on the importation and use of glyphosate and transgenic corn is established, such products will only be allowed for animal feed and industrial human food use subject to the authorization of the Federal Commission for the Protection against Sanitary Risks ("COFEPRIS, for its acronym in Spanish") and never intended for corn destined for human food.

SMPS' Legal team notes that this Decree does not point out any scientific evidence that proves that human consumption of transgenic corn is harmful to health. Therefore, it is possible to anticipate challenges to the measure in terms of the USMCA and other FTAs signed by Mexico, as well as in terms of WTO agreements.

Finally, the Decree establishes February 14, 2023, to March 31, 2024 as the transition period for the development and compliance of the actions and measures indicated.

First Resolution of Amendments to the GFTR for 2023.

On February 16, 2023, the First Resolution of Amendments to the GFTR for 2023 was published in the Official Gazette, which establishes the requirements for registration in the Registry of Importers of Food Basket Products ("Food Basket Registry") in order to exempt the products contemplated in the Decree that grants facilities to the food basket published in the Official Gazette on January 6, 2023 (analyzed above) from import duties and obtain the administrative facilities contemplated in such Decree. The First Resolution of Amendments to the GFTR for 2023 also establishes the grounds for suspension of the Food Basket Registry, the procedure for reincorporation in the event of suspension and the grounds for definitive termination of the Food Basket Registry.

Agreement that establishes the goods whose importation is subject to regulation by the Ministry of Labor and Social Welfare ("Ministry of Labor").

On February 17, 2023, the Ministry of Labor published in the Official Gazette the Agreement that establishes that, for the importation of goods of any of the tariff items of Article 1° of the General Import and Export Tax Law, such

goods must not have been produced in whole or in part through the use of forced or compulsory labor of workers, including forced or compulsory child labor. This is in accordance with the Forced Labour Convention, 1930 ("Convention 29") of the International Labour Organization ("ILO") ratified by Mexico on May 12, 1934.

The Agreement also sets forth the procedure to be followed *ex officio* or at the party's request with respect to the use of forced or compulsory labor in the production of goods, pursuant to Article 23.6 of the USMCA.

The Agreement will enter into force 90 calendar days following the date of its publication in the Official Gazette.

Preliminary Resolution of the antidumping investigation on imports of aluminum cookware, originated in China, regardless of the country of origin ("Preliminary Resolution").

On February 21, 2023, the Unit of International Trade Practices of the Ministry of Economy ("UPCI", for its acronym in Spanish) issued the Preliminary Resolution, in compliance with the rulings of July 10, 2018, July 16, 2020 and January 7, 2021, that the Federal Court of Administrative Justice ("TFJA, for its acronym in Spanish") in the administrative contentious lawsuits filed by Comercializadora México Americana, S. de R.L. de C.V. ("CMA"), Sears Operadora de México, S.A. de C.V. ("Sears") and Coppel, S.A. de C.V. ("Coppel"), respectively.

As background of such rulings, on December 2nd, 2014, Vasconia Brands, S.A. de C.V. ("Vasconia" or the "Applicant"), requested the initiation of the administrative investigation for unfair international trade practices, in its modality of price discrimination, on the imports of aluminum cookware, entering through tariff item 7615.10.02 of the TIGIE or any other, originated in China, regardless of the country of origin.

The Preliminary Resolution indicates that, in compliance with the rulings referred to in the first paragraph of this note, the investigation procedure referred to above is still ongoing. Vasconia and CMA have a period of 20 business days to file the complementary arguments and evidence that they deem pertinent, only with respect to the determination of Brazil as a substitute country, counted from the publication of the Preliminary Resolution in the Official Gazette.

Final Resolution of the antidumping administrative proceeding on imports of coated flat steel from Vietnam, regardless of the country of origin.

On February 24, 2023, the UPCI published in the Official Gazette the Final Resolution that declared concluded the administrative investigation procedure on unfair international trade practices, in its modality of price discrimination, on imports of coated flat steel, including definitive, temporary and those that enter through the import regimes, tax warehouse, processing, transformation or repair in bonded facilities, strategic bonded facilities, and any other that may be incorporated to the customs legislation, as well as those that enter under the protection of Rule Eighth of the complementary rules for the application of TIGIE ("Rule Eighth") originated in the Socialist Republic of Vietnam, regardless of the country of origin.

As a result of the above, definitive antidumping duties were imposed on imports of coated flat steel described in the preceding paragraph, entering under tariff items 7210.30.02, 7210.41.01, 7210.41.99, 7210.49.99, 7210.61.01, 7210.70.02, 7212.20.03, 7212.30.03, 7212.40.04, 7225.91.01, 7225.92.01 and 7226.99.99, and under Rule Eight for tariff items 9802.00.01, 9802.00.02, 9802.00.02, 9802.00.03, 9802.00.04, 9802.00.06, 9802.00.07, 9802.00.10, 9802.00.13, 9802.00.15 and 9802.00.19 of the TIGIE, or any other, according to the following:

- 10.32% for imports from the exporting company Hoa Phat Steel Sheet Co., Ltd.
- 7.00% for the imports from the exporting company Hoa Sen Group Joint Stock Company.
- 6.40% for the imports from the exporting company Nam Kim Steel Joint Stock Company.
- 8.29% for imports from the exporting company Pomina Flat Steel Joint Stock Company.
- 10.84% for imports from the exporting company Ton Dong A Corporation,
- 10.84% for all other exporting producers.

The Final Resolution also determined that the imports from the exporting producer Maruichi Sun Steel Joint Stock Company were not made under conditions of price discrimination.

The importers that according to the Resolution must pay the definitive antidumping duty, will not be obliged to pay it if they prove that the country of origin of the merchandise is other than Vietnam.

Final Resolution of the antidumping administrative proceeding on imports of type I and type H steel beams originated in Germany, Spain, the United Kingdom and Northern Ireland, regardless of the country of origin.

On February 24, 2023, the UPCI published in the Official Gazette the Final Resolution that declared concluded the administrative procedure of investigation for unfair international trade practices, in its modality of price discrimination, on the imports of steel beams (profiles) type I and type H originated in Germany, Spain, the United Kingdom of Great Britain and Northern Ireland, regardless of the country of origin, that enter through the tariff sections 7216.32.99 and 7216.33.01 of the TIGIE or through any other:

- 0.0613 dollars per kilogram for imports originated in Spain coming from the company ArcelorMittal Olaberría Bergara, S.L. ("AMOB").
- 0.0666 dollars per kilogram for the imports originated in Spain from the other exporting companies.
- 0.1095 dollars per kilogram for imports originated in Germany.
- 0.1270 dollars per kilogram for imports originated in the United Kingdom.

The importers that according to the Resolution must pay the definitive antidumping duty, will not be obligated to pay it if they prove that the country of origin of the merchandise is different from Germany, Spain or the United Kingdom.

REGIONAL SCOPE

USMCA Panel resolves dispute on Rules of Origin in the Automotive Sector.

On January 11, 2023, the Ministry of Economy released the Final Report of the Panel constituted under the Agreement between the United States, Mexico and Canada ("USMCA"), resulting from multiple disagreements with the United States in the interpretation of the Rules of Origin in the Automotive Sector.

On August 20, 2021, Mexico filed a request for consultations with the United States regarding the application and interpretation of the United States to calculate the Regional Value Content ("RVC") of passenger vehicles, light trucks and their parts, since, according to its interpretation, these did not correspond to those established in the USMCA. Since the dispute was not resolved at the consultation stage, on January 6, 2022, Mexico requested the establishment of a Panel. On January 13, 2022, Canada requested to join the dispute as a co-complainant.

The Panel determined that the USMCA allows vehicle manufacturers to consider the essential parts of a finished vehicle (engine, transmission, body, etc.) as originating, as long as independently, such auto parts have met the minimum regional content percentage of 75%. The Panel considered that the methodology applied by the United States to determine the RCV was incorrect because it was stricter than the one indicated in the USMCA.

As a result of the ruling, Mexico, the United States and Canada must re-engage in dialogue and find a mutually favorable solution within the next 75 days. In the event that the three countries do not reach an agreement within this period, Mexico and Canada may temporarily impose tariffs on U.S. products in an amount equivalent to the damage caused by the disputed measure, as a trade countermeasure (retaliatory measure).

Agreement announcing Decision No. 113 of the Administrative Commission of the Free Trade Agreement between Mexico and Colombia ("Mexico-Colombia FTA"), adopted on December 16, 2022.

On January 20, 2023, the Ministry of Economy published in the Official Gazette the Agreement that announces Decision No. 113 of the Administrative Commission of the Mexico-Colombia FTA, whereby a temporary waiver is granted for certain textile goods manufactured entirely in Colombia using materials produced or obtained outside the free trade zone with the purpose of receiving the preferential tariff treatment established in the Mexico-Colombia FTA.

Such waiver shall be applicable only for the Colombian tariff item number 5402.31.00.00, which consists of synthetic filament yarns (except sewing thread) not conditioned for retail sale, including synthetic monofilaments of less than 67 decitex, textured yarns of nylon or other polyamides, of less than or equal to 50 tex per single yarn, provided they do not exceed the amount of 144.00 kilograms net.

The temporary waiver will enter into force on January 20, 2023 and will expire on January 19, 2025.

Agreement that announces the entry into force of the Comprehensive and Progressive Agreement of Trans-Pacific Partnership ("CPTPP") for Chile.

On February 20, 2023, the Ministry of Economy published in the Official Gazette the Agreement stating that the CPTPP would enter into force for the Republic of Chile on February 21, 2023.

CPTPP establishes the rules and disciplines under which the trade relations of the 11 countries of the Asia-Pacific region: Japan, Australia, Canada, Mexico, Peru, Chile, Malaysia, Vietnam, New Zealand, Singapore and Brunei shall be governed, and is considered one of the most relevant multilateral trade negotiations in the last 25 years.

CPTPP was signed on March 8, 2018 in Santiago, Chile. However, each signatory country must notify the Depositary in writing of the fulfillment of the applicable legal procedures for the CPTPP to enter into force in accordance with the legal framework of each country, and it would enter into force 60 days after the date of such notification.

As a result, on December 23, 2022, Chile notified New Zealand, in its capacity as Depositary, of the successful completion of all applicable legal procedures for the entry into force of CPTPP, so that CPTPP entered into force for Chile on February 21, 2023.

Chile was the tenth signatory country to become a full member of CPTPP. Brunei is currently the only signatory country pending for CPTPP to enter into force in all signatory countries.

Agreement that amends the Applicable Rate of the General Import Tax ("IGI, for its acronym in Spanish") for goods originated in the region formed by Mexico, Australia, Brunei, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

On February 21, 2023, the Ministry of Economy published in the Official Gazette the Agreement by which the Applicable Rate of IGI for goods originating in the CPTPP region, which correspond to Australia, Canada, Chile, Japan, Malaysia, New Zealand, Peru and Singapore.

This Agreement establishes the new dates for goods originated in the region formed by the CPTPP countries are free of duties. These dates are periodic and provide for tariff reduction from January 2025 to January 2033.

MULTILATERAL SCOPE

Establishment of panels to examine the European Union's complaints regarding China's trade measures.

On January 27, the Dispute Settlement Body ("DSB") of the World Trade Organization ("WTO") accepted requests submitted by the European Union for the establishment of two dispute settlement panels.

The first panel was established to examine measures imposed by China that allegedly affect and restrict trade in goods and services from, destined for or related to Lithuania. In its complaint, the European Union argued: (i) that since December 2021 China has applied discriminatory and coercive measures on exports to or from Lithuania; (ii) Chinese customs authorities have rejected imports from Lithuania and there has been a reduction in Chinese exports to Lithuania; and (iii) China formalized a total import ban on alcohol, beef, dairy products, firewood and peat from Lithuania, invoking phytosanitary reasons. China did not demonstrate that these bans were justified. China's customs statistics show that Lithuania's trade to China decreased by 80% between January and October 2022 compared to the previous year.

The European Union considers the measures described above to be inconsistent with the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), General Agreement on Trade in Services ("GATS"), Agreement on Trade Facilitation ("ATF") and the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement").

The second panel was formed to examine China's compliance with its intellectual property obligations. The European Union argued that China's measures unduly restrict the enforceability of intellectual property rights and are inconsistent with China's obligation under the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS").

In this second dispute, the European Union argues that court proceedings relating to the enforcement of intellectual property rights in China prohibit patent holders from enforcing their rights in other jurisdictions by initiating, pursuing or demanding the enforcement of court proceedings before a non-Chinese court. This prohibition takes the form of so-called "anti-proceeding injunctions" issued by Chinese courts, which provide for daily penalties in case of infringement, which are normally set at the maximum level permitted by China's Civil Procedure Law and accrue on a daily basis.

The United States appeals panel reports before the WTO.

On January 30, the WTO published that the United States appealed two panel reports. The first is the panel report concerning issues raised by China, Norway, Switzerland and Turkey related to measures on steel and aluminum products. On a general basis, in 2018 the United States imposed a 25% tariff on steel imports and a 10% tariff on aluminum imports, claiming that the importation of these products represented a threat to their country's national security. As a result, several complaints were filed at the WTO alleging that these tariff measures were inconsistent with WTO rules and violated international trade agreements.

The second is the panel report concerning the Hong Kong, China case on the origin marking in which Hong Kong, China argued that the United States violated the GATT 1994, the Agreement on Rules of Origin and the Agreement on Technical Barriers to Trade ("TBT Agreement").

The dispute centers on the fact that United States law states that imported products from Hong Kong, China must be marked as "China" to indicate their origin (origin marking requirement). Under the Hong Kong Policy Act of 1992, the U.S. Congress grants Hong Kong, China different treatment from that accorded to China in certain circumstances (including origin marking), subject to the condition that Hong Kong, China remains sufficiently autonomous from China. However, due to certain events in Hong Kong, China, such as China's adoption of the Hong Kong National Security Law in 2020, the U.S. President issued an executive order determining that Hong Kong, China was no longer sufficiently autonomous and suspended special treatment in certain areas (including the origin marking requirement).

However, as there continues to be no agreement among WTO Members to fill the available vacancies on the Appellate Body, there is no Appellate Body Division currently free to deal with these appeals.

SMPS LEGAL ANALYZES...

Mexico has become a growing investment destination with nearshoring.

SMPS Legal analyzes the opportunities that nearshoring has represented for various companies to relocate and transfer part of their production to third parties in nearby countries, in order to reconfigure global value chains and optimize supply production chains.

Mexico has multiple competitive advantages over other countries, from its geographical position as a neighbor of the United States, which is the world's largest importer, as well as the various international treaties to which Mexico is currently a party, especially the USMCA. [More information](#)

Sincerely,

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