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THE NEW UNITED STATES TARIFFS AND THEIR EFFECT ON THE MEXICAN MANUFACTURING INDUSTRY: SOME CONSIDERATIONS

The new United States tariff policy is now a reality and has already reshaped the global trade principals that were agreed since the enactment of the General Agreement on Tariffs and Trade ("GATT") and the World Trade Organization ("WTO"). The Most-Favored-Nation principle ("MFN") has now been replaced by a reciprocal tariffs system unilaterally proposed by the United States, the largest world's economy.

According to the reciprocal tariffs order issued by the president of the United States (the "RTO")[1], the reciprocal tariffs are the response by the United States to the different trade barriers that countries have imposed on USA's exports which, in their view, have created unsustainable trade deficits. Two days prior to the announcement of the RTO, the United States Trade Representative ("USTR") issued the 2025 National Trade Estimate Report on Foreign Trade Barriers (NTE), with a country-by-country analysis detailing the trade barriers that they have identified as the basis to support the reciprocal tariffs under the RTO.

US tariffs on Mexican exports

Prior to the enactment of the RTO, the United Sates had already imposed a series of tariffs on Mexican and Canadian products under separate executive orders (the "Mexican Tariff Orders"),[2] which were paused and adjusted as a result of a series of negotiations between the three governments until the announcement of the RTO.

[1] EO 14257 of April 2, 2025.
[2] EO 14914 of February 1, 2025, EO 14198 of February 3, 2025, EO 14227 of March 2, 2025, EO 14232 of March 6, 2025, and Proclamations 10896 and 10895 of February 10, 2025.

Currently, the US tariffs applied to Mexican goods are summarized as follows:

(i) 0% for originating goods under the United States-Mexico-Canada Agreement ("USMCA") or 25% on non-USMCA´s originating goods.

(ii) If the Mexican Tariff Orders are terminated or suspended, non-USMCA's originating goods will be subject to a 12% tariff.

(iii) Steel and aluminum, including derivative products, are subject to a 25% tariff.

(iv) For automobiles the tariff is 25% applicable only to the non-US content of the vehicle. For auto parts, the tariff is 25% applicable to the non-US content of the vehicle. Certain individual parts are exempted, and the US Customs and Border Protection ("CPB") will issue guidelines to determine the US content that will not be affected by the 25% tariff.

Mexico's response

In response to the US tariffs, Mexico did not immediately impose retaliatory tariffs. Instead, the Mexican president and the Ministry of Economy announced continuing negotiations to get a better agreement on non-originating USMCA's goods, automobiles and auto parts, and steel and aluminum. They expect to conclude these negotiations in 40 days.

As part of the strategy, the president of Mexico declared that one of the goals is to reach an agreement to reduce the 25% rate on non-USMCA's originating goods to at least 12%. If we

analyze the RTO, it already provides that in case the Mexican Orders are terminated, the non-originating tariff rate would be 12%, which in our view, opened the door for negotiations.

Currently, close to 60% of the Mexican exports to the United States are USMCA's originating goods; in particular, finished goods manufactured in Mexico, comply with the applicable rule of origin ("ROO") in relevant sectors such as automobiles/auto parts, pharmaceuticals, electronics. Prior to the imposition of the US tariffs, Mexican non-originating goods were exported to the United States under the MFN tariffs (i.e. 2.5% for automobiles) which are now being replaced by the 25% tariff. As further explained, certification of origin will be the essential issue for Mexican exporters, and perhaps, the most important issue that the US government will be auditing to enforce the new tariff policy.

Manufacturing and origin

Mexico is now the number one trading partner of the United Sates with close to 86% of its exports going to such market. The reason for this situation is the integration of the two economies, which has created a strong manufacturing zone and supply chains across the border. Elements like geopolitical, proximity, logistic costs, and labor support that integration.

Manufacturing inputs cross the US-Mexican border many times until they are exported as finished goods to the United States. The majority of the inputs and raw materials used by Mexican manufacturing plants are US originating goods which are temporary imported by Mexican manufacturing companies and transformed into finished goods that eventually are exported back to the United Sates (IMMEX regime). A majority of these Mexican manufacturing companies are wholly owned subsidiaries of large US industrial groups such as automobiles manufacturers. If tariffs are applied on one side of the border or sustained even for a short period of time (or in both in a scenario of retaliatory tariffs), sales on these markets will be seriously affected.

Moreover, under the reciprocal tariffs imposed on major manufacturers from Europe (20%) and Japan (24%), Mexico could be an alternative since, prior to such reciprocal tariffs, they exported a major portion of their inputs and components to their US' plants for the manufacturing finished goods (e.g. tier one auto parts manufacturers). Some of those suppliers already manufacture their auto parts in Mexico to be exported thereafter as finished goods to their plants or customers in the United States, after complying with the applicable USMCA's rule of origin.

Under this scenario, origin and compliance with the applicable ROO will be essential for Mexican exporters and their US counterparts who would be seeking USMCA's treatment to avoid the 25% tariffs.

For example, in our experience, many companies that exported goods to the United Sates under the MFN status before these tariffs, seem to confuse the term country of origin with country of shipment. It is clear that transshipments and triangulation of goods will now be two of the most important areas that CBP will be reviewing as part of their enforcement strategy.

Under current USMCA's transshipment rules, foreign non-originating goods retain their status if they're transported without passing through a non-Party country and goods remain under customs control and don't undergo operations beyond those necessary for their preservation or transport.

Rules of origin

Under the USMCA, preferential duty treatment shall be granted to originating goods based on the rules of origin contained in chapter 4 of the USMCA.

The general rules to determine whether a good qualifies as originating under the USMCA are based on the following criteria:

i. The good is wholly obtained or produced entirely in the territory of one or more Parties.

ii. The good is produced entirely in the territory of one or more of the Parties using non-originating materials, provided the good satisfies the applicable product-specific rules of origin set forth in the USMCA. The USMCA's product-specific rules of origin are:

a. the tariff shift rule (i.e., non-originating components shall suffer a change of tariff classification); or

b. meet a specific regional value content requirement ("RVC").

iii. The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

iv. The good is produced entirely in the territory of one or more of the Parties, is classified with its materials or satisfies the "unassembled goods" requirement and meets an RVC threshold. Namely, the good originates if:

a. One or more of the non-originating materials used to produce the good cannot satisfy the applicable product-specific rules of origin because both the good and its materials are classified in the same tariff heading; or

b. The good was imported into the territory of a Party unassembled or disassembled but was classified as an assembled good; and

c. The RVC of the good is at least 60% when calculated using the transaction value method, or at least 50% when using the net cost method.

De minimis rule

Like free trade agreements, the USMCA establishes a *de minimis* rule allowing non-originating materials to be used in a good up to a 10% threshold without it being determined as non-originating.

In other words, producers in Mexico, United States and Canada may use non-originating materials or components (i.e., materials produced in third-party countries) in the production process of a good, up to 10% of the good's value, without the good being disqualified for preferential treatment under the USMCA.

This rule provides greater flexibility to producers in the North American region, promoting trade and the utilization of the benefits of the USMCA as it increases the *de minimis* threshold provided in its predecessor, the North American Free Trade Agreement.

Namely, under the *de minimis* rule applicable to that good, it will be deemed as originating if it complies with the following:

i. if the value of all non-originating materials used in its production that do not undergo an applicable change in tariff classification is not more than 10% of:

a. the transaction value of the good, or

b. the total cost of the goods.

ii. a good that is otherwise subject to an RVC requirement will not be required to satisfy such content requirement if the value of all non-originating materials used in its production does not exceed:

c. 10 percent of the transaction value of the good, or

d. the total cost of the goods.

Enforcement-verification of origin

The US government, through the CBP, will likely issue new guidelines and rules for the enforcement of the new tariffs.

Likewise, verification of origin procedures under the USMCA will now become more essential for the United Sates and surely will be strengthened. Mexican manufacturing companies and exporters will need to be prepared to face and properly respond to such verification of origin procedures.

Under article 5.9 of the USMCA, the parties may verify the origin of the goods certified by an exporter/producer by one of the following alternatives: "… *(a) a written request or questionnaire seeking information, including documents, from the importer, exporter, or producer of the good; (b) a verification visit to the premises of the exporter or producer of the good in order to request information, including documents, and to observe the production process and the related facilities; (c) for a textile or apparel good, the procedures set out in Article 6.6 (Verification); or (d)*

any other procedure as may be decided by the Parties."

Final thoughts

The new trade and tariffs policy implemented by the current US administration with respect to Mexico and Canada, its trading partners under the USMCA, is still evolving and it is uncertain if it will remain as outlined under the current orders. However, under any final scenario, compliance with current USMCA's ROO will be essential for the Mexican manufacturing industry. Other areas such as the use of duty deferral programs (i.e. importing non-originating goods subject to tariffs currently imposed by Mexico on goods from countries that do not have a free trade agreement transformed into finished goods exported to the United States) will also be important and subject to other analysis.

As the implementation of the new US tariffs develops and final negotiations are concluded, Dentons' specialized trade team in Mexico, in coordination with our Dentons US and Dentons Canada trade teams, will keep clients informed on the relevant developments for all the sectors within the manufacturing industry, and be ready to advise clients to navigate this complex new trade environment.

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