



Global Trade Advisory Alert: Latin America Customs Update

Several regulatory and policy developments have occurred in the Latin American region over the past few months that may impact the customs and global trade activities of many multinational companies, including:

- Argentina: Modifications to foreign exchange control regulations impacting imports and exports of goods and services;
- Brazil: Customs valuation/transfer pricing regulatory updates and Value Added Tax (VAT) reform; and
- Mexico: Recent updates to the Authorized Economic Operator (AEO) certification.

Argentina: Modifications to foreign exchange control regulations impacting imports and exports of goods and services

On 13 December 2023, the new Argentinian Administration, led by the recently elected President Javier Milei, issued several Decrees and Resolutions that modified the foreign exchange (FX) control regulations impacting the payment of imports of goods and services, as well as tax changes on importations of specific goods. In past years, the previous government had established strict restrictions on imports of goods and payments for such imports sent abroad, which was motivated by the lack of reserves of foreign currency of the Central Bank of the Argentine Republic (BCRA). Now, the new president aims at targeting the economic and financial crisis through a liberal and more aggressive approach.

Changes regarding payments for imports

Through Communication “A” 7917, published on 13 December 2023, the BCRA modified the conditions to access the FX market to make payments abroad as follows:

- For payment on new imports of goods, it eliminated previous authorizations and requirements, specifying that payment may be made based on a schedule of deadlines that is determined based on the import tariff classification of the imported goods. For example, the import of electrical energy and hydrocarbon derivatives may be paid without a deadline, while pharmaceutical products and respective inputs and fertilizers will have a term of 30 days from their import date, automobiles and luxury goods will have a term of 180 days.

- A similar situation applies to imports of services, for which payments will be allowed without further requirements for many services (e.g., passenger services, travel services, health services, audio-visual services, government services, and credit card consumption). For other services, the term will be 30 days or 180 days from the provision or accrual of the service, depending on whether the provider is an unrelated or related party, respectively.
- Advance payments for imports of goods or services will require prior authorization from the BCRA, unless the importer simultaneously enters and converts into pesos, financing funds obtained from foreign institutions. Payments related to the Incremental Oil and/or Natural Gas Production Program, and the Knowledge Economy Promotion System, are exempt from this limitation.

However, the main subject addressed by Communication “A” 7917 is the stock of debt for imports, which is estimated at approximately US\$50 million, mainly due to the restrictions established over the last several years. Communication “A” 7918, published on December 13, 2023, established the guidelines for the creation of a Bond for the Reconstruction of a Free Argentina (BOPREAL), which are BCRA Notes in US dollars that have a redemption option, aimed exclusively for importers of goods and services with pending payments. The BOPREAL will accrue interest based on a 360-day year (comprised of 12 months of 30 days each), at a maximum annual rate of 5%, to be defined in the bid announcement, which may be payable on a quarterly or semi-annual basis in US dollars. As of now, this would be the only alternative to cancel debts for imports of goods and services through the FX market, unless expressly authorized by the BCRA.

Solidarity Tax

Also, under Decree 29/23, published on 13 December 2023 in the Official Gazette, the government established an increase in tax rates under the “Tax for an Inclusive and Solidary Argentina” (PAIS Tax). The PAIS Tax applies on the importation of non-luxury goods and the purchase of freight services and other transportation services from non-residents. The purchase of foreign currency to pay for the importation of non-luxury goods and the purchase of freight and other transportation services is now subject to a rate of 17.5%.

Brazil: Customs valuation/transfer pricing regulatory updates and VAT reform

As part of its accession to the Organization for Economic Cooperation and Development, Brazil has modified its customs regulations and policies to align with international standards. Some of these modifications are also related to the implementation of new transfer pricing rules and the overall simplification of Brazil’s indirect tax system.

New transfer pricing rules

New transfer pricing rules have recently been released with the objective of aligning transfer pricing and customs valuation in Brazil. These rules and modifications include:

- In June 2022, the Brazilian Federal Revenue (RFB) published Normative Instruction No. 2090/2022, a new customs valuation regulation, which establishes the possibility of using transfer pricing studies to support customs valuation in specific instances;
- In February 2023, the RFB published Normative Instruction No. 2132/2023, which implemented the arm’s length principle in Brazilian legislation; and
- In June 2023, Provisional Measure No. 1,152/2022 was converted into Law 14,596/2023, granting the option of applying the new transfer pricing rules to calendar year 2023, and making its application mandatory from 2024 onwards.

Proposed indirect tax reform

Brazil is also taking significant steps toward simplifying its indirect tax system by proposing to replace its current multiple level (federal, state, and municipal) VAT system with a simpler, dual VAT approach and an additional selective tax. Specifically, in July 2023, the Brazilian Chamber of Deputies approved a proposed constitutional amendment called “PEC 45”, which creates a dual VAT system by:

- (i) merging the state VAT (ICMS) and the service tax (ISS) into a single tax on goods and services (IBS) administered by the states and municipalities; and
- (ii) combining the federal contributions on gross revenues (PIS and COFINS) into a contribution on goods and services (CBS) administered by the federal government.

Regarding customs impacts, it is important to note that import duties are not affected by the VAT reform. The proposed constitutional amendment does not cover free trade zones or special customs regimes. Nevertheless, a more standardized environment is expected for ICMS, which might potentially have an impact on import and export operations.

VAT reform will still need to be approved by the Brazilian National Congress. A seven-year transition period for the implementation of the dual VAT system is expected, which would create a hybrid system and require careful implementation, especially since it may increase taxpayers' tax compliance burdens. This will involve evaluating all the effects of the new rules in overall daily compliance management, including tax return filings, computation accuracy, monitoring and monetizing input tax credits, and, most importantly, managing tax audit risks to minimize potential penalties for noncompliance commonly applied by the Brazilian tax authorities.

Mexico: Recent updates to the AEO certification

On 3 August 2023, modifications to the Mexican AEO certification were published in the Official Journal of the Federation. These modifications established a new format of the Company Profile that companies need to complete to obtain or renew their AEO certifications. The changes to the Company Profile will enter into force in six months from the date of publication, which is February 2024. Modifications require AEO participants to:

- Establish a new Safety Committee where executives and managerial positions get involved in different safety processes like periodic CCTV reviews;
- Conduct annual drills to validate the effectiveness of contingency plans related to (among others) cyberattacks and kidnapping of transport drivers by armed persons;
- Conduct risk analysis related to money laundering and screen potential restricted parties;
- Have a documented social compliance policy and program among their employees and business partners ensuring that imported goods were not extracted, produced or manufactured, in whole or in part, with prohibited forms of labor;
- Review and evaluate commercial partners periodically, at least once per year;
- Map the different processes, identifying parties involved directly or indirectly in the supply chain, like warehousing, transportation companies and third-party logistics;
- Implement processes to reduce infestations;
- Establish a database of hired personnel and perform periodic background checks;
- Take training in matters of money laundering, terrorism, cyber security, and others; and
- Include specific documentation in an investigation file following a supply chain security incident.

These modifications are aligned with recent changes to the Customs Trade Partnership Against Terrorism (CTPAT) program in the US, which requires members to have a documented social compliance program in place that, at a minimum, addresses how the company ensures goods imported into the US were not mined, produced or manufactured, wholly or in part, with prohibited forms of labor. CTPAT also requires that importers, exporters, and manufacturers include the threat of forced labor into the company risk assessment methodology and document how they address this threat. CTPAT started to implement these changes in 2023, aiming to ensure that the whole supply chain assess risk, monitor compliance, report, and remediate any violation referenced to forced labor.

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