

Send to: PUREVDORJ, MUNKHSELENGE
WAKE FOREST UNIVERSITY SCHOOL OF LAW
1834 WAKE FOREST DR
WINSTON SALEM, NC 27109-8758

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Doing Business in Spain

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CHAPTER 16 Import and Export

1-16 Doing Business in Spain § 16.02

§ 16.02 Imports and Exports

[1] Import Systems

During the past few years the commercial regime for importation has been modified and adapted to the new conditions imposed by Community norms and other liberalizing processes within the Spanish economy. The consolidation of a single market from January 1, 1993 has supposed the elimination of interior Community borders and has made necessary the definitive unification of Community commercial policy towards imports from third countries. This is reflected in EC Council Regulations 625/2009, of July 7 (which derogates EC Council Regulation 519/1994, of March 7) and 260/2009, of February 26 (which derogates EC Council Regulation 3285/1994, of December 22), concerning the common regime applicable to imports from third countries.

The new Community commercial regime supposes the elimination of means of vigilance and commercial restrictions that the different member states applied. This has been substituted by measures of a Community sphere and uniform documents and procedure that will be applicable in all member states. On the other hand, EC Council Regulation 517/1994, of March 7 (LC Eur 1994, 543), concerning the common regime applicable to imports of textile products from certain third countries that are not covered by bilateral agreements or other specific community import regimes, eliminates national vigilance measures and suspends quantitative restrictions that have been applied to these products.

As a result of these Community regulations and the liberalization of exchange control in Spain, Spanish provisions regulating the procedure and the regime of the importations have been partially modified. For example, the requirement for administrative authorization of importation is eliminated for operations involving compensations or barter and the importation of crude oil and its derivatives by companies subject to a regime of permanent customs intervention. The requirement of an administrative authorization for importation of certain products when they are used or in a bad state is also eliminated. Likewise eliminated, except when expressly provided otherwise, is the requirement of prior notification of importation of merchandise originating from certain countries and for which no administrative authorization of importation is necessary.

Given the diversity of regulations and procedures existing for the importation of goods, the General Secretariat for Exterior Commerce (*Secretaría General de Comercio Exterior*) has issued circulars detailing not only the applicable legislation to imports and the different existing commercial regimes but also the importation documents that are required for each type of import and their appropriate processing with the competent authorities. The one currently in

force is the Circular of March 1, 2010 of the General Secretariat for Foreign Commerce on the procedure and processing of imports and introduction of merchandise and their commercial regimes.

There are three basic systems for importation: liberalized imports, importation according to global or contingency quotas and bilateral importation.

Law 53/2007, of December 28 on control of the foreign trade refers to the regulation of material for defense and other products and material for double use. It also rules the procedure to transfer defense material. n1

[a] Liberalized Imports (*Importaciones Liberadas*)

For the application of "liberalized import" norms, a product must first have been categorized as a liberalized import in one of the lists published by the Offices of the Director General of Tariff Policy and Imports (*Direccion General de Politica Arancelaria e Importaciones*). The country of origin and source must also be included in the lists for liberalized overseas trade. Finally, such goods must be unused and of standard quality. n2

[b] Importation According to Global Quotas (*Cupos Globales*)

This is an intermediate system between free and bilateral import trade. The classification of a product as being one for which total importation quotas are appropriate is carried out by the Offices of the Director General of Tariff Policy and Imports. Each year it determines which goods shall be classified, and it determines the total volume of such goods to be allowed as imports. An importer makes an application for importation charged against the quota. The authorization against global quotas is discretionary in nature.

[c] Bilateral Imports (*Bilaterales*)

Bilateral imports require that Spain and the country of origin of the goods make a commercial agreement. This requirement is also applied to certain specified goods from otherwise "liberalized countries." Within the framework of these agreements, it is common to establish a system of compensation of payments called "clearing" in which the actual transfer of foreign currencies are limited to the final balances. Authorization for bilateral imports is of an entirely discretionary nature.

[2] Anti-Dumping Duties

In order to prevent the introduction of goods at abnormally low prices or those which have enjoyed subsidies in their country of origin, a system of "antidumping or countervailing" duties is set up. It is designed to reset the prices at their normal levels in the context of international markets. These are fixed by an inter-ministerial commission and are paid as complements to the corresponding customs tariff.

Royal Decree 925/1982, of April 30, which repealed the Decree 3519/1970, of November 12, sets forth the procedural rules for the establishment of antidumping and countervailing duties. The procedure for the imposition of antidumping or countervailing duties is initiated at the instance of the interested party, or *ex officio* by the authorities themselves. Consequently, any body representing the sector of production which is affected, or any individual national producer affected may file a petition in the Ministry of Economy and Trade. The petition seeks the establishment of countervailing duties. It must provide information that proves the presence of dumping, premium, or subsidy; the presence of loss; and the causal relationship between them. Subsequently, an investigation begins, and is reported to the exporting country concerned and published in the Official State Gazette. Representatives of the country concerned may present evidence in defense. If the proceedings give rise to an affirmative result, the inter-ministerial commission for antidumping and countervailing measures will forward a report to the Minister of Economy and Trade on the advisability or inadvisability of establishing countervailing duty. In accordance with the provisions of the Tariff Act, these duties are considered to be supplementary to, or surcharges on the customs schedule tariff.

Ultimate resolution is in the province of the Council of Ministers, acting on the proposal of the appropriate minister. They will decide whether to impose countervailing duty. In cases of urgency, it is possible that measures may be adopted by resolution of the Offices of the Director General of Tariff Policy and Imports. It will have a maximum period of effectiveness of four or six months, depending on the case.

[3] Export System

Exportation is regulated by Royal Decree 2701/1985, of December 27. Said Royal Decree established the general principle of freedom in export operations. Certain goods are excepted. The Order of August 1, 2005 of the Ministry of Trade and Tourism (Order ITC/2880/2005) establishes the procedure and application for the expedition and export of merchandise in the Peninsula, Balearic Islands and Canary Islands. n3 The Circular of April 10, 2008, of the General Secretariat for Foreign Commerce refers to the procedure and processing of exports and expedition of merchandise and their commercial regimes.

[a] Exportable Goods

All goods may be exported, provided the conditions and requirements have been met. There are no limitations other than those established by the government for reasons of morality, health, public order or other internationally recognized reasons. The use of an export license requires the fulfillment by the exporter of all the required conditions, periods, and terms specified in the license.

[b] Requirements for Licensing

If licenses and customs export declarations are to be valid, they must contain the following required information: the name of the exporter, the name of the consignee, and specification of the goods, the net weight and total amount of the goods, their unit price, their statistical position (Brussels nomenclature), the total value and partial discounts, the currency in which payment is to be made, the country of destination, delivery conditions (CIF, FOB, FAS, etc.), the export method, the form of bank payment to be used, the term for payment, the period of validity of the license, and the customs point of departure. The validity of a license or customs export declaration issued is conditioned on the authenticity of this data.

Any individual or legal entity, whether Spanish or foreign, resident in Spain, may be an exporter. When the goods are from a sector for which there is a special registry, such person must be registered as an exporter.

As already pointed out, one of the requirements to be contained in the export license, or customs export declaration, is the type of currency in which payment is to be made. It must belong to one of the following classes: (a) convertible foreign currency admitted to listing on the Spanish market; (b) Euros from foreign accounts; or (c) non-convertible currency from a bilateral payments agreement account.

No export license nor customs declaration is required for travelers' goods with a value of less than 1,202.02 Euros. n4 They are also not required for the dispatch of goods (except philatelic items) valued at less than 300.51 Euros or the temporary export of works of art. These and other issues are regulated in detail in the export legislation.

The expeditions and exportations of specific goods may be subject to a previous control. n5 Said expedition or exportation requires the issue of a document known as "Prior Export Notification" (*Notificación Previa de Exportación "NPE"*). This administrative document is required in case of merchandise in the free commercial regime, but subject to Prior Statistical Surveillance (*Vigilancia Estadística Previa*).

Specific agricultural products will require for their export the Export Certification (AGREX) or similar document

established by European Community regulation. n6 The exportation of goods that are subject to Community quantitative restrictions will require the issuance of the Export License established in Annex II B of the Regulation (CE) 717/2008 dated July 15 (which derogates Regulation (CE) 738/1994 dated March 30).

On the other hand the export of goods that are subject to an administrative authorization regime will require the issuance of a document known as "Administrative Export Authorization" n7 (*Autorizacion Administrativa de Exportacion "AAE"*). There are two types of AAE. The Administrative Export Authorization per operation and the Global Administrative Export Authorization. Jointly with this administrative documentation the exporter will also use commercial documentation such as an invoice, a packing list, bank documentation, insurance policy, transport documentation, etc.

Evidence of the export is done by presenting, at the corresponding customs exit, the Unique Administrative Document n8 (*Documento U nico Administrativo "DUA"*) or by way of the INTRASTAT system.

[4] Exporters' Registry (*Registro de Exportadores*)

Royal Decree 3039/1980, of December 30 abolished the General Exporters' Registry and updated the Special Exporters' Registries. In principle, registration in the Special Exporters' Registries is a requirement in order to be able to export the goods which are the object of these Registries. Specifically, there are special registries for the export of certain agricultural products, such as truffles, almonds, and hazelnuts. By means of an Economy and Trade Ministerial Order, the conditions of registration in such Special Exporters' Registries are foreseen.

FOOTNOTES:

(n1)Footnote 1. This Law is developed in the Royal Decree 2061/2008, of December 12 (which derogates the Order ITC/822/2008, of February 19).

(n2)Footnote 2. The Ministerial Order of November 24, 1998 (which derogates the Ministerial Order, of May 8, 1995, which in turn derogates the Ministerial Order of June 14, 1994).

(n3)Footnote 3. This regulation is not applicable to the export of derivative species and products included in the Annexes of the EC Regulation 338/1997 of the Council dated December 9 1996 (which derogates EC Regulation 3626/1982 dated December 3), expeditions and exports made under the temporary importations for subsequent exportations or temporary importation, or exports made from Ceuta or Melilla.

(n4)Footnote 4. These figures are subject to periodic revision.

(n5)Footnote 5. *See* Annex I of the Order dated August 1, 2005.

(n6)Footnote 6. *See* Annex I of the Order dated August 1, 2005.

(n7)Footnote 7. Copy of said document is attached as Annex V to the Order dated August 1, 2005.

(n8)Footnote 8. This document shall be fulfilled following the instructions of Resolution of September 15, 2008, and Resolution of August 8, 2007.