Mexico Alert: Current Problems with Imports due to Incorrect Incoterm Declarations

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"Incoterms" are 11 internationally recognized rules that define the responsibilities of buyers and sellers for the sale, transportation, and delivery of goods. Incoterms specify who is responsible for paying for and managing shipment, insurance, documentation, customs clearance, and other logistical activities, and who bears the risk of loss.

Incoterms are relevant when importing goods into Mexico because the Incoterm stated on the import documentation presumes the expenses that must be included to determine the applicable customs value of the imported goods. The customs value is the taxable basis for determining applicable customs duties. The customs value must include some import-related expenses ("incremental expenses") if they are to be paid by the importer and are not included in the price paid for the goods.

Currently, Mexican tax authorities are auditing importers for their incorrect use of an Incoterm in their import declarations, resulting in the improper addition of incremental expenses in the customs value of the imported goods, mainly for freight, insurance, and packing costs.

Sometimes there are errors when filling out the import forms or "pedimentos," but in other cases the importer lacks sufficient contractual documentation to demonstrate that the imports were effectively made in accordance with the applicable law. The customs authorities may determine fines of up to US$4,500 for each import when there are insufficient elements to justify the declared customs value (based on the Incoterm that was stated). Because a large volume of imports is customarily audited, the fines can be very high.

Which Incoterm is used should be carefully selected to ensure that it is the appropriate one and that it is correctly used in the supporting documentation for the "pedimentos."

Importers should conduct a due diligence review of previous years on a preventive basis to identify whether the correct Incoterm was used in the import declarations and to confirm that the appropriate supporting documentation exists.

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