

Functions of the customs tariff in Mexico; 28 years after Marrakesh**Funciones del arancel aduanero en México; 28 años después de Marrakech**MORENO-YEBRA, Felipe^{†*}*Universidad de Guanajuato, Campus Guanajuato, Economic and Administrative Sciences Division, Department of Management and Business Administration, Mexico.*ID 1st Author: *Felipe, Moreno-Yebra* / ORC ID: 0000-0002-0049-5651, Web of Science Researcher: IDHHZ-5922-2022, arXiv Author ID: FelipeMY

DOI: 10.35429/JED.2022.28.9.30.37

Received: July 30, 2022; Accepted: December 30, 2022

Abstract

Mexico experienced a before and after 1994. Previously, the Customs Tariff was used as a protectionist instrument to support The Import Substitution Industrialization Model (ISI) which sought to strengthen the domestic industry with very high tariffs (1947-1979). The tax system of the time underwent interesting changes to avoid multiple taxation, a situation that was overcome with the National Fiscal Coordination System (1980). Mexico began its insertion into globalization in 1979 to express its intention to join the GATT, and objective that was achieved until 1986. In 1994, the entry into force of the North American Free Trade Agreement (NAFTA), coincided with the Marrakesh Declaration. Nowadays, 27 years have been passed in which Mexico, contrary to the ISI model, has established itself as an open economy, where the customs tariff has a dual role: it is a key instrument to stimulate trade between partner countries and, on the other hand, it is a solid barrier to prevent the benefits of Trade Agreements from being extended to non-signatory countries.

Objective: analyse the function of the customs tax in Mexico.

Methodology: documentary research.

Contribution: show the function of the customs tax in an open economy.

Tariff, Customs, Taxation

Citation: MORENO-YEBRA, Felipe. Functions of the customs tariff in Mexico; 28 years after Marrakesh. Journal Economic Development. 2022. 9-28:30-37.

Resumen

México vivió un antes y un después de 1994. Antes, el arancel aduanero se manifestó como instrumento proteccionista para apuntalar el modelo Industrialización por Sustitución de Importaciones (ISI) donde se pretendió fortalecer la industria nacional con aranceles aduaneros muy altos (1947-1979). El Sistema Tributario de la época sufrió interesantes cambios para evitar la recurrente múltiple tributación, situación superada con el Sistema Nacional de Coordinación Fiscal (1980). México inicia su inserción a la globalización en 1979 al manifestar su intención de adherirse al GATT, objetivo que cumple hasta 1986. En 1994, la entrada en vigor del Tratado de Libre Comercio de América del Norte (TLCAN), coincide con la Declaración de Marrakech. A la fecha han pasado 27 años en los cuales México, contrario al modelo ISI, se ha consolidado como economía abierta, donde el arancel aduanero tiene un doble papel: es instrumento clave para estimular la actividad comercial entre países socios y, por otro lado, es barrera sólida para evitar que los beneficios de los Tratados Comerciales no se extiendan a países no signantes.

Objetivo: analizar la función del tributo aduanero en México.

Metodología: investigación documental.

Contribución: mostrar la función del tributo aduanero en una economía abierta.

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Introduction

By way of Introduction: Initial Considerations

Multiple Taxation and its elimination through the National System of Fiscal Coordination

Tariff policy in Mexico was and will be of transcendental importance. Although this study focuses briefly on the situation of the customs tariff 20 years after Marrakech, it is important to describe how the Mexican tax system, henceforth referred to as the STM, evolved in order to prepare for the impetuous race to join a global market, as we believe that customs tariff policy was not isolated from other taxes.

The distribution of resources in a country like Mexico is complicated to date. The issue has been dealt with for a long time. The First National Fiscal Convention in 1925 tried to solve it, highlighting the lack of coordination between the exploitation of tax sources, as they had their own taxation system (Marcela, 2005). However, the efforts to eliminate multiple taxation were not enough, so other solutions had to be found.

In 1980, two events were relevant for the STM. First, the Value Added Tax (VAT) was introduced to replace the Federal Tax on Commercial Income. Second, the National System of Fiscal Coordination was formally created. These situations resolved the problem of multiple taxation. To date, the problem of multiple taxation has been eliminated; the taxes levied by the Federation, States and Municipalities do not create tax competition. The problems now arise in the amounts to be collected to meet public expenditure.

Import Substitutive Industrialisation (ISI). Protectionist Tariff Policy

In the mid-1940s and until the 1980s, Mexico opted for an inward growth model called Import Substitution Industrialisation, ISI (Héctor, 2013), where the aim was to build an industrial sector to meet domestic needs, of course, consuming what the country produced and, in parallel, imposing quantitative restrictions on imports, in terms of customs tariffs, replacing with ad-valorem tariffs the specific ones existing at that time (Héctor, 2013, p. 34).

Unemployment, weak industry, among others, were arguments for increasing tariffs during the 1950s and 1960s, which were later replaced by quantitative import restrictions (Héctor, 2013, p. 35). Thus, the reaction at the time was predictable: if the good could be acquired in the domestic market, the border would be closed.

The protectionist tariff policy designed to substitute imports was detrimental to exports (Rogelio, 1980). The fact that goods were produced domestically did not ensure the best costs, in fact, they were generally higher. Therefore, it was difficult to compete in the international market.

Tariff policy in the ISI was characterised by high import barriers, where import tariffs for manufactured goods averaged 74% for Mexico, 84% for Argentina, and 184% for Brazil (Paola, 2011). The tariff barriers referred to above allowed, in the Mexican case, to succeed in blocking the border by preventing the entry of manufactured goods.

During the aforementioned period, the state's import tariff policy was constant (Manuel, 2015), raising customs tariffs in an attempt to strengthen national industry.

Thus, they created a sophisticated protectionist section (Miguel, 1993) and it was configured as follows: a) Very high tariffs (ad-valorem and specific) for consumer goods. Raw materials, machinery and equipment were taxed lower through legal rules designed exclusively for novel industries, b) prior permission requirements, c) official import prices to combat under-invoicing and d) quotas, in order to control and allow the entry only of quantities that were not produced in the domestic market.

At the time, imports had to comply with the requirements outlined in the previous paragraph. Very high tariffs, prior permits, official prices and quotas made it possible to substitute imports with domestically produced goods. The above is a brief reference to the customs tariff in the Mexican legal scenario prior to Marrakesh.

Implementing the New Legal Framework for a successful integration in the globalized world

Mexico and the GATT, preparations for the Trade Agreements

In 1979, still with strong protectionist sentiments, Mexico announced its intention to align itself with the GATT, the preceding reflections cannot be seen without the commitments made by it. The pressure from the United States for Mexico to join GATT was significant, as it was claimed that it would improve trade relations. It was clear that Mexico could not remain outside the international dynamic, but it was said that it had to do so decisively and under conditions that favored our country (Jaime, 1979).

After several years of negotiations, Mexico finally joined the GATT in 1986. The accession obeyed the guidelines that the latter enunciated regarding the configuration of Customs Unions and Trade Agreements between member countries, where, of course, there were also the rules to be followed for the negotiations. It is here where the relevance of the Customs Tariff as a negotiating instrument to differentiate the products that will be traded between the partners arises.

For Mexico, insertion into a globalized economy presented great challenges, as it had to create norms, reform existing ones and, in general terms, adapt its positive law to the guidelines acquired by the commitments assumed in the International Agreements.

Mexican Customs Law had to adapt to globalization, because now, if the world is seen as a single market where the marketing of goods is carried out without obstacles, the legal rules need to adapt to the new rules of the game. Thus, Customs Law has been characterized as three-dimensional (Oscar, 2005) as it brings together domestic, tax, non-tax and international rules, but we prefer to speak of modern Customs Law (Blanca, 2011).

Domestic legal norms are those that regulate the taxation aspect of Customs Law, among others, the Customs Law, the General Import and Export Tax Law, the Value Added Tax Law, the Income Tax Law, the New Car Tax Law, the Foreign Trade Law, the Federal Tax Code, and the Special Tax on Production and Services Law. All of them were adapted by including precepts derived from International Treaties signed by Mexico, which to date make up an abundant framework of applicable regulations (Gerardo, 1996) to customs operations.

Customs, in a globalized world, takes on a leading role as it must modernize (Pedro, 2011), allowing the flow of goods, retaining (Enrique, 2015) the goods until the importer complies with his legal duty (Luis, 1997) born from the introduction of goods (Felipe, 2014) into national territory.

Mexico and the OECD

Mexico's acceptance into the Organisation for Economic Co-operation and Development (OECD) in 1994 coincided with the entry into force of NAFTA and the Marrakesh Declaration. This was obviously no accident, since the success of NAFTA required Mexico's acceptance into the OECD in order to "perfect" its insertion into the global economy.

The OECD, strictly speaking, is a "forum to discuss the development and improvement of social and economic policies, as well as to share experiences, seek answers to common problems and coordinate domestic and international policies to increase globalization" (Laura, 2002). Since 1992, the Mexico report recommended working on structural reforms, increasing investor security and achieving macro-stabilization (Diana, 2022).

The OECD was created to "expand the economy and employment, promote economic and social welfare by coordinating the policies" (Laura, 2002, p. 47) of the member countries, therefore, the OECD represents the guidelines to follow for the design of public policies of the Mexican state, hence its importance.

Evolution of the Customs Tariff. Tariff relief in the context of Free Trade Agreements

The customs tariff, manifested as a General Import Tax, was a key instrument in the negotiation of Trade Agreements. Thus, at this stage of its evolution, the customs tariff is the stimulus, in relation to the preferential treatment between the signatory countries of the Treaty, to increase trade operations between the partner countries.

From the North American Free Trade Agreement (NAFTA) to the Treaty between Mexico, the United States and Canada (TMEC). Tariff Relief and Origin Criteria

In Chapter IV of the then NAFTA, relating to the rules of origin, Canada, the United States and Mexico stated the requirements governing the issuance of the certificate of origin, a test that allowed the application of the General Import Tax rate in accordance with the treaty: the preferential rate.

In this scenario, the tariff elimination periods, which elapsed in the period prior to the modernization and conversion to the TMEC, were transcendental.

Thus, as the deadlines progressed, the rates were gradually reduced, as follows:

“Article 302. Tariff relief

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duties, or adopt any new customs duties, on originating goods.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its tariffs on originating goods in accordance with its Schedule to Annex 302.2.

3. At the request of any Party, the Parties shall consult to examine the possibility of accelerating the elimination of duties provided for in their schedules of relief. Where two or more of the Parties, in accordance with their applicable legal procedures, approve an agreement on the accelerated elimination of customs duty on a good, that agreement shall prevail over any customs duty or any period of relief specified in accordance with their schedules for that good.
4. Each Party may adopt or maintain measures on imports for the purpose of allocating the quota of imports made under a quota through tariffs (quota tariff) set out in Annex 302.2, provided that such measures do not have trade-restrictive effects on imports in addition to those resulting from the imposition of the quota tariff.
5. On the written request of either Party, a Party applying or proposing to apply measures on imports under paragraph 4 shall consult to review the administration of such measures.

To date, in the TMEC, information on origin criteria has been described in Chapter IV, where it should be noted that there have been considerable changes that are beyond the scope of this study, but we should note the increased complexity and requirements for their issuance.

To date, there is no concern about the customs duties paid for originating products, since the tax relief can be said to have been achieved. However, the scenario built over the 28 years of NAFTA's life, together with the SSSM, is affected by the actions of the State, political positions, business chambers, among others, which demand, in certain cases, a paternalistic attitude to protect some industrial sectors or, in any case, priority to political marketing rather than to the commitments assumed.

Trade Agreements in Mexico; succinct reference with special emphasis on the negotiation of the Customs Tariff

The United States of America is Mexico's main trading partner (Carlos, 2017), and for this reason, we have gone into some detail in this regard. However, Mexico has an interesting network of trade agreements in which the customs tariff has proven to be the perfect stimulus to increase trade relations between partner countries.

Trade Agreement with the European Union

On 26 June 2000, the Decree Promulgating the Economic Partnership, Political Coordination and Cooperation Agreement between the United Mexican States and the European Community and its Member States, the Decision of the Joint Council of this Agreement, and the Decision of the Joint Council of the Interim Agreement on Trade and Trade-Related Matters between the United Mexican States and the European Community were published in the Official Journal of the Federation. From the transcript, the economic aspect is noted and is the focus of our comments.

Among the agreements related to the customs tariff, we find that the partner countries declare the progressive and reciprocal liberalisation of trade in goods, in accordance with Article XXIV of GATT 1994, which was developed in Articles 6 and 8 of the aforementioned decision, for products originating in the European Union and Mexico, respectively.

Thus, for products originating in the European Community, a distinction is made by categories ("A", "B", "B+", "C" of Annex II of Mexico's Schedule of Duty-Free Treatment) of the periods of relief according to their category (León, 2022). On the other hand, for products originating in Mexico, the periods and percentages of the Community's duty-free allowances are distinguished by categories ("1", "2", "3", "4", "4a", "5", "6", "7" and "8" of Annex I of the Community's Schedule of Duty-Free Treatment).

The customs tariff, as in NAFTA, becomes the key instrument for negotiating the agreement under study. In this regard, in order to apply the preferential rate, the importer must present a certificate of movement of goods, commonly known as EUR1. The latter is issued by a competent authority, unlike the certificate of origin in NAFTA, where its issuance is free. Mexico currently has 14 Trade Agreements (Economía, 2022) from which multiple assumptions emerge where the customs tariff is the protagonist. The economic reality of our country cannot be seen without the treaties as mechanisms for attracting investment. The preferential tariff rate makes it possible to build logistical chains between companies resident in the partner countries. Unfortunately, due to the lack of space for this paper, we cannot go into the other treaties in depth, but we will extend our comments to those that have not been analysed.

The Customs Tariff as a protectionist instrument: consequences for countries that are not signatories to Free Trade Agreements

The tariff also serves as a protectionist instrument, especially when the Trade Agreement contains an obligation in this regard. Article 2.5 of the TMEC, formerly article 303 of NAFTA, sets out restrictions on the refund, reduction or exemption of customs duties paid or owed, in relation to a good imported into the territory of the parties. We have already ruled on this aspect of the tariff (Felipe, La Presunta Influencia del Artículo 303 del Tratado de Libre Comercio de América del Norte en el Hecho Imponible del Impuesto General de Importación, 2012), however, it is relevant for the purposes of this paper to briefly refer to it.

Affectation of the Draw Back programme; reduction of the amount of customs duty to be refunded. The then article 303 of NAFTA, now 2.5 of the TMEC, and in relation to the terms -restriction to drawback-, affected the Draw Back programme, as previously, in the case of definitive imports and if these were exported within the following year, 100% of the duty paid was refunded. Now, only the amount that its client in the destination country pays as customs duty in relation to the returned good will be refunded, among other assumptions (Economía, www.siicex.gob.mx, 2022).

Affecting the Decree for the promotion of the manufacturing, maquiladora and export services industry (IMMEX Decree).

The IMMEX Decree (Economía, www.sicex.gob.mx, 2022) is undoubtedly the most important promotion programme in Mexico, as it allows imports of raw materials, parts and components for a specific period of time without paying customs duties, as they are only determined and, if the budget is met, the obligation to pay arises.

When the goods are introduced into Mexico, allowing the customs duty to be determined and deferred, the stimulating aspect of the aforementioned decree is manifested, however, under the obligation of Article 303, now Article 2.5 of the TMEC, if the goods, after their transformation, are exported to the United States or Canada, the obligation to pay arises.

The obligation to pay the customs duty mentioned in the preceding paragraph arises from the protectionist nature of articles 303 of NAFTA and now article 2.5 of the TMEC, since the legislator, by stating this obligation to pay, intends to limit the use of the benefits only between trading partners.

The protectionist facet of NAFTA/TMEC is understandable, as the preferential tariff rate arises from the rights and obligations of the signatory countries; consequently, the restriction seeks to prevent the benefits of NAFTA from extending to other countries.

The Customs Tariff as a catalyst for economic activity

The logic of this study allows us to make a pronouncement on the customs tariff as a catalyst for economic activity, because in a country where the development model is based on exports, the tariff can be an obstacle or a stimulus. Hence, we can point out the following:

1. The preferential customs tariff, negotiated by Mexico in its Trade Agreements, is an ideal stimulus to increase trade relations with partner countries. It is well known that the United States and Canada, respectively, are the main trading partners. Therefore, NAFTA is the most important trade agreement for Mexico.
2. The preferential and general customs tariff, in connection with the promotion programmes (Draw Back and IMMEX), among others, create a favourable tax environment for foreign trade operations. Where, if applicable, it is possible to apply for a refund of the customs duty paid. On the other hand, it is possible to defer the payment of customs duties for subsequent payment, reduction or even exemption. However, the administrative burden of the aforementioned programmes is an element to consider, as failure to comply with the obligations entails penalties by the Federal Treasury.
3. The preferential tariff rate of the Trade Agreements and the benefits of the promotion programs, among other benefits, may be combined, creating, as already mentioned, favorable tax environments for foreign trade operations.
4. Final Reflections

Although we have made several reflections in this paper, it is important to state the following:

Talking about the customs tariff in Mexico 28 years after Marrakesh implies the need to clarify that before 1994, Mexico undertook important reforms to prepare for its insertion in the globalized world.

Mexico's participation in globalization required it to join the international organizations that govern world trade: the World Customs Organization, the World Trade Organization, the Organization for Economic Cooperation and Development, among others, in order to create trade treaties that will allow it to use the customs tariff as the main negotiating element, since the preferential tariff rate is the catalyst for trade relations between partners.

Twenty-eight years after Marrakesh, Mexico is a purely export-oriented country, so the customs tariff is a key element that acts as a stimulus and protector of tariff benefits.

The abundance of trade treaties in Mexico allows us to observe the above mentioned and they have become an important source of law in the current Mexican Customs Law.

International organisations have been a cornerstone for building trade relations in the world, however, perhaps it is time to reflect, discuss and decide on adjustments, as most of them were created in the immediate context of the Second World War.

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