1995

Mexico Modifies Its Labeling Requirements Pursuant to NAFTA

Carole A. Azulaye

Follow this and additional works at: https://scholar.smu.edu/lbra

Recommended Citation
Available at: https://scholar.smu.edu/lbra/vol1/iss2/7

This Comment is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.
Mexico Modifies its Labeling Requirements Pursuant to NAFTA

Carole A. Azulaye

The passage of the North American Free Trade Agreement (NAFTA) has contributed to the creation of Mexican legislation tailored to facilitate trade between the U.S. and Mexico and to monitor trade between the two countries. This article serves as a summary of the NAFTA's labeling requirements and those Mexican labeling requirements enacted pursuant to the passage of the NAFTA.

I. The NAFTA Requirements

The NAFTA, Chapter 5, requires exporters to prepare a uniform certificate of origin which states whether or not the goods being shipped qualify for preferential treatment under the NAFTA and are considered, as a consequence, originating goods. Each signatory to the treaty (Party) may require that the certificate be completed in the language of each Party's country. In order to be considered originating, the goods must contain a certain percentage of North American content, based upon formulas and definitions defined in Chapter 4 of the NAFTA.

The NAFTA additionally provides that an exporter who supplies false information on the certificate of origin will incur the same legal consequences as would apply to an importer in the territory of the Party into which the goods are shipped. If an exporter voluntarily corrects any erroneous statements on the certificate of origin, then the exporter will not be subject to penalties.

The NAFTA additionally requires that exporters and importers maintain their records for five years. These records consist of documents relating to the purchase, cost, value or payment of the goods which are exported as well as any materials used in the production of the goods.

The NAFTA permits importers, exporters, and producers to obtain advance rulings, from the customs administration of the importing country, on determinations of whether the goods will be considered originating. The Treaty permits each country to establish procedures for the issuance of these advance rulings. In addition, the NAFTA

1. Carole A. Azulaye is an Associate of Akin, Gump, Strauss, Hauer & Feld, L.L.P. (Dallas, Texas). The information in this article was current as of April 1, 1995.
3. NAFTA, Art. 504.
4. Id.
5. NAFTA, Art. 505.
6. Id.
7. NAFTA, Art. 509.
8. Id.
requires that each Party provide the same rights of review and appeal to exporters and producers located in the other Parties' territories.\(^9\)

The NAFTA permits each Party to the Treaty to determine and generate regulations to monitor the importation and exportation of goods between the Parties.\(^10\) As a consequence, Mexico began its post-NAFTA regulatory regime with the publication of a decree in March 1994, and a proposed decree in June 1994, both regarding labeling of products which enter the country.

**II. Mexico's Labeling Decrees**

On March 7, 1994, the Mexican government published the Mexican Certification and Labeling Decree, which became effective the following day. This executive decree identifies imported goods that are subject to existing and new Mexican product standards, certification, and labeling requirements.\(^11\) The government also provided its customs service with three letters which clarify these requirements.

The decree states that existing textiles and apparel and leather labeling decrees will be enforced at the border.\(^12\) For products other than textiles and leather, the decree states that certain products must comply with Mexican official standards of mandatory nature (NOM) requirements which will be enforced at the border.\(^13\) Where a NOM does not exist, or the NOM does not contain product specific labeling requirements, the imported products must comply with generic Mexican labeling requirements.\(^14\)

Where a product is not subject to labeling requirements of product-specific NOMs, the following information, in Spanish, must be placed on a label prior to importation into Mexico:

1. Name of product or merchandise.
2. Name or business name and address of the importer.
3. Importer's RFC number and/or their industry association registration number.
4. Name of business of exporter.
5. Net contents.
6. Warnings or precautions on hazardous materials.
7. Use, handling and care instructions for the product as required.\(^15\)

The decree does not provide any specifications as to the size or location of the label. The labels must be legible and accessible to the consumer at the time of the sale.\(^16\) The required information may be attached to the product, package, or container depending on the product characteristics.\(^17\) In a March 17 clarification, the government stated that

---

10. NAFTA, Art. 511.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
the labels do not have to be physically attached to the product at the time of importation into Mexico. Instead, importers may present the labels to the Mexican customs authorities. However, labels must be prepared for each package or product that will be offered to the ultimate consumer.

The March 7 decree provides a list of products, by Mexican tariff number, which are subject to NOMs and which labeling requirements will be enforced at the border. These products include cooking appliances, non-portable liquid petroleum gas containers, water heaters, domestic electrical appliances, and medical equipment. In order to satisfy the NOM requirement, the products must have been tested in Mexico, found to have complied with the applicable NOM, and granted a certificate attesting to the fact that the products meet the applicable NOM. There are certain products which are exempted from the decree, including the following:

1. Capital and intermediate goods, including those goods which will be resold in Mexico. These goods are still subject to certification requirements.
2. Those goods imported, a maximum quantity of 3, for the purpose of obtaining NOM certification.
3. Personal items sent by a person domiciled in Mexico, in compliance with Mexican Customs Law.
4. Those goods imported for educational and scientific institutions, civic organizations and organizations authorized by the Secretary of Housing and Public Credit to receive donations.
5. Samples without commercial value imported in compliance with Mexican Customs Law.
6. Goods imported in bulk, which are defined as those goods requiring measurement or weighing in the presence of the final consumer at the point of sale, regardless of the container in which they are imported.
7. Goods which are new or unique in kind or highly specialized and that could prove to be a security risk, can be imported in quantities of up to 25 items; the goods cannot be destined to reach the public.

Products valued under $1000 are exempted from these requirements if they are imported into Mexico through international package delivery or courier service.

The Mexican government has indicated that Spanish-language labels which are placed over the original label will not be acceptable at some point in the near future. Subsequent to the March 7 decree, the Mexican government drafted a proposed set of labeling regulations, which was published in the Diario Oficial on June 20, 1994, for comment. These proposed regulations required that data which must show the origin of the products of national or foreign manufacture and its contents will be expressed in the Spanish language in accordance with Mexican Official Standards NOM-008-SCFI and

19. Id.
21. Id.
23. Mexican Certification and Labeling Decree, Diario Oficial (March 7, 1994).
NOM-030-SCFI, without prejudice to its also being expressed in another language or other measurement system. As a consequence, exporters may need to commence the process of redesigning labels for products destined for the Mexican retail market.

The proposed new labeling regulations pertain to commercial information for the container or label that should be displayed on the products manufactured nationally or abroad. The proposed decree was issued for public comment and has the purpose of establishing minimum commercial information that should be provided to the consumer for products manufactured nationally or abroad. This proposed NOM standard, NOM-050-SCFI-1994, is applicable to all the products of national or foreign manufacture when they are marketed in the Mexican national territory and are not subject to specifications of commercial information from official Mexican Standards, or to any other regulations in force, or to exceptions granted by competent authorities. Certain enumerated items will not be subject to this decree including the following: (1) bulk products; (2) highly specialized products; (3) products that are imported through messenger and international packaging companies, in accordance with other customs legislation; and (4) products imported temporarily to be returned abroad in the same condition and which is protected by customs legislation.

The proposed decree sets forth the following obligatory information which must be included on domestic and international products marketed in the Mexican territory:

1. Generic name of the product, unless it is obvious;
2. Name, designation, firm name and domicile of the manufacturer;
3. Legend that identifies the product's country of origin;
4. Warnings about the main risks and precautionary measures, in the case of dangerous products.
5. When the use, handling, and/or preservation of the product is not obvious, it should rely on that same information that should be indicated in the instructive annex with a note on the corresponding label: "See Instructive Annex"; and
6. For foreign products, add the name, designation or firm name and domicile of the importer.

In addition, the products must be accompanied by instructions and warnings in which the clear and precise indications for the product's normal use, preservation and best manner to use are contained, as well as the warnings for safe and reliable handling. The proposed language also provides further information on guarantees.

### III. Conclusion

The NAFTA sets forth general guidelines for the customs' administrative procedures with regard to importing and exporting goods. Essentially, the treaty permits each Party...
to determine its own guidelines with respect to labeling of goods entering each Party's territory all within Uniform Regulations to be established by the Parties. Subsequent and pursuant to the passage of the NAFTA, Mexico's March 7, 1994, decree identifies imported goods that are subject to existing and new Mexican product standards, certification, and labeling requirements. The new proposed labeling decree adds further requirements regarding consumer product labeling. Exporters and importers should become familiar with these regulations and should monitor continuing changes by the Mexican customs authorities.

29. NAFTA, Art. 511.