

ILLEGITIMATE NATIONAL CONSTITUENT ASSEMBLY REFORMS THE ORGANIC CUSTOMS LAW

On January 29 of this year, it was published in Official Gazette No. 6. 507 Extraordinary the Constituent Decree of Reform of the Decree with Rank, Value and Force of the Organic Customs Law, hereinafter referred to as the "Constituent Decree", through which the National Constituent Assembly introduced a series of amendments that substantially affect aspects inherent to the scope of application of the Organic Customs Law, the competencies of the President of the Republic, the sanctioning regime and the regime for the rendering of customs services. In this regard, the Constituent Decree will be analyzed as follows:

I. LEGITIMACY OF THE REFORM BY THE NATIONAL CONSTITUENT ASSEMBLY:

Like the vast majority of the Venezuelan lawyers' guild committed to democracy and institutionality, I reaffirm that the National Constituent Assembly is nothing more than a political instrument of the regime of Nicolás Maduro Moros to perpetuate itself in power. This National Constituent Assembly lacks legitimacy, since its convocation and installation was carried out in violation of the Constitution of the Bolivarian Republic of Venezuela, which is and is an example that clearly shows the institutional rupture in an anti-democratic regime. Therefore, since the National Constituent Assembly is illegitimate, each of its actions and decisions are equally illegitimate, an example of which is the Reform of the Organic Customs Law.

The National Constituent Assembly has only sought to maintain in power the dictator Nicolás Maduro Moros, through maneuvers and technicalities that are outside the constitutional order, with the support of an indulgent Supreme Court of Justice (TSJ) and an Electoral Power unconstitutionally appointed by it, as well as the Citizen Power, allowing Nicolás Maduro Moros to rule the country at his convenience.

Since its convocation and subsequent installation, the ANC has not complied with its purpose of drafting a new Constitution, demonstrating that its true intentions are: the usurpation not only of the legislative function of the legitimate National Assembly but also the usurpation of its control function, the suppression of decentralization figures and the subjection of the electoral participation to the will of the National Constituent Assembly and the National Electoral Council.

II. OF THE OBJECT OF THE CONSTITUENT DECREE:

To reform articles 1; 2; 4; 117; 118; 159; 161; numeral 3 of article 162; 164; 165; 166; 167; 168; 177; 178; 180; 181; as well as Title IX, containing the Transitory and Final Provisions, in which a new article is included which becomes 194 and, 194, which becomes 195.

III. SCOPE OF THE CONSTITUTING DECREE:

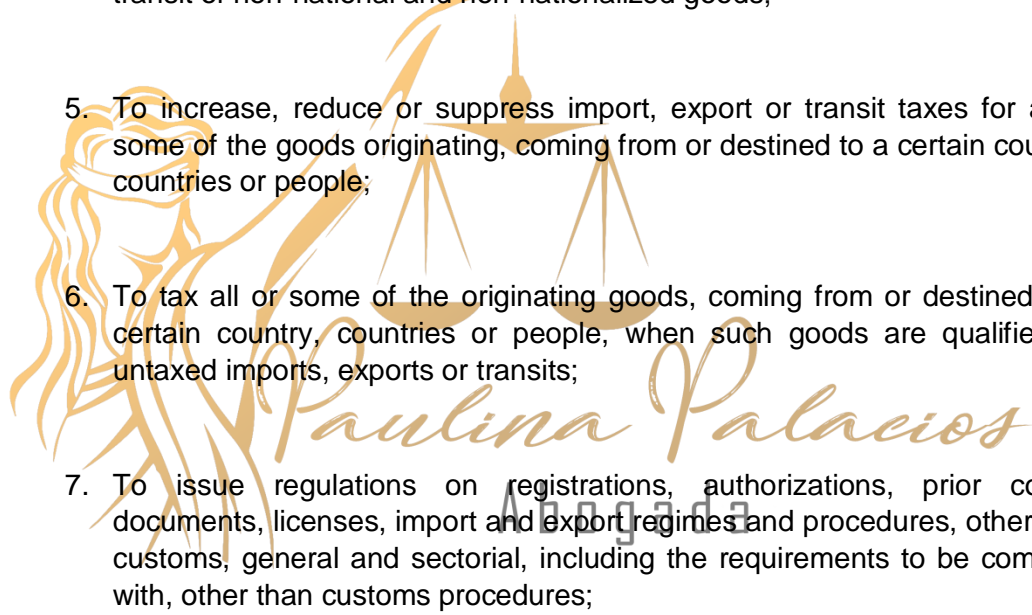
Although reference was made above to the amended articles, the changes derived from said amendment may be grouped, from a general perspective, as follows:

- A. Commercial Policy: In its Article 1, the Constituent Decree provides that the commercial policy of the Bolivarian Republic of Venezuela is subject to the Organic Customs Law and its Regulations, as well as to the "customs regulations contained in the International Treaties and Conventions subscribed and ratified by the Republic, in the Community obligations and in other legal instruments in force, related to the matter, as well as those of the Bolivarian Republic of Venezuela". Now, being that the commercial policy is understood as the normative framework that regulates the exchange of goods (merchandise) and services, it is necessary to include the commercial policy of Venezuela in the Organic Law of Customs, since this law governs the entry, permanence and exit of merchandise in the national territory. Trade in services is intangible, so there is no flow of goods through customs offices.

It is necessary to design a trade policy adjusted to the current dynamics of international trade, which foresees an exponential growth of trade in services. This conception must be accompanied by the establishment of a regulatory framework that recognizes, regulates and facilitates international trade in services.

- B. The powers of the President of the Republic: It is important to point out that the Constituent Decree no longer subjects the exercise of the powers of the President of the Republic to the formation of the Council of Ministers. Likewise, it provides the President with new powers, namely:

1. To approve the policies and strategies, general and sectorial, in matters of foreign trade, development and promotion of exports, as well as to designate the executing agencies;
2. Approve the Customs Tariff. Previously it was only competent to promulgate it;
3. To set the rates and determine the amounts to be paid by the users of the services rendered by the Customs Administration, within the limits set forth in the Constituent Decree. Although this attribution was contained in the previous regulation, now the Unidad Tributaria (UT) is replaced as the basis for the determination of such rates by the equivalent of the official exchange rate of the highest value currency, published by the Central Bank of Venezuela;
4. To regulate, facilitate or restrict the exportation, importation, circulation and transit of non-national and non-nationalized goods;
5. To increase, reduce or suppress import, export or transit taxes for all or some of the goods originating, coming from or destined to a certain country, countries or people;
6. To tax all or some of the originating goods, coming from or destined to a certain country, countries or people, when such goods are qualified as untaxed imports, exports or transits;
7. To issue regulations on registrations, authorizations, prior control documents, licenses, import and export regimes and procedures, other than customs, general and sectorial, including the requirements to be complied with, other than customs procedures;
8. To adopt such measures as may be necessary for the simplification and administrative efficiency in foreign trade matters, other than customs procedures;
9. Adopt the norms and measures necessary to safeguard the macroeconomic stability of the country and to counteract unfair practices



that affect national production, exports or, in general, the commercial interests of the country;

10. To take cognizance of the reports of the Investigating Authority and adopt trade defense measures in accordance with the national and international regulations in force, in the face of unfair international practices or increased imports, which cause or threaten to cause damage to national production;

11. Approve import quotas or restrictive measures to foreign trade operations, when the commercial conditions, the impact on the local industry, or the economic circumstances of the country so require;

Additionally, Article 163 of the Constituent Decree includes the power to establish, by means of Regulations, causes for the suspension of the authorizations to act as Auxiliary of the Customs Administration. For these purposes, the Organic Law of Customs considers the following as auxiliary of the Customs Administration: customs agents and agencies; storage companies or customs warehouses; duty free stores and warehouses; international courier companies; cargo consolidation companies, transportation companies; and any other that the Customs Administration designates as auxiliary of the Customs Administration, by means of an Administrative Ruling.

Regarding the preceding points, this author considers that there is an excessive concentration of powers in the head of the President of the Republic. It is inefficient and dangerously bureaucratic to grant the President of the Republic functions such as issuing regulations on registrations, authorizations, prior control documents, licenses, import and export regimes and procedures, which could be exercised by other administrative levels. Likewise, the assumption of the powers to increase and reduce import, export and transit taxes, to tax goods originating from, coming from or destined to a certain country, when they are qualified as untaxed imports, exports or customs transit, which previously corresponded to the Minister with competence in matters of finance, could limit the operation of the national customs system. Now, it should be noted that the Constituent Decree provides for the power of the President to delegate the powers set forth in the aforementioned article 3. In this sense, it would be convenient to make use of such delegation in order to facilitate and promote the correct development of customs activities.

Likewise, it is worth referring to the power of the President to adopt the necessary rules and measures to safeguard the macroeconomic stability of the country and to counteract unfair practices that affect national production, exports or, in general, the commercial interests of the country. This point is extremely important, since it grants exorbitant powers in the control of foreign trade, even of a precautionary nature, which would place in a situation of legal insecurity any importer and/or

exporter wishing to carry out legal trade operations, since the President of the Republic could, by virtue of this power, limit or prohibit its commercial activity if it considers that the same generates damage or could generate damage in the future.

C. CUSTOMS APPROACH:

The TFA contains provisions to simplify, streamline and harmonize export and import procedures. It also establishes measures for effective cooperation between customs and other competent authorities on trade facilitation issues, as well as decisions on technical assistance.

D. ENTRY INTO FORCE:

The Constituent Decree shall become effective within 20 days counted from the day following the day of its publication in the Official Gazette.

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