CONFIDENTIAL

Dear Article 4(1)b,

Further to the email below, we gathered some additional information on the Unconstitutionality Action filed by 45 Mexican Senators in 2022 regarding the Decree issuing the Import and Export Duty Tariffs Law (#97/2022) before the Supreme Court of Justice of the Nation (Mexican Supreme Court).

As of this week the Action is listed in number 17, and the next session of the Supreme Court was expected to be held yesterday, June 29th. The Supreme Court normally meets 3 times per week, and on average it reviews 3 cases per day, thus the action could theoretically be reviewed at some point during July.

The Supreme Court of Justice of the Nation (Supreme Court) is composed of 11 members. The Action of unconstitutionality is a mechanism regulated by Article 105 section II of the Political Constitution of the United Mexican States (“Constitution”), and the Regulatory Law of Sections I and II of Article 105 of the Constitution (“Regulatory Law”). When this mechanism is invoked, the Supreme Court may rule as follows:

1. The constitutionality (validity) of the challenged rule.
2. The unconstitutionality (invalidity) of the challenged rule.
3. The partial constitutionality (partial invalidity) of the challenged rule.

For the Supreme Court to declare null a norm, it is mandatory to reach a qualified majority vote of eight Ministers out of eleven. The effect of a declaration of unconstitutionality is that the challenged rule becomes void (i.e., it cannot be applied anymore). If that special majority is not reached, the action is dismissed for the purposes of declaring null a norm, and the challenged norm continues to be in force in general.
As previously mentioned, there is no public information related to the content of the Action of unconstitutionality #97/2022 due to the fact that the Supreme Court classified it as confidential information. The only public information that the Action of unconstitutionality #97/2022 is that it is under consideration, and Article 4(2) first indent

I hope this information is useful and we remain available in case you need any clarifications.

Best regards

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From: Article 4(1)b
Sent: Tuesday, May 23, 2023 2:49 PM
To: Article 4(1)b @ec.europa.eu, Article 4(1)b @pmi.com
Cc: Article 4(1)b @ec.europa.eu, Article 4(1)b @ec.europa.eu, Article 4(1)b @ec.europa.eu, Article 4(1)b @pmi.com, Article 4(1)b @pmi.com
Subject: HTPs - trade barrier in Mexico and other WTO members

Document released subsequent to third party consultation and agreement

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Dear Article 4(1)b

Thank you once again for the meeting we had in Brussels on April 24th.

As a follow up, please find attached the one-pagers for Argentina and Vietnam, respectively, summarizing the market access barriers that we currently face in these countries. We’d be glad to provide a comprehensive analysis for each of these countries if necessary, and also to update you on similar trade barriers that Heated Tobacco Products manufactured in the EU are facing in other WTO members such as Brazil and Taiwan.

Regarding Vietnam, we have been informed that in the upcoming MAAC meeting of May the 25th the trade barriers for that country will be discussed. We would kindly ask you to consider the market access barriers for Heated Tobacco Products in your discussions and, moreover, I’d take this opportunity to recall the importance of updating the Rules of Origin for HTPs in the EU - Vietnam FTA if and when you decide that these discussions take place.
With regard to the ban on imports of HTPs in Mexico, we are finalizing the process of information gathering on the status of the Supreme Court decision, which we will share with you as soon as possible. Nonetheless, the preliminary feedback that we received is that even in case of a positive decision by the Supreme Court regarding HTPs, follow up implementation actions would be necessary at the domestic level.

We remain available should you need any additional information from our side at this stage, and we look forward to discussing in more detail before the summer break.

Best regards,

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