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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”



## Customs Authority on board? By Gerardo Reyes

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## Customs Authority on board?

by Gerardo Reyes.

The aviation industry literally connects the entire world, international flights are the cornerstone of globalization and the international trade. In the last Terrum edition “*Legal Treatment to the internment of spare parts into Mexico*”, F. Aramburú thoroughly explained that, in according with article 24 of the Chicago Convention<sup>1</sup>, Articles 61, subsection I, 106, subsection III e), and 107 of the Customs Law, and Article 97 of the Regulation of the Customs Law, the nature and extent of what the term “cargo” means, can be considerably wide, from spare parts and components to other company materials used by the airlines, all of which have a different treatment to that of regular cargo.

“Despite the fact that spare parts and components to other company materials used by the airlines is not subject to customs provisions, the Mexican Customs Authority has, during the last three years, attempted to enforce its customs authorities to by way of requesting authorization to airlines in order to inspect any airline cargo transported, which, as mentioned, is free of any customs duty.”

The different treatment given to “regular cargo” and “airline cargo” is of particularly emphasis in the fact that the former is subject to customs regulations and the latter is free of any custom duty. The aim of this regulation is to facilitate the air cargo transportation and avoid any legal obstacle or barriers to the international transportation of airline cargo around the globe.

Despite the fact that spare parts and components to other company materials used by the airlines is not subject to customs provisions, the Mexican Customs Authority has, during the last three years, attempted to enforce its customs authorities to by way of requesting authorization to airlines in order to inspect any airline cargo transported, which, as mentioned, is free of any customs duty. The Mexican Customs Authority has been doing this without a written order whereby a request is presented to the airlines to grant the access to their private aircraft in order to conduct an inspection within the aircraft. Having said this, it is important to remember that, in accordance with Article 14 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*) any

### 1.- Chicago Convention

#### Article 24.- Customs duty

a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.

b) Spare parts and equipment imported into the territory of a contracting State for incorporation in or use on an aircraft of another contracting State engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

acts of any Mexican Authority must be issued in written, and shall contain the articles that sustain the orders, as specifically it is specifically mentioned hereunder:

*“No one can be bothered in his person, family, address, papers or possessions, except by virtue of a written order of the competent authority, which founds and motivates the legal cause of the procedure”.*

***“The legal advice recommended to the airlines that have been targeted of illegal examinations is to deny the access to the aircraft to those members of the Mexican Customs Authority unless the Authority shows the written order.”***

In such regard, it is evident that the Mexican Customs Authorities are systematically breaching Article 14 of the Political Constitution of Mexico, due to the lack of due lack of inclusion of the applicable motivates and legal basis, which would allow them to enter the aircraft.

The legal advice recommended to the airlines that have been targeted of illegal examinations is to deny the access to the aircraft to those members of the Mexican Customs Authority unless the Authority shows the written order.

It is important to mention, however, that as a result of the refusal of access to the aircraft and in retaliation the Mexican Customs Authority starts an administrative proceeding against the domestic or foreign airlines that could rule a sanction of an amount between \$7,420.00 to \$10,200.00 Mexican Pesos.<sup>2</sup> The Custom Authority initiates the proceeding arguing the violation of Article 20, Section I of the Customs Law that states:

*“ARTICLE 20. The carrier companies and their representatives in national territory, the captains, pilots, drivers and owners of the means of transport of merchandise entering or leaving the national territory, are obliged to:*

*I. Make available to the customs authorities the means of transport and the goods they carry for inspection or verification, in the place designated for such purposes.”*

These proceedings and sanctions issued by the Public Servants of the Mexican Customs Authority against the airlines not only have systematically breached the formalities required by the Mexican Constitution, but they have violated the regulations provided in the Mexican Customs Law and the Chicago Convention.

Against the sanction regulated in Article 20, Section I of the Customs Law, the sanctioned Airlines have a strong argument grounded in two articles of different provisions. The first one, is Article 16 of the Convention on International Civil Aviation signed at Chicago, on December 7, 1944 and the second regulation is the first Article of the Customs Law.

On December 31, 1945, the Senate approved the Convention on International Civil Aviation (Chicago Convention) which was signed by the government of Mexico one year earlier, and that international

*2.- Article 187, Section I of Customs Law.*

treaty enter in full force and effect on April 04, 1947.<sup>3</sup> That means that since 1947 all the Mexican Authorities shall adopt the regulation of the Chicago Convention. Relevant to this article are the provisions of article 16 of the Chicago Convention which states that: *“The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this convention”*.

*“Against the sanction regulated in Article 20, Section I of the Customs Law, the sanctioned Airlines have a strong argument grounded in two articles of different provisions. The first one, is Article 16 of the Convention on International Civil Aviation signed at Chicago, on December 7, 1944 and the second regulation is the first Article of the Customs Law.”*

In such regard, the primary focus to determine if the customs authorities have the mandate to enter an aircraft, we must first determine whether or not they are an *“appropriate authority”* or not. In order to determine this, we must turn to the provisions of the Article 1 of the Customs Law, which provides the following:

Article 1° of the Customs Law:

*“ARTICLE 1.- This Law, the General Import and Export Taxes and the other applicable laws and regulations, regulate the entry into the national territory and the exit from it of merchandise...”*

According with article 1 of the Customs Law, the Customs Authority has a limitation to *“entry into the national territory and the exit from it of merchandise”* that means that any material or merchandise that stays inside the aircraft as is the cargo that the Customs Authority tries to inspect is not on the jurisdiction of the Customs Authority because that merchandise never entry to Mexican soil and never gets out from the country.

The Federal First Court Specialized in Foreign Trade has issued at least eleven precedents that annuls the reviewed customs sanctions arguing lack of jurisdiction of the Customs Authority to entry to the commercial aircraft<sup>4</sup>. Reason why the Mexican Government should train it’s public servants in order to avoid the injustices made to the domestic and foreign airlines.

As evidence, Mexican Companies and individuals have to deal everyday with the lack of legality and ignorance of the diverse Mexican Authorities. Which is why the Mexican Customs Authority should raise the admissions standards to have the suitable personnel and avoid the overcrowding of unnecessary administrative and judicial proceedings.

3.- [https://aplicaciones.sre.gob.mx/tratados/muestratratado\\_nva.sre?id\\_tratado=115&depositario=0](https://aplicaciones.sre.gob.mx/tratados/muestratratado_nva.sre?id_tratado=115&depositario=0) Last consult: October 26, 2020.

4.- The eleven precedents of the Federal First Court Specialized in Foreign Trades: 444/18-EC1-01-3, 600/18-EC1-01-3, 963/18-EC1-01-2, 968/18-EC1-01-3 y 925/18-EC1-01-9, 79/20-EC1-01-8, 80/20-EC1-01-2, 81/20-EC1-01-9, 82/20-EC1-01-8, 83/20-EC1-01-4 and 193/20-EC1-01-9.

## Supreme Court declares constitutional the survey on trial of former presidents.

On September 24, Luis María Aguilar, Minister of the SCJN, presented a proposal to declare unconstitutional the request of the president to submit for consultation the submission to trial former presidents for possible crimes committed. However, after a controversial vote, it was determined that the request for consultation to determine whether to prosecute former presidents is constitutional with 6 votes in favor and 5 against the proposal. [www.forbes.com.mx/politica-scjn-inconstitucional-consulta-juicio-expresidentes/](http://www.forbes.com.mx/politica-scjn-inconstitucional-consulta-juicio-expresidentes/) 01/10/2020.

## More than 700 scientists from Harvard and Oxford sign against the extinction of Mexican trusts.

Scientists from all over the world signed and from prestigious universities, such as Harvard, Oxford, Yale, Cambridge, Stanford and MIT, have signed a manifesto in support of Mexican science trusts, which are at risk of disappearing due to an initiative that the Congress is about to approve. The document, titled "Letter in support of Mexican scientists", demanded legislators to "reconsider their support for the project to avoid the extinction of the trusts" since "it would be a hard blow to science and technology in Mexico exactly when the country needs their contribution more than ever". [www.forbes.com.mx/noticias-mas-de-700-cientificos-harvard-y-oxford-firman-en-defensa-a-fideicomisos-de-mexico/](http://www.forbes.com.mx/noticias-mas-de-700-cientificos-harvard-y-oxford-firman-en-defensa-a-fideicomisos-de-mexico/) 19/10/2020.

## US congressmen accuse Mexico of violating the spirit of the T-MEC on energy.

A bipartisan group of US lawmakers says Mexico is violating the "spirit" of the United States–Mexico–Canada Agreement (USMCA) by granting preferential treatment to state energy companies. They accuse that the Mexican government is protecting the state oil company Pemex and the electricity supplier Comisión Federal de Electricidad (CFE), while it cancels the contracts of US energy companies. Also, the political party Morena has presented constitutional initiatives that seek to reverse the energy reform of 2014 to renounce all contracts currently in force, which violates and contravenes the Agreement. [www.eluniversal.com.mx/mundo/congresistas-de-eu-acusan-mexico-de-violar-espiritu-del-t-mec-sobre-energia](http://www.eluniversal.com.mx/mundo/congresistas-de-eu-acusan-mexico-de-violar-espiritu-del-t-mec-sobre-energia) 23/10/2020.

## Mexico proposes to convene Assembly at UN to discuss on a global strategy for the Covid-19 pandemic.

Chancellor Marcelo Ebrard stated that the crisis that comes with the pandemic will increase inequality in Latin America and the Caribbean, which implies a greater effort by countries with more resources, the reason why he is proposing to the UN Economic Commission for Latin America and the Caribbean to convene the general assembly of the international body to analyze a global strategy to deal with the economic crisis derived from the Covid-19 pandemic. [www.eluniversal.com.mx/nacion/mexico-propone-convocar-asamblea-en-la-onu-para-ver-e-strategia-mundial-por-covid](http://www.eluniversal.com.mx/nacion/mexico-propone-convocar-asamblea-en-la-onu-para-ver-e-strategia-mundial-por-covid) 26/10/2020.

## Tests of Chinese anti-covid vaccine to start in Mexico in November.

After the success of the anti-covid vaccine, from the Chinese pharmaceutical company CanSinoBIO, in that nation's army, it is now a matter of time for the Mexican authorities to allow it to carry out Phase III trials in the first half of November. At a conference held at the National Palace, the foreign secretary, Marcelo Ebrard, stressed that the clinical phases of this vaccine against Covid-19 have had positive results in Pakistan, Russia and Saudi Arabia. [/www.excelsior.com.mx/nacional/en-noviembre-iniciaran-en-mexico-ensayos-de-vacuna-china-anticovid/1413465](http://www.excelsior.com.mx/nacional/en-noviembre-iniciaran-en-mexico-ensayos-de-vacuna-china-anticovid/1413465) 27/10/2020.

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## GERARDO REYES

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