Presidency of the Republic
Executive Office
Sub Directorate for Legal Affairs

LAW Nº 12.546, OF DECEMBER 14, 2011.

Conversion of Provisional Measure nº 540, of 2011

Veto message

Institutes the Special Tax Restitution Regime for Exporting Companies (Restitution); makes provisions for the reduction of the Tax on Industrial Products (IPI) for the automotive industry; alters the incidence of retirement contributions owed by the companies it mentions; amends Laws nº 11.774, of September 17, 2008, nº 11.033, of December 21, 2004, nº 11.196, of November 21, 2005, nº 10.865, of April 30, 2004, nº 11.508, of July 20, 2007, nº 7.291, of December 19, 1984, nº 11.491, of June 20, 2007, nº 9.782, of January 26, 1999, and nº 9.294, of July 15, 1996, and Provisional Measure nº 2.199-14, of August 24, 2001; it revokes Art. 1 of Law nº 11.529, of October 22, 2007, and Art. 6 of Decree-Law nº 1.593, of December 21, 1977, as specified herein; and makes further provisions.

THE PRESIDENT OF THE REPUBLIC hereby makes known that the National Congress decrees, and I do sanction the following Law:

Special Tax Restitution Regime for Exporting Companies

Art. 1 A Special Tax Restitution Regime for Exporting Companies (Restitution) is hereby instituted, for the purpose of refunding amounts associated with residual federal tax costs existing in their production chains.

Art. 2 Within the scope of the Restitution, producing companies engaged in the exportation of goods manufactured in the country shall be able to determine the value for purposes of partial or total reimbursement of the federal tax residue existing in the production chain.

§ 1 The amount is to be calculated through the application of a percentage established by the Executive Branch on revenues accruing from the export of goods produced by the company mentioned in the heading.

§ 2 The Executive Branch can set the percentage mentioned in § 1 between zero and 3% (three percent), and it may also differentiate the applicable percentage by economic sector and type of activity performed.

§ 3 For the purposes of this article, the following are considered to be goods manufactured in the country:

I – Classified in the code of the Table of Incidence of the Tax on Industrial Products (TIPI), approved by Decree nº 6.006, of December 28, 2006, related in an act of the Executive Branch; and

II – The cost of whose imported inputs does not exceed the percentage limit of the export price, as defined in an itemized list broken down by type of good, stated in the act cited in sub-paragraph I of this paragraph.

§ 4 The company shall use the amount assessed to do the following:

I – Make payment of its own debts, that have fallen due or are yet to fall due, relating to taxes administered by the Federal Revenue Service of Brazil, observing the legislation specifically applicable to the matter; or

II – Request its reimbursement in cash, pursuant to the terms and conditions established by the Federal Revenue Service of Brazil.

§ 5 For the purposes of this article, exportation is considered to be direct sales abroad or to a commercial export company for the specific purpose of export abroad.

§ 6 What is set forth in this article does not apply to the following:

I – Commercial export companies; and

II – Goods that have been imported.

§ 7 Commercial export companies are obliged to collect the amount attributed to the producer company making the sale if :

I – They resell the products acquired for export on the domestic Market; or

II – Within a period of 180 (one hundred and eighty) days, counting from the date of issue of the invoice by the producing company, the export of the products abroad has not taken place..

~~§ 8 The collection of the amount stated in § 7 must be implemented by the tenth day following that of the expiration of the period for the implementation of the exportation, with the addition of a lateness fine or automatic fine and interest equivalent to the reference rate of the Special System for Liquidation and Custody (Selic), for federal government securities, accrued monthly, calculated on the basis of the first day of the month following that in which the invoice was issued for the sale of products to the commercial export company, until the last day of the month prior to payment, and 1% (one percent) in the month of payment.~~

§ 8 The collection of the amount indicated in § 7 must be implemented by the tenth day following: (Rendering of text given in Provisional Measure nº 556, of 2011) (Production of effects)

I – The date of resale on the domestic market; or (Included in Provisional Measure nº 556, of 2011) (Production of effects)

II – The date of expiration of the period established for completion of the exportation. (Included in Provisional Measure nº 556, of 2011) (Production of effects)

§ 9 The collection of the amount stated in § 7 must be implemented with the addition of the lateness fine or automatic fine and interest equivalent to the reference rate of the Special System for Liquidation and Custody- SELIC, for federal government securities, accrued monthly, calculated on the basis of the first day of the month following that in which the invoice was issued for the sale of products to the commercial export company until the last day of the month prior to payment, and one percent in the month of payment. (Included in Provisional Measure nº 556, of 2011) (Production of effects)

§ 10. The companies indicated in Arts. 11-A and 11-B of Law nº 9.440, of March 14, 1997, and Art. 1 in Law nº 9.826, August 23, 1999, may apply for RESTITUTION. (Included in Provisional Measure nº 556, of 2011) (Production of effects)

§ 11. Of the determined amount referred to in the heading: (Included in Provisional Measure nº 556, of 2011) (Production of effects)

I – Seventeen point eight four percent shall be ascribed to the credit of the Contribution for PIS/PASEP; and (Included in Provisional Measure nº 556, of 2011) (Production of effects)

II – Eighty two point one six percent shall be ascribed to the credit of COFINS. (Included in Provisional Measure nº 556, of 2011) (Production of effects)

Art. 3 The Restitution shall be applicable to exports carried out up until December 31, 2012.

Art. 4 Art. 1 of Law nº 11.774, of September 17, 2008, is to be amended to read as follows:

"Art. 1 In the event of purchase on the domestic market or import of machinery and equipment intended for the production of goods and the provision of services, companies may choose to deduct the credits from the Contribution to the Program for Social Integration/Program for Formation of Assets of Public Employees (PIS/Pasep) and from the Contribution to the Financing of Social Security (Cofins) addressed in sub-paragraph III of § 1 of Art. 3 of Law nº 10.637, of December 30, 2002, sub-paragraph III of § 1 of Art. 3 of Law nº 10.833, December 29, 2003, and § 4 of Art. 15 of Law nº 10.865, April 30, 2004, as follows:

I – Within a period of 11 (eleven) months, for acquisitions occurring in August of 2011;

II – Within a period of 10 (ten) months, for acquisitions occurring in September of 2011;

III – Within a period of 9 (nine) months, for acquisitions occurring in October of 2011;

IV – Within a period of 8 (eight) months, for acquisitions occurring in November of 2011;

V – Within a period of 7 (seven) months, for acquisitions occurring in December of 2011;

VI – Within a period of 6 (six) months, for acquisitions occurring in January of 2012;

VII – Within a period of 5 (five) months, for acquisitions occurring in February of 2012;

VIII – Within a period of 4 (four) months, for acquisitions occurring in March of 2012;

IX – Within a period of 3 (three) months, for acquisitions occurring in April of 2012;

X – Within a period of 2 (two) months, for acquisitions occurring in May of 2012;

XI – Within a period of 1 (one) month, for acquisitions occurring in June of 2012; and

XII – Immediately, for acquisitions occurring after July of 2012.

§ 1 The credits addressed in this article are to be determined as follows:

I – Through application of the percentages stated in the heading of Art. 2 of Law nº 10.637, of 2002, and in the heading of Art. 2 of Law nº 10.833, of 2003, of the amount corresponding to the purchase cost of the good, in the case of purchases on the domestic market; or

II – As stated in § 3 of Art. 15 of Law nº 10.865, of 2004, in cases of importation.

§ 2 What is set forth in this article applies to new goods acquired or received after August 3, 2011.

§ 3 The regime of credit deduction within a period of 12 (twelve) months continues to be applicable to new goods acquired or received after the month of May, 2008 and prior to August 3, 2011." (NR)

Art. 5 Companies in Brazil manufacturing products classified in positions 87.01 to 87.06 of TIPI, approved by Decree nº 6.006, of 2006, observing the limits stated in sub-paragraphs I and II of Art. 4 of Decree-Law nº 1.199, December 27, 1971, may take advantage of the reduction of the rates of the Tax on Industrial Products (IPI), through an act of the Executive Branch, for the purpose of stimulating competitiveness, adding national content, investment, technological innovation and local production.

§ 1 The reduction noted in the heading:

I –Must observe levels of investment, technological innovation and the adding of national content, in compliance with the requirements established by act of the Executive Branch;

II – May be made use of until July 31, 2016; and

III – Shall cover products indicated by act of the Executive Branch.

§ 2 For purposes of this article, the Executive Branch shall determine:

I – The percentages of the reduction noted in the heading, and may differentiate them by product type, taking into consideration the criteria established in § 1; and

II – The form of accreditation of the company.

§ 3 The reduction noted in the heading does not exclude the benefits stated in Arts. 11-A and 11-B of Law nº 9.440, of March 14, 1997, and in Art. 1 of Law nº 9.826, August 23, 1999, and the special regime of taxation indicated in Art. 56 of Provisional Measure nº 2.158-35,August 24, 2001, pursuant to the terms, limits and conditions established by act of the Executive Branch.

Art. 6 The reduction noted in Art. 5 applies to products of foreign origin classified at positions 87.01 to 87.06 of TIPI, observing what is set forth in sub-paragraph III of § 1 of Art. 5, in keeping with the limits and conditions established by act of the Executive Branch.

§ 1 To respect the international agreements to which the Federative Republic of Brazil is a signatory, what is set forth in the heading applies only in cases of the exit of the imported products from the importing establishment belonging to the manufacturing company that meets the requirements mentioned in §§ 1 and 2 of Art. 5.

§ 2 The requirement noted in § 1 does not apply to imports of vehicles carried out under the auspices of international agreements that include specific integration programs, pursuant to terms established by act of the Executive Branch.

Art. 7 Until December 31, 2014, the contribution owed by companies exclusively engaged in the provision of Information Technology (IT) and Information and Communications Technology (ICT) services, referred to in § 4 of Art. 14 of Law nº 11.774, of September 17, 2008, shall apply to gross earnings, excluding cancelled sales and unconditional deductions granted, replacing the contributions stated in sub-paragraphs I and III of Art. 22 of Law nº 8.212, of July 24, 1991, at the rate of 2.5% (two point five percent).

§ 1 While this article is in force, the companies covered by the heading and by §§ 3 and 4 of this article shall not be entitled to the reductions stated in the heading of Art. 14 of Law nº 11.774, of 2008.

§ 2 What is set forth in this article does not apply to companies exclusively engaged in the activities of representative, distributor or reseller of computer programs.

§ 3 In the case of IT and ICT companies engaging in activities other than those stated in the heading, until December 31, 2014, the calculation of the contribution owed shall adhere to the following:

I – To what is set forth in the heading regarding the portion of gross earnings corresponding to the services listed in the heading; and

II – To what is set forth in sub-paragraphs I and III of Art. 22 of Law nº 8.212, of 1991, reducing the amount of the contribution to be collected to the percentage resulting from the ratio between gross earnings for activities not related to the services noted in the heading and total gross earnings.

§ 4 What is set forth in this article applies to companies providing the services referred to in § 5º of Art. 14 of Law nº 11.774, of 2008.

§ 5 (VETOED).

Art. 8 Until December 31, 2014, companies manufacturing the products classified in TIPI, approved by Decree nº 6.006, of 2006 shall contribute from gross earnings, excluding cancelled sales and unconditional deductions granted, at the rate of 1.5% (one point five percent), replacing the contributions stated in sub-paragraphs I and III of Art. 22 of Law nº 8.212, of 1991, :

I – In codes 3926.20.00, 40.15, 42.03, 43.03, 4818.50.00, 63.01 to 63.05, 6812.91.00, 9404.90.00 and in chapters 61 and 62;

II – In codes 4202.11.00, 4202.21.00, 4202.31.00, 4202.91.00, 4205.00.00, 6309.00, 64.01 to 64.06;

III – In codes 41.04, 41.05, 41.06, 41.07 and 41.14;

IV – In codes 8308.10.00, 8308.20.00, 96.06.10.00, 9606.21.00 and 9606.22.00; and

V – In code 9506.62.00.

Sole paragraph. In the case of companies engaged in activities other than those stated in the heading, the calculation of the contribution shall adhere to the following:

I – To what is set forth in the heading regarding the portion of gross earnings corresponding to the products listed in its sub-paragraphs I to V; and

II – To what is set forth in sub-paragraphs I and III of Art. 22 of Law nº 8.212, of 1991, reducing the amount of the contribution to collect the percentage resulting from the ratio between gross earnings on activities not related to the manufacture of products listed in sub-paragraphs I to V in the heading and total gross earnings.

Art. 9 For purposes of what is set forth in Arts. 7 and 8 of this Law:

I –Gross earnings must be considered without the adjustment indicated in sub-paragraph VIII of Art. 183 of Law nº 6.404, of December 15, 1976;

II – Gross earnings on exports are excluded from the base for calculation of contributions;

III – The date for collection of contributions shall be in accord with what is set forth in item “b” of sub-paragraph I of Art. 30 of Law nº 8.212, of 1991;

IV – The Federal Government shall compensate the General Fund for the Social Retirement Regime, indicated in Art. 68 of Supplementary Law nº 101, of May 4, 2000, for the amount corresponding to the estimate of waivers of retirement benefits resulting from exemptions, in such a way that it does not affect the assessment of the financial result of the General Social Retirement Regime (RGPS); and

V – With regard to the contributions indicated in Arts. 7 and 8, companies continue to be subject to fulfillment of the other obligations stated in retirement legislation.

Art. 10. A tripartite commission is to be established by act of the Executive Branch for the purpose of overseeing and evaluating implementation of the measures indicated in Arts. 7 to 9, made up of representatives of workers and management from the economic sectors indicated therein, as well as from the federal Executive Branch.

Art. 11. Art. 1 of Provisional Measure nº 2.199-14,August 24, 2001, is to be amended to read as follows:

“Art. 1 Without impairment to other rules in effect bearing on this matter, starting in calendar year 2000, companies that have a plan registered and approved as of December 31, 2013 for the

installation, expansion, modernization or diversification projected in sectors of the economy considered priorities for regional development, by act of the Executive Branch, in the areas of activity of the Superintendency for Development of the Northeast (SUDENE) and the Superintendency for Development of Amazonia (SUDAM), shall be entitled to a 75% (seventy five percent) reduction of income tax and additional taxes calculated on the basis of operating profits.

.....

§ 1-A. Companies that are manufacturers of machinery, equipment, instruments and devices based on digital technology, geared towards the program of digital inclusion with an approved plan, as per the terms of the heading, shall be entitled to an exemption from income tax and additional tax, calculated on the basis of operating profits.

.....

§ 3-A. In cases of plans such as those indicated in § 1-A that are already being used for tax benefit, as per the terms of the **heading**, the period for such use is extended to become 10 (ten) years counting from the date of publication of Provisional Measure nº 540,of August 2, 2011.

....." (NR)

Art. 12. Art. 7 of Law nº 11.033, of December 21, 2004, is to be amended to read as follows:

"Art. 7 Companies earning the revenues indicated in sub-paragraph XXIII of Art. 10 of Law nº 10.833, December 29, 2003, are required to install equipment for the issuance of tax coupons in their establishments, or another equivalent system for the control of revenues, in a manner subject to the discipline of the Federal Revenue Service of Brazil." (NR)

Art. 13. Art. 19-A of Law nº 11.196, of November 21, 2005, is to be amended to read as follows:

"Art. 19-A. For purposes of determining real profits and the basis for the calculation of the Social Contribution on Net Profits (CSLL), companies may exclude from net profits expenditures made on projects for scientific and technological research and technological innovation to be executed by the Scientific and Technological Institution (ICT), referred to in sub-paragraph V of the heading of Art. 2 of Law nº 10.973, December 2, 2004, or by private, not-for-profit scientific and technological entities, in accordance with regulations. ....." (NR)

Art. 14. Cigarettes classified in code 2402.20.00 of TIPI, approved by Decree nº 6.006, of 2006, of domestic manufacture or imported, excepting those classified in Ex 01, are subject to the IPI at a rate of 300% (three hundred percent).

§ 1 The Executive Branch is authorized to alter the rate noted in the heading, observing what is set forth in sub-paragraphs I and II of Art. 4 of Decree-Law nº 1.199, of 1971.

§ 2 The IPI is to be calculated based on application of the rate on taxable value set forth in sub-paragraph I of Art. 4 of Decree-Law nº 1.593, of December 21, 1977.

Art. 15. The percentage set by the Executive Branch, in observance of what is set forth in sub-paragraph I of Art. 4º of Decree-Law nº 1.593, of 1977, may not be less than 15% (fifteen percent).

Art. 16. The IPI indicated in Art. 14 is to be assessed and collected only once, as follows:

I – By the industrial establishment, in relation to the output of cigarettes intended for the domestic market; or

II – By the importer, in settlement of customs duties on cigarettes of foreign origin.

§ 1 In the event that differentiated prices are adopted for the same commercial brand of cigarettes, for purposes of assessment and collection of the IPI, the highest retail sale price charged in each state or the Federal District shall prevail.

§ 2 The Federal Revenue Service of Brazil shall disclose on its web site the names of the commercial brands of cigarettes and the retail prices indicated in § 1, as well as the date that prices first became effective.

Art. 17. The industrial company or importer of cigarettes referred to in Art. 14 may opt for the special regime of assessment and collection of the IPI, whereby the amount of the tax is to be derived by the sum of 2 (two) elements, calculated based on the use of the following rates:

I – Value added, observing what is set forth in § 2 of Art. 14; and

II – Specific, set in reals per lot of twenty cigarettes, based on the physical characteristics of the product.

§ 1 The Executive Branch shall set the rates for the special regime noted in the heading as follows:

I – At a percentage not greater than one third of the rate noted in the heading of Art. 14, in relation to the value-added rate; or

II – For an amount not less than R$ 0.80 (eighty cents of the real), in relation to the specific rate.

§ 2 The provisions contained in Art. 16 also apply to the IPI owed by companies opting for the special regime noted in the heading.

§ 3 The bringing of legal action by companies challenging the terms of the special regime noted in the heading implies abandonment of the option and application of the IPI as indicated in Art. 14.

Art. 18. Opting for the special regime stated in Art. 17 shall be exercised by companies in relation to all establishments, until the last business day of the month of December of each calendar year, producing effects beginning on the first day of the calendar year following the year in which the option was taken.

§ 1 The option referred to in this article shall be automatically extended to the following calendar year, unless the company withdraws from the option, pursuant to the terms and conditions established by the Federal Revenue Service of Brazil.

§ 2 During the calendar year in which the company commences the cigarette production or import activities indicated in Art. 14, the option for the special regime may be exercised on any date, producing effects starting on the first day of the month following the month in which the option was taken.

§ 3 Exceptionally during the calendar year of 2011, the option referred to in the heading may be exercised until the last business day of the month of November of 2011, producing effects starting on the first day of the month following the month in which the option was taken.

§ 4 The Federal Revenue Service of Brazil shall disclose on its web site the names of companies opting for the regime pursuant to this article, as well as the date of the start of such option.

Art. 19. In the event of a violation of IPI legislation, the requirement of fines and penalty interest shall be applied in accordance with the general rules for this tax.

Art. 20. The Executive Branch may set a minimum retail sale price for cigarettes classified in code 2402.20.00 of TIPI, valid throughout the whole national territory, and below this price their commercialization is prohibited.

§ 1 The Federal Revenue Service of Brazil shall apply the penalty of loss of cigarettes that are sold in a manner not in compliance with what is set forth in the heading, without impairment of such sanctions as may be appropriate in the case of products brought illicitly into the national territory.

§ 2 A company convicted of what is set forth in the heading shall be forbidden to sell cigarettes for a period of 5 (five) calendar years.

§ 3 Industrial establishments shall be subject to cancellation of their special registration as a manufacturer of cigarettes indicated in Art. 1º of Decree-Law nº 1.593, of 1977 that engage in the following practices:

I – Present a schedule of retail prices that is not in compliance with what is set forth in the heading; or

II – Sell cigarettes to a company falling in the category indicated in § 2.

Art. 21. Art. 8 of Law nº 10.865, April 30, 2004, is to be amended to read as follows: (Entry into force)

"Art. 8 .....

§ 21. The rate indicated in sub-paragraph II of the heading is to be increased by 1.5 (one point five) percentage points, in the event of import of the goods classified in the Table of Incidence of the Tax on Industrial Products (TIPI), approved by Decree no 6.006, of December 28, 2006:

I – In codes 3926.20.00, 40.15, 42.03, 43.03, 4818.50.00, 63.01 to 63.05, 6812.91.00 and 9404.90.00 and in chapters 61 and 62;

II – In codes 4202.11.00, 4202.21.00, 4202.31.00, 4202.91.00 and 4205.00.00;

III – in codes 6309.00 and 64.01 to 64.06;

IV – In codes 41.04, 41.05, 41.06, 41.07 and 41.14;

V – In codes 8308.10.00, 8308.20.00, 96.06.10.00, 9606.21.00 and 9606.22.00; and

VI – In code 9506.62.00." (NR)

Art. 22. Art. 25 of Law nº 11.508, of July 20, 2007, is to be amended to read as follows:

"Art. 25. The act of the founding of the EPZ (Export Processing Zones) authorized as of October 13, 1994 shall expire if by December 31, 2012 the administrator of the EPZ shall have failed to effectively initiate the works of implementation." (NR)

Art. 23. Art. 11 of Law nº 7.291, of December 19, 1984, is to be amended to read as follows:

"Art. 11. .....

§ 4 For purposes of calculation of the contribution noted in the heading of this article, the following amounts are to be deducted from the total amount of the general movement of bets for the preceding month:

I – the amounts paid to bettors; and

II – the amounts paid in the form of premiums to owners, horse breeders and jockeys." (NR)

Art. 24. Without impairment to what is set forth in Supplementary Law nº 116, of July 31, 2003, the Executive Branch is authorized to institute the Brazilian Nomenclature of Services, Intangibles and other Operations that Produce Variations in Assets (NBS) and the Explanatory

Notes of the Brazilian Nomenclature of Services, Intangibles and other Operations that Produce Variations in Assets (Nebs).

Art. 25. The obligation is hereby instituted to provide information for economic and commercial purposes to the Ministry of Development, Industry and Foreign Trade concerning transactions between those residing or domiciled in Brazil and those residing or domiciled abroad, including services, intangibles and other operations that produce variations in the assets of natural persons, juridical persons and entities without legal personality.

§ 1 The provision of the information noted in the heading of this article:

I – Is to be established in accordance with the manner, schedule and conditions defined by the Ministry of Development, Industry and Foreign Trade;

II – Does not include purchase and sale operations transacted exclusively with merchandise; and

III – Is to be implemented via an electronic system to be made available on the World Wide Web.

§ 2 The services, intangibles and other operations noted in the heading of this article are to be defined in the Nomenclature mentioned in Art. 24.

§ 3 The following parties are obliged to provide the information indicated in the heading of this article:

I – Providers or takers of services residing or domiciled in Brazil;

II – Natural or juridical persons residing or domiciled in Brazil that transfer or acquire the intangible, including rights of intellectual property, via assignment, concession, licensing or other means allowed by law; and

III – Natural or juridical persons or the party legally responsible for an entity without legal personality, residing or domiciled in Brazil, engaging in other operations that produce variations in assets.

§ 4 The obligation stated in the heading of this article also extends to the following:

I – To operations for the export and import of services, intangibles and other operations; and

II – To operations conducted through a commercial presence abroad related to a juridical person domiciled in Brazil, pursuant to item “d” of Article XXVIII of the General Agreement on Trade in Services (GATS), approved by Legislative Decree n° 30,of December 15, 1994, and promulgated by Decree n° 1.355,of December 30, 1994.

§ 5 Circumstances for waiving the obligation stated in the heading of this article are to be defined by the Ministry of Development, Industry and Foreign Trade.

§ 6 The information noted in the heading of this article may subsidize other electronic systems of public administration.

Art. 26. The information indicated in Art. 25 is to be used by the Ministry of Development, Industry and Foreign Trade for the systematic collection, processing and dissemination of statistics, for the assistance of management and the oversight of support mechanisms for foreign trade in services, intangibles and other operations, instituted in the framework of public administration, as well as for the exercise of the other legal attributions that fall within its competence.

§ 1 The persons referred to in § 3 of Art. 25 must indicate the use of support mechanisms for foreign trade in services, intangibles and other operations, through linkage thereof to the information indicated in Art. 25, without impairment to what is set forth in specific legislation.

§ 2 The agencies and entities of public administration that are legally responsible for the regulation, standardization, oversight or enforcement of the mechanisms noted in the heading of this article shall use the linkage indicated in § 1 of this article to verify compliance with the conditions necessary for their execution.

§ 3 Concession or recognition of the mechanisms noted in the heading of this article is subject to fulfillment of the obligation stated in Art. 25.

§ 4 The Ministry of Development, Industry and Foreign Trade shall ensure the means for compliance with what is stated in this article.

Art. 27. The Ministry of the Treasury and the Ministry of Development, Industry and Foreign Trade shall issue supplementary rules for the fulfillment of what is set forth in Arts. 24 to 26 of this Law.

Art. 28. The rules of origin indicated in 1994 General Agreement on Tariffs and Trade (GATT), approved by Legislative Decree nº 30,of December 15, 1994, and promulgated by Decree nº 1.355,of December 30, 1994, are only to be applied in non-preferential instruments of trade policy, in a consistent, uniform and impartial manner.

Art. 29. Investigations of trade protection under the auspices of the Department of Trade Protection (Decom) of the Secretary of Foreign Trade (Secex) of the Ministry of Development, Industry and Foreign Trade are to be based on the declared origin of the product.

§ 1 The application of measures of trade protection are to be imposed through a specific act by the Chamber of Foreign Trade (Camex) and shall forego the additional investigation undertaken under the terms of the heading.

§ 2 Even if the requirements established in this Law have been fulfilled, measures of trade protection may still be extended, under the terms of Art. 10-A of Law nº 9.019, of March 30, 1995, to products whose origin is different from that on which the application of the measure of trade protection is based, to which § 1 of this article makes reference.

Art. 30. In cases in which the application of a measure of trade protection has been established by a specific act of Camex based on the origin of the products, the collection of the amounts owed is to be carried out by the Federal Revenue Service of Brazil, taking into consideration the non-preferential rules of origin established in Arts. 31 and 32 of this Law.

Art. 31. Respecting the criteria resulting from the international treaty to which Brazil is a party, the country of origin of a product is considered to be the country where it was produced or, in the case of a product resulting from material or labor from more than one country, the country where it underwent substantial transformation.

§ 1 For the purposes of what is set forth in Arts. 28 to 45 of this Law, the following merchandise is considered to be produced:

I –Products totally obtained, understood as follows:

a) products from the vegetable domain harvested in the national territory;

b) live animals, born and raised in the national territory;

c) products obtained from live animals in the national territory;

d) products obtained from hunting, trapping or fishing performed in the national territory;

e) minerals and other natural resources not included in items “a” to “d”, extracted or obtained in the national territory;

f) fish, shellfish and other marine species obtained from the sea outside its exclusive economic zones by vessels registered or matriculated in the country and authorized to fly the flag of the country, or by vessels leased or chartered to companies established in the national territory;

g) products produced on board factory ships from products identified in items “d” and “f” of this sub-paragraph, as long such factory ships are registered or matriculated in the country and are authorized to fly the flag of the country, or by factory ships leased or chartered by companies established in the national territory;

h) products obtained from the seabed or sub-seabed by a juridical person of a country, as long as the country has rights to explore this seabed or sub-seabed; and

i) products obtained from outer space, as long as they are obtained by a juridical person from the country;

II – Products prepared entirely in the national territory, when solely and exclusively materials originating from the national territory were used in their preparation.

§ 2 For purposes of what is set forth in Arts. 28 to 45 of this Law, ‘substantial transformation’ is understood to refer to products for whose preparation materials not originating from the country were used, when they result from a process of transformation that confers upon them a new individuality, characterized by the fact that they are classified at a rate ranking (first 4 (four) digits of the Harmonized System for the Designation and Codification of Products – SH) different from the ranking of the aforementioned materials, except for what is set forth in § 3 of this article.

§ 3 Products shall not be considered to originate from the exporting country that result from operations or processes performed in its territory, whereby they acquire the final form in which they will be commercialized, when, in such operations or processes, materials or inputs are used that do not originate in the country and consist only of assembly, packaging, division into batches or units, selection, classification, marking, components of assorted merchandise or simple dilutions in water or other substance that do not alter the characteristics of the product in their original state, or other operations or equivalent processes, even if such operations alter the product classification, considered at 4 (four) digits.

Art. 32. The Executive Branch can define specific non-preferential criteria of origin.

Sole paragraph. The specific requirements defined as a base in the heading shall prevail over those established in Art. 31 of this Law.

Art. 33. The Federal Revenue Service of Brazil and Secex, in the scope of their competencies, shall undertake the verification of non-preferential origin based on aspects of authenticity, veracity and observance of the rules stated in Arts. 28 to 45 of this Law or its regulations.

Art. 34. Proof of origin shall be ascertained through presentation by the exporter/producer or by the importer of information concerning, among other things:

I – The location of the producing establishment;

II – Operational capacity;

III – The manufacturing process;

IV – The constituent raw materials; and

V – The level of non-original inputs used to obtain the product.

§ 1 The presentation of the information referred to in the heading does not exclude the possibility of carrying out reviews or inspections at the producing or exporting establishment.

§ 2 The Executive Branch can establish additional procedures and requirements necessary for proof of origin, as well as the manner and deadline for submission and the content of documents required for such verification.

Art. 35. The importer is jointly liable for the information submitted by the exporter/producer concerning the products it has imported.

Art. 36. It is incumbent upon Secex to perform verification of non-preferential origin during the import licensing phase, in response to complaints or on its own initiative.

Art. 37. Failure to prove the stated origin shall entail the denial of approval of the import license by Secex.

§ 1 After denial of approval of the import license for a particular product, Secex shall extend the measure to imports of identical products by the same exporter or producer, until it demonstrates compliance with the rules of origin.

§ 2 Secex shall extend the measure to imports of identical products of other exporters or producers from the same country or from other countries that do not comply with the rules of origin.

Art. 38. The import license for the product that is subject to verification shall only be approved following the completion of the process of investigation that proves its stated origin.

Art. 39. It is incumbent upon the Federal Revenue Service of Brazil to conduct verification of non-preferential origin in the course of customs processing or during the performance of customs inspection activities undertaken after clearance, and it shall impose, when applicable, the financial penalties established in this Law.

Art. 40. In the case of importation of a product subject to quantitative restriction, when the stated origin is not proven, the importer shall be obliged to return the products to where they came from outside the country.

Sole paragraph. The importer shall assume the costs of returning the products referred to in the heading.

Art. 41. Without impairment to a characterization of abandonment, pursuant to the terms of sub-paragraph II of Art. 23 of Decree-Law n^{o} 1.455, of April 7, 1976, in the course of customs processing, the import of products subject to quantitative restriction, when the stated origin is not proven, shall be subject to a fine of R$ 5,000.00 (five thousand reals) per day, counting from the date of registration of the Declaration of Importation until the date of the actual return of the product to where it came from outside the country.

Art. 42. Except in the case stated in Art. 41 of this Law, the lack of proof of non-preferential origin shall subject the importer to a fine of 30% (thirty percent) of the customs value of the product.

Art. 43. The application of penalties concerning proof of origin shall not impair the collection, either provisional or definitive, of antidumping or compensatory fees, or even the imposition of safeguard measures, by the Federal Revenue Service of Brazil.

Art. 44. Secex and the Federal Revenue Service of Brazil shall notify each other in writing of the initiation and conclusion of the respective processes of investigation of non-preferential origin and shall conduct them in a coordinated fashion.

Sole paragraph. In the event of initiation of investigation by an agency concerning a particular product and company that has already been subject to a previous investigation by another agency, the information obtained by the latter as well as its conclusions must be taken into consideration in the ongoing process of investigation.

Art. 45. Secex and the Federal Revenue Service of Brazil shall issue, within the scope of their competencies, supplementary rules necessary for the execution of Arts. 28 to 44 of this Law.

Art. 46. (VETOED).

Art. 47. Companies subject to the regime of non-cumulative assessment of the Contribution for the PIS/Pasep and the Contribution for Financing of Social Security (Cofins) can deduct from these contributions, owed at each period of assessment, a tax credit calculated on the basis of the value of the raw materials acquired from an individual or received from an individual member of a cooperative that are used as inputs in the production of biodiesel.

§ 1 What is set forth in the heading of this article applies also to acquisitions by companies engaged in agricultural activities or agricultural cooperatives.

§ 2 Entitlement to the tax credit mentioned in the heading and § 1 of this article only applies to goods acquired or received in the same period of assessment of the natural or juridical person residing or domiciled in the Country, observing what is set forth in § 4 of Art. 3 of Law nº 10.637, of December 30, 2002, and in the § 4 of Art. 3 of Law nº 10.833, December 29, 2003.

§ 3 The amount of the credit referred to in the heading and § 1 of this article shall be determined by application to the value of the aforementioned acquisitions of a percentage corresponding to 50% (fifty percent) of the rates stated in the heading of Art. 2º of Law nº 10.637, of 2002, and in the **heading** of Art. 2º of Law nº 10.833, of 2003.

§ 4 The juridical persons indicated in § 1 of this article may not avail themselves of the following:

I – Of the tax credit noted in the heading of this article; and

II – Of the credit on earnings from sales transacted with the suspension of the juridical persons noted in the heading of this article.

§ 5 The tax credit indicated in the heading must be deducted from the amount of the Contribution for the PIS/Pasep and Cofins to be collected from other operations in the domestic market.

§ 6 The tax credit addressed in this article shall only be applicable after the terms and conditions regulated by the Federal Revenue Service of Brazil are established.

Art. 48. The text of the column “CAUSATIVE FACTORS” of item 9.1 of Annex II of Law nº 9.782, of January 26, 1999, is to be amended to read as follows: “Registration, revalidation or renewal of the registration of smoking products, with the exception of products intended exclusively for export.”

Art. 49. Arts. 2 and 3 of Law nº 9.294, of July 15, 1996, shall be amended to read as follows:

“Art. 2º The use of cigarettes, cigarillos, cigars, pipes or any other smoking product, whether or not it is a tobacco derivative, in a public or private shared enclosed space, is prohibited.

.....

§ 3º A shared enclosed space is considered to be a space accessible to the public, intended for simultaneous use by several people.” (NR)

“Art. 3º Commercial advertising of cigarettes, cigarillos, cigars, pipes or any other tobacco product, whether or not it is a tobacco derivative, is forbidden in all of the national territory, with the sole exception of exposure to the aforesaid products at points of sale, as long as they are accompanied by the warning clauses referred to in §§ 2, 3 and 4 of this article and the respective table of prices, which must include the minimum retail price for cigarettes classified in code 2402.20.00 of TIPI, that is in force at the time, as established by the Executive Branch.

.....

§ 5º On packages of smoking products sold directly to consumers, the warning clauses referred to in § 2 of this article are to be used sequentially, simultaneously or on a rotating basis, and in the latter case they should vary at most every 5 (five) months, and are to be presented in a legible and prominently displayed fashion on 100% (one hundred percent) of their back surface and on one of their sides.

§ 6 As of January 1, 2016, in addition to the warning clauses mentioned in § 5 of this article, an additional text occupying 30% (thirty percent) of the lower part of the front surface must also be printed on packages of smoking products sold directly to consumers.

§ 7 (VETOED)." (NR)

Art. 50. The Executive Branch shall regulate what is set forth in Arts. 1 to 3, 7 to 10, 14 to 20, 46 and 49 of this Law.

Art. 51. The following are hereby revoked:

I – As of July 1, 2012, Art. 1 of Law nº 11.529, of October 22, 2007; and

II – As of the date of the entry into force of Arts. 14 to 20 of this Law, Art. 6 of Decree-Law nº 1.593, of December 21, 1977.

Art. 52. This Law enters into force on the date of its publication.

§ 1 Arts. 1 to 3 shall produce effects only after their regulation.

§ 2 Arts. 7 to 9 and 14 to 21 enter into force on the first day of fourth month following the date of publication of Provisional Measure nº 540,of August 2, 2011, observing what is set forth in §§ 3 and 4 of this article.

§ 3 §§ 3 to 5 of Art. 7 and sub-paragraphs III to V of the heading of Art. 8 of this Law shall produce effects starting on the first day of the fourth month following the date of publication of this Law.

§ 4 Sub-paragraphs IV to VI of § 21 of Art. 8 of Law nº 10.865, April 30, 2004, with the rendering given by Art. 21 of this Law, shall produce effects starting on the first day of the fourth month following the date of publication of this Law.

§ 5 Arts. 28 to 45 enter into force 70 (seventy) days after the date of publication of this Law.

Brasília, December 14, 2011; 190th anniversary of Independence and 123rd anniversary of the Republic.

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