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United States–Mexico–Canada Agreement Technical Amendment in New FY21 Omnibus Appropriation Bill to Benefit Importers from Mexico and Canada

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A USMCA Technical Amendment to the FY21 Omnibus Appropriation/Covid Relief Act allows post importation refunds of the Merchandise Processing Fee (“MPF”) for the United States Mexico Canada Agreement (“USMCA”) participants.

Section 205 of the USMCA Implementation Act, allowed U.S. importers from Mexican and Canadian companies to seek exclusion from the merchandise processing fee at the time of entry, but precluded companies from making a post importation claim for such refunds. MPFs refunds were eligible for post importation claims under the prior North American Free Trade Agreement (“NAFTA”) that was replaced by the USMCA and other U.S. free trade agreements. Various organizations and importers have sought this correction and over 100 groups and companies, including those representing automotive industries, signed a letter addressed to key members of the House Ways and Means Committee and the Senate Finance Committee supporting a fix to what they characterized as a “drafting error”.

This technical error was remedied in the bill passed by Congress on December 21, 2020 (the complete title of the bill is the “Coronavirus Response and Relief Supplemental Appropriations Act, 2021”). Title III to Section O, is entitled “United States–Mexico–Canada Agreement Implementation Act Technical Corrections”. This correction remedied this oversight that could result in millions of dollars in refunds to importers from Canada and Mexico.

The Merchandise Processing Fee although a relatively small percentage of the value of the imported goods can add up over a period of time and particularly impact larger shipments. The process to calculate the MPF is as follows:

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To calculate MPF, multiply the shipment value by 0.3464%. For example, from July 1, 2020, to October 1, 2020, the MPF on a shipment valued greater than \$2,500 USD but less than \$7,400 USD was assessed at the minimum fee of \$26.79, and the maximum MPF per shipment was \$519.76 (shipments valued at \$144,000 USD or more were assessed the maximum MPF which was \$519.76 up through October 2020.) After this date the minimum fee was increased to \$27.23 and the maximum to \$528.33. The rate has not changed.

The removal of the MPF is retroactive to July 1, 2020, the effective date of the USMCA so importers from companies in Mexico and Canada that have paid the MPF can seek post importation refunds. Butzel Long attorneys can assist in advising on this procedure.

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