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Prepared By: Erich Kuss

Approved By: Erich Kuss

Report Highlights:

On Tuesday October 27 Mexico's Secretariat of Economy released updated "criteria" for imported products to comply with NOM-051-SCFI/SSA1-2010 - General Specifications for Labeling of Prepackaged Food and Non-Alcoholic Beverages. The three documents seek to clarify which food and non-alcoholic beverage products must comply with the regulation focusing on inputs not destined to the final consumer, bulk merchandise, and raw materials.

On Tuesday October 27, 2020, Mexico's Secretariat of Economy released updated "criteria" for imported products to comply with NOM-051-SCFI/SSA1-2010 - General Specifications for Labeling of Prepackaged Food and Non-Alcoholic Beverages. The three documents seek to clarify which food and non-alcoholic beverage products must comply with the regulation focusing on inputs not destined to the final consumer, bulk merchandise, and raw materials.

Additional information and access to the PDF documents in Spanish is available on the following Government of Mexico website:

<https://twitter.com/snicemx?lang=en>

The following are non-official translations of the three relevant documents. Please see the Spanish version for exact wording and final interpretation.

Document #1 - Inputs not Destinated to the Final Consumer

NON OFFICIAL TRANSLATION - Release by the Ministry of Economy regarding the Criteria for the application of the Mexican Official Standards (NOM) NOM-051 -SCFI /SSA1- 2010 - **Inputs not destined to the final consumer**

Date: October 26, 2020

I. Background

A letter dated October 7, 2020, from Distribuidora e Importadora ALSEA, S.A. de C.V., from its representative Rodrigo Suárez Espinosa, among others submitted a consultation to the Dirección General de Normas (General Directorate of Standards) related to the application of the standard NOM-051-SCFI/SSA1-2010 “ General Specifications for the labeling of prepacked foods and non-alcoholic beverages regarding commercial and sanitary information”.

Due that the letter is signed by its Representative, it is accredited the legitimization before this authority to request the determination of a criteria that attends to the dispositions that are under the consideration of this General Direction.

Likewise, this criterion may be used by customs agents or authorities, or any other operator who has to apply NOM-051-SCFI/SSA1-2010.

II. Subject of the Criteria

The purpose of this criteria is to define the **raw materials not destined to the final consumer**, which are subject to compliance with NOM-051-SCFI/SSA1-2010.

III. Evaluation

Based on the provisions of articles 8 of the Political Constitution of the United Mexican States; 34, fraction XIII of the Organic Law of the Federal Public Administration, 15 of the Federal Law of Administrative

Process; 5, 9, 64 of the Law of Quality Infrastructure; 2, section A, fraction II, numeral 15,19,11,32, fractions VII and XI and 36, fractions I and IX of the Ministry of Economy's Internal Regulations, issuing the following criteria on the administrative interpretation of the content of NOM-051-SCFI/SSA-2010, for the purposes of Annex 2.4.1. Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters.

For the issuing of this criterion, this authority took into consideration, indistinctly, the provisions of the following normative instruments:

1. Quality Infrastructure Law,
2. Foreign Trade Law
3. NOM-051-SCFI/SSA1-2010 "General Specifications for the labeling of prepacked foods and non-alcoholic beverages regarding commercial and sanitary information".

Once the subject of this criterion has been defined, the following should be considered:

1. On March 27, 2020, the Modification to Standard NOM-051-SCFI/SSA1-2010 "General Specifications for the labeling of prepacked foods and non-alcoholic beverages regarding commercial and sanitary information" was published in the Official Gazette of the Federation, on April 5, 2010.

According to the content of the NOM-051-SCFI/SSA1-2010, its purpose is to establish the commercial and health information that must be contained in the labeling of the product related to prepackaged food and non-alcoholic beverages intended for the final consumer, whether manufactured nationally or abroad, marketed on national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

Numerals 1, 3.42 and 3.9 establish the following:

1. Purpose and Scope of Application

The purpose of this Official Mexican Standard is to establish the commercial and health information that must be contained in the labeling of prepackaged products destined to the final consumer, whether manufactured in Mexico or abroad, marketed in national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

This Mexican Official Standard does not apply to:

- a) pre-packaged food and non-alcoholic beverages that are subject to commercial and health information provisions contained in specific Mexican Official Standards and that do not include this Official Mexican Standard as a normative reference, or in any other current federal regulation that explicitly excludes this regulation from compliance;
- b) food and non-alcoholic beverages in bulk;
- c) food and non-alcoholic beverages packaged at the point of sale; and
- d) other products determined by the competent authority, in accordance with its powers.

3.42 pre-packaged product

food and non-alcoholic beverages that are placed in a container of any nature, in the absence of the consumer and the amount of product contained therein cannot be altered, unless the container is opened or significantly modified.

3.9 final consumer

is the natural or legal person who acquires or enjoys as the final recipient of a pre-packaged product.

Therefore, it is clear that the field of application of NOM-051-SCFI/SSA1-2010 is prepackaged food and non-alcoholic beverages **intended for the final consumer.**

The final consumer is understood to be the individual or company that acquires or enjoys a pre-packaged product as a final recipient.

In this context, it must be understood that the effective scope of the standard is subordinated to the existence of a packaged product. And that said container constitutes the efficient means of carrying it and thus presenting it to the subject who is going to acquire it as a final consumer.

In other words, if a product is contained in a package, but it does not represent the final and definitive container that will appear in front of the consumer's eyes to be acquired as a product at the point of sale, in that case the demonstration of compliance with the NOM should not be required.

In this context, we proceed to exemplify its application:

1. Inputs that are used in the manufacture, processing, preparation or treatment of a food or non-alcoholic beverage not intended for the final consumer.

In other words, those substances or products that are not intended to be placed at the point of sale to be acquired by the person enjoying the pre-packaged product, since they are used in the production process of a food or non-alcoholic beverage.

2. Products that are processed or used by restaurants, canteens, taverns or similar are not intended for the final consumer.

That is, those products that given their nature of use will not be intended to be purchased by the final consumer at a point of sale, but are used in a restaurant service or similar.

It should be considered that the Mexican Official Standards are a public policy measure aimed at protecting legitimate public interest objectives, such as commercial information, which acquires relevance when it is available at the point of sale to the final consumer for the choice of the product or to be acquired and/or consumed.

Therefore, the raw materials not destined to the final consumer, used in the manufacture, elaboration, mixture, processing, preparation and treatment of a food or non-alcoholic beverage, are excluded from the application of the NOM-051 -SCFI/SSA1 -2010, since given their application they are not available to the final consumer at the point of sale to be acquired or consumed.

Thus, once the application of the NOM has been clarified, it is necessary to point out the following:

On July 10, 2020, the Ministry of Economy and the Ministry of Health, through the Federal Commission for Protection against Sanitary Risks (COFEPRIS), published in the Federal Registry the "Agreement establishing the criteria for the implementation, verification and surveillance, as well as for the evaluation of the conformity of the Amendment to the Mexican Official Standard NOM-051-SCFI/SSAI-2010, General Specifications for Food Labeling.

Article Fourteen of the Agreement on Criteria states that the Ministry of Economy will submit to the consideration of the Foreign Trade Commission the adequacy of the Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters published in the Federal Registry on December 31, 2012 and its amendments (Rules Agreement), to add the Modification and validate the import operations of goods subject to its compliance at the point of entry to the country.

Article 64 of the Law on Quality Infrastructure (LIC) states that when a good, product, process or service must comply with a certain Mexican Official Standard or the Standards referred to therein, its similar products to be imported must also comply with the specifications established therein, in the terms provided for in the Law on Foreign Trade. For such purpose, the standardizing authorities will determine, depending on the level of risk, which products subject to Mexican Official Standards must demonstrate their compliance at the point of entry into the country, which will be identified in the Foreign Trade Rules, through the corresponding scope fractions.

In accordance with the provisions of Articles 20 and 26 of the Foreign Trade Law, only the official Mexican standards determined by the Ministry of Economy may be enforced at the point of entry of the goods into the country, and the goods subject to such standards must be identified in terms of their tariff fractions and the corresponding nomenclature, according to the respective Tariff.

And according to Articles 17, 20 and 26 of the Foreign Trade Law, the NOMs Annex is the Agreement through which the Ministry of Economy determines the Official Mexican Standards that must be enforced at the point of entry of the goods into the country. Therefore, this regulatory instrument cannot be used to modify the scope of application of an official Mexican standard.

It should be noted that as a result of the review of the import operations of goods subject to compliance with the Mexican Official Standards of Commercial Information, a high number of operations that did not demonstrate compliance with official Mexican Commercial Information Standards at the point of entry into the country, when they were intended for the direct use of the individual who imports them, or those that are not to be sold to the public as imported.

For this reason, it was appropriate to eliminate such exceptions and ensure that users have the necessary tools to identify the information in an appropriate and clear manner regarding the correct specifications of quantity, characteristics, composition, quality, price, nature and content of the products in Spanish, according to the general system of units of measurement, as well as the risks they represent, allowing them to be sure that their use is reliable, and thus avoid a possible risk to their health and physical integrity, or that of their families in any part of the national territory.

Therefore, on October 1, 2020, the "Agreement of Rules" was published in the Federal Registry, updating the reference of NOM-051-SCFI/SSAI-2010 and repealing the exceptions in compliance with Mexican Official

Standards of Commercial Information and Labeling, which applied to goods that were imported to be used directly by the individual who imported them and goods that were not to be sold to the public as imported.

However, notwithstanding the exceptions eliminated, the "Rules Agreement", as indicated in previous paragraphs, said normative instrument does not modify the objective and scope of application of an official Mexican standard; in that sense, if the inputs not destined to the final consumer are not subject to compliance with NOM-0SI -SCFI/SSA1 -2010; consequently, at the point of entry into the country the inputs not destined to the final consumer are not subject to compliance either.

In that sense, and taking into consideration the points of assessment described above, as well as the legal basis expressed, these General Guidelines issue the following:

CRITERIA

FIRST: The General Directorate of Standards interprets that raw materials not destined to the final consumer are not subject to compliance with NOM-0SI -SCFI/SSA1-2010.

SECOND: For purposes of the Annex to the NOMs, goods entering the country as inputs not destined to the final consumer are not subject to demonstrate compliance with the NOM-0SI -SCFI/SSA1 -2010.

THIRD: Therefore, for purposes of carrying out the customs and foreign trade operation, the importers of inputs not destined to the final consumer must declare in the imports permit, the key of the identifier "EN" plus the corresponding complement: "ENOM", "U" or "E" in accordance with Appendix 8 of Annex 22 of the General Rules of Foreign Trade of the Tax Administration Service.

Document #2 - Bulk Products

NON OFFICIAL TRANSLATION - Release by the Ministry of Economy regarding the Criteria for the application of the Mexican Official Standards (NOM) NOM-051-SCFI/SSA-2010 -SCFI /SSA1- 2010 - **Bulk Products**

Date: October 26, 2020

I. Background

By letter dated October 8, 2020, the National Chamber of Dairy Industries (CANILEC) and the Dairy Export Council of the United States (USDEC) through its General Director René Fonseca Medina and the Director of Regulatory Affairs and Market Access Dr. Oscar Ferrara, respectively, among others, submitted to the General Directorate of Standards a consultation regarding the NOM-051-SCFI/SSA-2010 SCFI/SSA1-2010 "General Specifications for the Labeling of Prepackaged Foods and Non-Alcoholic Beverages - Commercial and Health Information".

Since the writing is signed by the General Director and Director of Regulatory Affairs of CANILEC and USDEC, it is accredited the legitimacy before this authority to request the determination of a criterion that attends to the dispositions that this General Direction puts under consideration.

Likewise, this criterion can be accepted by customs agents or authorities, or any other operator who has to apply the NOM-051-SCFI/SSA-2010 SCFI/SSA1-2010.

II. Subject of Criteria

The purpose of this criterion is to define whether or not bulk products are subject to compliance with NOM-051-SCFI/SSA-2010 SCFI/SSA1-2010 and consequently whether or not its compliance applies at the point of entry into the country.

III. Evaluation

Based on the provisions of articles 8 of the Political Constitution of the United Mexican States; 34, fraction XIII of the Organic Law of the Federal Public Administration, 15 of the Federal Law of Administrative Process; 5, 9, 64 of the Law of Quality Infrastructure; 2, section A, fraction II, numeral 15,19,11,32, fractions VII and XI and 36, fractions I and IX of the Ministry of Economy's Internal Regulations, issuing the following criteria on the administrative interpretation of the content of NOM-051-SCFI/SSA-2010-SCFI/SSA-2010, for the purposes of Annex 2.4.1. Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters.

For the issuing of this criterion, this authority took into consideration, indistinctly, the provisions of the following normative instruments:

4. Quality Infrastructure Law,
5. Foreign Trade Law
6. NOM-051-SCFI/SSA-2010-SCFI/SSA1-2010 "General Specifications for the labeling of prepacked foods and non-alcoholic beverages regarding commercial and sanitary information".

Once the subject of this criterion has been defined, the following should be considered:

2. On March 27, 2020, the Modification to Standard NOM-051-SCFI/SSA-2010-SCFI/SSA1-2010 “General Specifications for the labeling of prepackaged foods and non-alcoholic beverages regarding commercial and sanitary information” was published in the Official Gazette of the Federation, on April 5, 2010.

According to the content of the NOM-051-SCFI/SSA-2010-SCFI/SSA1-2010, its purpose is to establish the commercial and health information that must be contained in the labeling of the product related to prepackaged food and non-alcoholic beverages intended for the final consumer, whether manufactured nationally or abroad, marketed on national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

Numerals 1,3.9 y 3.40 establish the following:

1. Purpose and Scope of Application

The purpose of this Official Mexican Standard is to establish the commercial and health information that must be contained in the labeling of prepackaged products destined to the final consumer, whether manufactured in Mexico or abroad, marketed in national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

This Mexican Official Standard does not apply to:

- a) pre-packaged food and non-alcoholic beverages that are subject to commercial and health information provisions contained in specific Mexican Official Standards and that do not include this Official Mexican Standard as a normative reference, or in any other current federal regulation that explicitly excludes this regulation from compliance;
- b) food and non-alcoholic beverages in bulk;
- c) food and non-alcoholic beverages packaged at the point of sale; and
- d) other products determined by the competent authority, in accordance with its powers.

3.9 final consumer

is the natural or legal person who acquires or enjoys as the final recipient of a pre-packaged product.

3.40 bulk product

product placed in a package of any nature and whose content may be variable, being weighed, counted or measured in the presence of the consumer at the time of sale.

Therefore, it is clear that the field of application of NOM-051-SCFI/SSA-2010 is pre-packaged food and non-alcoholic beverages intended for the final consumer and that **bulk products are undoubtedly excluded from such field of application.**

In this context and considering that "**bulk product**" is an objective concept, based on facts and logic, we proceed to define its application:

1. Bulk products are **those found in a container for transportation purposes**, which are susceptible to being weighed, counted or measured in the presence of the consumer at the time of sale.

Therefore, as regards bulk product, any container, wrap, or packaging intended to transport the goods must be understood by **packaging**.

Therefore, if the product is in a packaging for transportation purposes, and is susceptible of being weighed, counted or measured in the presence of the consumer at the time of sale, it is therefore only considered a bulk product and is therefore excluded from NOM-051-SCFI/SSA-2010.

2. Bulk products are products that are **susceptible from being weighed, counted, or measured in the presence of the final consumer**.

That is, those that, given their nature of fungible goods, such as objects that can be exchanged for others without any detriment to the owner, require the use of measures of volume, mass, weight, and quantity to be acquired by the final consumer.

Therefore, if the product is capable of being weighed, counted or measured in the presence of the final consumer, it is therefore only considered a bulk product and is therefore excluded from the application of NOM-051-SCFI/SSA-2010.

Thus, once the application of NOM has been clarified, it is necessary to point out the following:

On July 10, 2022, the Ministry of the Economy and the Ministry of Health through the Federal Commission for the Protection of Health Risks (COFEPRIS) published in the Federal Registry the "Agreement establishing the criteria for the amendment to NOM-051-SCFI/SSA-2010", published on 27 March (Criteria Agreement).

Article Fourteen of the Agreement on Criteria states that the Ministry of Economy will submit to the consideration of the Foreign Trade Commission the adequacy of the Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters published in the Federal Registry on December 31, 2012 and its amendments (Rules Agreement), to add the Modification and validate the import operations of goods subject to its compliance at the point of entry to the country.

Article 64 of the Law on Quality Infrastructure (LIC) states that when a good, product, process or service must comply with a certain Mexican Official Standard or the Standards referred to therein, its similar products to be imported must also comply with the specifications established therein, in the terms provided for in the Law on Foreign Trade. For such purpose, the standardizing authorities will determine, depending on the level of risk, which products subject to Mexican Official Standards must demonstrate their compliance at the point of entry into the country, which will be identified in the Foreign Trade Rules, through the corresponding scope fractions.

In accordance with the provisions of Articles 20 and 26 of the Foreign Trade Law, only the official Mexican standards determined by the Ministry of Economy may be enforced at the point of entry of the goods into the

country, and the goods subject to such standards must be identified in terms of their tariff fractions and the corresponding nomenclature, according to the respective Tariff.

And according to Articles 17, 20 and 26 of the Foreign Trade Law, the NOMs Annex is the Agreement through which the Ministry of Economy determines the Official Mexican Standards that must be enforced at the point of entry of the goods into the country. Therefore, this regulatory instrument cannot be used to modify the scope of application of an official Mexican standard.

It should be noted that as a result of the review of the import operations of goods subject to compliance with the Mexican Official Standards of Commercial Information, a high number of operations that did not demonstrate compliance with official Mexican Commercial Information Standards at the point of entry into the country, when they were intended for the direct use of the individual who imports them, or those that are not to be sold to the public as imported.

For this reason, it was appropriate to eliminate such exceptions and ensure that users have the necessary tools to identify the information in an appropriate and clear manner regarding the correct specifications of quantity, characteristics, composition, quality, price, nature and content of the products in Spanish, according to the general system of units of measurement, as well as the risks they represent, allowing them to be sure that their use is reliable, and thus avoid a possible risk to their health and physical integrity, or that of their families in any part of the national territory.

Therefore, on October 1, 2020, the "Agreement of Rules" was published in the Federal Registry, updating the reference of NOM-051-SCFI/SSA-2010-SCFI/SSA1-2010 and repealing the exceptions in compliance with Mexican Official Standards of Commercial Information and Labeling, which applied to goods that were imported to be used directly by the individual who imported them and goods that were not to be sold to the public as imported.

However, notwithstanding the exceptions eliminated, the "Rules Agreement", as indicated in previous paragraphs, said normative instrument does not modify the objective and scope of application of an official Mexican standard; in that sense, if the inputs not destined to the final consumer are not subject to compliance with NOM-051-SCFI/SSA1-2010; consequently, at the point of entry into the country the inputs not destined to the final consumer are not subject to compliance either.

In that sense, and taking into consideration the points of assessment described above, as well as the legal basis expressed, these General Guidelines issue the following:

CRITERIA

FIRST: The Directorate-General for Standards interprets bulk products as not in the NOM-051-SCFI/SSA-2010 field of application.

SECOND: Those referenced in the valuation part of this document shall be considered as bulk products.

THIRD: For this purpose in the provisions of the NOMs Annex, goods entering the country as a bulk product are not subject to demonstrate compliance with NOM-051-SCFI/SSA-2010, since they are excluded from the NOM application field.

FOURTH: Therefore, for purposes of carrying out the customs and foreign trade operation, the importers of inputs not destined to the final consumer must declare in the imports permit, the key of the identifier "EN" plus the corresponding complement: "ENOM", "U" or "E" in accordance with Appendix 8 of Annex 22 of the General Rules of Foreign Trade of the Tax Administration Service.

Document #3 - Raw Materials

NON OFFICIAL TRANSLATION - Release by the Ministry of Economy regarding the Criteria for the application of the Mexican Official Standards (NOM) NOM-051 -SCFI /SSA1- 2010 - **Raw materials**

Date: October 26, 202

I. Background

By means of a letter dated October 7, 2020, the Confederation of Industrial Chambers of the United Mexican States (CONCAMIN) and the retail chains associated with the National Association of Retailers, A.C. (ANTAD) through its President of the Commission of Internal Commerce of the CONCAMIN, Raul Picard del Prado, and the Director of Government Relations with of ANTAD, Manuel . Cardona Zapata, respectively, among others, entered the General Directorate of Norm as a consultation regarding the application of NOM-051 -SCFI/SSA1 - 2010, "General Specifications for the Labeling of Prepackaged Foods and Non-Alcoholic Beverages - Commercial and Health Information".

Since the document is signed by the President of the Commission and the Director of Government of CONCAMIN and ANTAD, respectively, the legitimacy is accredited before this authority to request the determination of a criterion that attends to the dispositions that it puts to consideration of this General Direction.

Likewise, this criterion can be accepted by customs agents or authorities, or any other operator who has to apply the NOM-051 SCFI/SSA1-2010.

II. Subject of the Criteria

The purpose of this criterion is to define whether the product that is imported as a raw material, to produce or manufacture food or non-alcoholic beverages, is subject to compliance with NO M -051-SCFI/SSA1 -2010.

III. Evaluation

Based on the provisions of articles 8 of the Political Constitution of the United Mexican States; 34, fraction XIII of the Organic Law of the Federal Public Administration, 15 of the Federal Law of Administrative Process; 5, 9, 64 of the Law of Quality Infrastructure; 2, section A, fraction II, numeral 15,19,11,32, fractions VII and XI and 36, fractions I and IX of the Ministry of Economy's Internal Regulations, issuing the following criteria on the administrative interpretation of the content of NOM-051-SCFI/SSA-2010, for the purposes of Annex 2.4.1. Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters.

For the issuing of this criterion, this authority took into consideration, indistinctly, the provisions of the following normative instruments:

7. Quality Infrastructure Law,
8. Foreign Trade Law
9. NOM-051-SCFI/SSA1-2010 "General Specifications for the labeling of prepacked foods and non-alcoholic beverages regarding commercial and sanitary information".

Once the subject of this criterion has been defined, the following should be considered:

3. On March 27, 2020, the Modification to Standard NOM-051-SCFI/SSA1-2010 “General Specifications for the labeling of prepacked foods and non-alcoholic beverages regarding commercial and sanitary information” was published in the Official Gazette of the Federation, on April 5, 2010.

According to the content of the NOM-051-SCFI/SSA1-2010, its purpose is to establish the commercial and health information that must be contained in the labeling of the product related to prepackaged food and non-alcoholic beverages intended for the final consumer, whether manufactured nationally or abroad, marketed on national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

Numerals 1, 3. 2, 3.29, 3.42 and 3.9 establish the following:

1. Purpose and Scope of Application

The purpose of this Official Mexican Standard is to establish the commercial and health information that must be contained in the labeling of prepackaged products destined to the final consumer, whether manufactured in Mexico or abroad, marketed in national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

This Mexican Official Standard does not apply to:

- a) pre-packaged food and non-alcoholic beverages that are subject to commercial and health information provisions contained in specific Mexican Official Standards and that do not include this Official Mexican Standard as a normative reference, or in any other current federal regulation that explicitly excludes this regulation from compliance;
- b) food and non-alcoholic beverages in bulk;
- c) food and non-alcoholic beverages packaged at the point of sale; and
- d) other products determined by the competent authority, in accordance with its powers.

3.2 additive

any substance which as such is not normally consumed as a food, nor is it used as a basic ingredient in food, whether or not it has nutritional value, and the addition of which to the product for technological purposes at the stages of production, processing, preparation, treatment, packaging, packing, transport or storage, results or can reasonably be expected to result (directly or indirectly) in a component of the product or an element affecting its characteristics (including organoleptic ones) This definition does not include "contaminants" or substances added to the product to maintain or improve nutritional qualities.

3.29 ingredient

any substance or product, including additives, used in the manufacture, processing, preparation or treatment of a food or non-alcoholic beverage and present in the final product at, whether processed or not.

a. **Composite ingredient**

previously elaborated mixture of substances and products that constitutes a finished product and is used for the manufacture of another one.

3.42 pre-packaged product

food and non-alcoholic beverages that are placed in a container of any nature, in the absence of the consumer and the amount of product contained therein cannot be altered, unless the container is opened or significantly modified.

3.9 final consumer

is the natural or legal person who acquires or enjoys as the final recipient of a pre-packaged product.

Therefore, it is clear that the scope of application of NOM-051-SCFI/SSA1-2010 is pre-packaged foods and non-alcoholic beverages intended for the final consumer that are not included in the list of ingredients before point 3.2 of the NOM.

It is important to emphasize that prepackaged products are foods and non-alcoholic beverages that are placed in a container of any nature, in the absence of the consumer and the amount of product contained therein cannot be altered, unless the container is opened or significantly modified, being this the one acquired by the final consumer.

Unlike ingredients that can be included in the final product, which can be any substance or product, including additives, used in the manufacture, processing, preparation or treatment of a food or non-alcoholic beverage and is present in the final product, whether processed or not.

However, raw material is any good that is used during a production process until it becomes a consumer good.

In this context and considering that the raw material is an objective concept, based on facts and logic, we proceed to define it:

Raw material is any ingredient, including additives used in the manufacture, processing, preparation or treatment of a food or non-alcoholic beverage.

As soon as said raw material is inserted in the final product and becomes a pre-packaged non-alcoholic food or beverage, it will be subject to the scope of application of NOM-051-SCFI/SSA1-2010 and must comply with it, provided that it is definitively incorporated into the pre-packaged product for the final consumer.

It should be considered that the Mexican Official Standards are a public policy measure aimed at protecting legitimate public interest objectives, such as commercial information, and it becomes relevant when it is available at the point of sale to the final consumer for the choice of the product or service to be purchased and/or consumed.

Therefore, **substances or products that are used as raw material in the manufacture, elaboration, preparation or treatment of a food or non-alcoholic beverage are excluded from the application of NOM-051-SCFI/SSA1-2010**, every time that given its application they are not available to the final consumer at the point of sale to be acquired or consumed.

Thus, once the application of the NOM has been clarified, it is necessary to point out the following:

On July 10, 2020, the Ministry of Economy and the Ministry of Health, through the Federal Commission for Protection against Sanitary Risks (COFEPRIS), published in the Official Gazette of the Federation the "Agreement establishing the Criteria for the implementation, verification and surveillance, as well as for the evaluation of the conformity of the Amendment to Official Mexican Standard NOM-051-SCFI/SSA1-2010, General Specifications for the Labeling of Prepackaged Foods and Non-Alcoholic Beverages with Commercial and Health Information, published on March 27, 2020 (Criteria Agreement).

Article Fourteen of the Agreement on Criteria states that the Ministry of Economy will submit to the consideration of the Foreign Trade Commission the amendment to the Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters published in the Official Gazette of the Federation on December 31, 2012 and its amendments (Agreement on Rules) to add the Amendment and validate the import operations of goods subject to its compliance at the point of entry into the country.

Article 64 of the Law on Quality Infrastructure (LIC) states that when a good, product, process or service must comply with a certain Mexican Official Standard or the Standards referred to therein, its similar products to be imported must also comply with the specifications established therein, in the terms provided for in the Law on Foreign Trade. For such purpose, the standardizing authorities will determine, depending on the level of risk, which products subject to Mexican Official Standards must demonstrate their compliance at the point of entry into the country, which will be identified in the Foreign Trade Rules, through the corresponding scope fractions.

In accordance with the provisions of Articles 20 and 26 of the Foreign Trade Law, only the official Mexican standards determined by the Ministry of Economy may be enforced at the point of entry of the goods into the country, and the goods subject to such standards must be identified in terms of their tariff fractions and the corresponding nomenclature, according to the respective Tariff.

In accordance with Articles 17, 20 and 26 of the Foreign Trade Law, the NOMs Annex is the Agreement through which the Ministry of Economy determines the official Mexican standards that must be enforced at the point of entry of the merchandise into the country. Therefore, this regulatory instrument cannot be used to modify the scope of application of an official Mexican standard.

It should be noted that as a result of the review of the import operations of goods subject to compliance with official Mexican commercial information standards, a high number of operations were detected that did not demonstrate compliance with official Mexican commercial information standards at the point of entry into the country, when they were intended for the direct use of the individual who imports them, or those that are not going to be sold to the public as they are imported.

For this reason, it was appropriate to eliminate such exceptions and ensure that users have the necessary tools to identify the information in an appropriate and clear manner regarding the correct specifications of quantity, characteristics, composition, quality, price, nature and content of the products in Spanish, according to the general system of units of measurement, as well as the risks they represent, allowing them to be certain that their use is reliable, and thus avoid a possible risk to their health and physical integrity, or that of their families in any part of the national territory.

Therefore, on October 1, 2020, the "Agreement of Rules" was published in the DOF, updating the reference of NOM-051-SCFI/SSA1-2010 and repealing the exceptions in compliance with Mexican official standards of commercial information and labeling, which applied to goods that were imported to be used directly by the individual who imported them and goods that were not to be sold to the public as they are imported.

However, notwithstanding the exceptions eliminated, the "Rules Agreement", as indicated in previous paragraphs, this regulatory instrument does not modify the objective and scope of application of an official Mexican standard; in that sense, if the raw material is not subject to compliance with NOM-051-SCFI/SSA1-2010; consequently, in the point of entry into the country the ingredients, including additives, used in the manufacture, processing, preparation or treatment of a food or non-alcoholic beverage are also not subject to compliance.

In that sense, and taking into consideration the points of assessment described above as well as the legal basis expressed, these General Directorates issue the following:

CRITERIA

FIRST: The General Directorate of Standards interprets that the raw material is not subject to compliance with NOM-051 -SCFI/SSA1 -2010.

SECOND: For purposes of the Annex to the NOMs, the goods entering the country as raw materials, that is, as substances or products used in the manufacture, processing, preparation or treatment of a food or non-alcoholic beverage, are not subject to demonstrating compliance with NOM-051 -SCFI/SSA1-2010.

THIRD: Therefore, for the purposes of carrying out the customs and foreign trade operation, the importers of raw materials must declare on the imports permit the identifier key "EN" plus the corresponding complement: "ENOM", "U" or "E" in accordance with Appendix 8 of Annex 22 of the General Rules of the Tax Administration Service.

Attachments:

No Attachments.