

## AMENDMENT OF THE NEW MEASURES ON FOREIGN TRADE

Decree No. 865/2018 (“Decree 865”), published in September 28, 2018 on the Official Gazette and in force since that day, amended and complemented Decree No. 793/2018 (“Decree 793”), which was analyzed in our September 5, 2018 Newsletter, which is available [here](#).

It is reminded that Decree 793 levied “definitive” exports (i.e. exports for consumption) of all goods in the MERCOSUR Common Nomenclature (“NCM”) with a **12% export duty** -in force as from September 4, 2018 until December 31, 2020-, although limited to either **AR\$ 4 per USD exported or AR\$ 3 per USD exported**, depending on the good being exported, and, in both cases, of the taxable value (or “*valor imponible*”, in Spanish) or FOB official price, as applicable.

On the other hand, Decree 865:

- Specifies that the taxable value<sup>1</sup> must include the amount resulting from the application of the 12% export duty for purposes of determining the mentioned ceilings and, therefore, the amount to be paid in consideration for export duty (i.e. the amount resulting from applying the 12% or any of the mentioned ceilings). Thus, the regulation would seek to ensure the use of a “gross” FOB value -including the 12% export duties- for the calculation of the limit, amount that must then be multiplied by AR\$ 4 or AR\$ 3, as the case may be;
- It provides that, if any of the limits is applied, the result of the calculation of such concept must be expressed in Argentine pesos, at the selling exchange rate of the Banco de la Nación Argentina of the business day prior to the date of registration of the export permit, remaining the amount in such currency until cancelled;
- For exporters that have exported less than USD 20,000,000 during the calendar year immediately prior to the date of registration of the corresponding export permit, it established a 60 calendar day term for the payment of the export duty resulting from the application of Decree 793;
- It exempted from the export duty the part of the price of certain fixed assets that had been invoiced and partially or wholly collected by the exporter, prior to September 4, 2018;
- Excluded from the payment of the export duty exports that are made through the “*EXPORTA SIMPLE*” Regime.

As with Decree 793, Decree 865 indicates that the Production and Labor Ministry will issue the necessary regulations for its application. To this date and in both cases such norms were not published.

Decree 865 was issued, as well as Decree 793, pursuant to Article 755(a) of the Argentine Customs Code, which was considered unconstitutional by the Argentine Supreme Court of Justice in the “*Cameronera Patagónica*” case. Therefore, as in the case of Decree 793, because of the legislative

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<sup>1</sup> According to art. 735 of the Argentine Customs Code, this taxable value is the FOB value.

technique used to re-establish and regulate export duties, the measures provided for by Decree 865 are legally questionable; consequently, its revision is suggested in each case.

To have access to Decree 865 please click [here](#).

For further information please do not hesitate to contact:

Eduardo Mallea  
[eduardo.mallea@bruchou.com](mailto:eduardo.mallea@bruchou.com)

María Laura Bacigalupo  
[maria.laura.bacigalupo@bruchou.com](mailto:maria.laura.bacigalupo@bruchou.com)

Andrea Callegari  
[andrea.callegari@bruchou.com](mailto:andrea.callegari@bruchou.com)

Exequiel Di Cosimo  
[exequiell.dicosimo@bruchou.com](mailto:exequiell.dicosimo@bruchou.com)

Kind regards,