

DOF: 07/16/2021.

DECREE amending the Tariff of the Law of General Taxes on Imports and Exports.

In the margin, there is a stamp bearing the National Coat of Arms, which reads: United Mexican States. - Presidency of the Republic.

ANDRÉS MANUEL LÓPEZ OBRADOR, President of the United Mexican States, in exercise of the authority conferred on me by article 89, section I of the Political Constitution of the United Mexican States, based on articles 1, 4 and 131 of the Constitution; 31 and 34 of the Organic Law of the Federal Public Administration, and 4, sections I and II of the International Trade Law; and

TAKING INTO CONSIDERATION

That, Article 1 of the Political Constitution of the United Mexican States establishes that in the United Mexican States all persons shall enjoy the human rights recognized in the Constitution itself and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection;

That, the aforementioned constitutional precept also establishes that all authorities, within the scope of their competencies, have the obligation to promote, respect, protect and guarantee human rights, in accordance with the principles of universality, interdependence, indivisibility, and progressiveness;

That, article 4 of the Constitution states that everyone has the right to health protection and a healthy environment for their development and well-being;

That, Article 131 of the Constitution confers to the President of the Republic the extraordinary power to create tariffs, as well as to restrict and prohibit imports, exports, and transit of products, articles, and effects, when he deems it urgent, in order to regulate international trade, to have efficient and expeditious legal mechanisms that allow the channeling of international trade operations for the benefit of the country and to respond with the necessary speed to new situations, thus creating a materially legislative provision;

That, the rights referred to in the preceding paragraphs, have the purpose, among others, to prolong and improve the quality of human life, not only of the individual but of a whole community, taking into account that there are factors such as the circulation of pathogens or inappropriate measures to prevent diseases that affect an entire society and which the Mexican State has the obligation to avoid;

That, to ensure effective health access, the federal government must operate articulated public policies to prevent, control and reduce noncommunicable chronic diseases, throughout all stages of the life cycle, considering indispensable to strengthen the preventive, integral and quality care model, in order to promote well-being;

That, on February 19, 2020, the Decree amending the Law of General Taxes on Imports and Exports was published in the Official Gazette of the Federation, prohibiting the entry and exit of

vaping devices to the national territory, among which are the electronic cigarettes and tobacco heating devices, implementing the necessary measures for the benefit of the country, to protect human life, prevent damage to health in the population and obtain a healthy environment for its development and well-being, for which tariff items 3824.90.83, 8543.70.18 and 8543.90.03 were created, in order to identify these products in greater detail and for the correct implementation of the measures required;

That, moreover, through the aforementioned decree, a second Explanatory Note of National Application was added to chapter 85 “Electric machines, apparatus and electric equipment, and parts thereof; sound recording or reproducing devices, television image and sound recording or reproducing devices, and parts and accessories of these devices,” in order to grant greater legal certainty to stakeholders of international trade in the interpretation of the nomenclature of the Law of General Taxes on Imports and Exports published in the Official Gazette of the Federation on June 18, 2007, as well as of its subsequent modifications, regarding the creation of tariff item 8543.70.18;

That, on July 1, 2020, the Decree by which the General Import and Export Taxes is issued and by which various provisions of the customs law are reformed and added was published in the Official Gazette of the Federation. Article 1 of that decree, in the provisions regarding the Law of General Taxes on Imports and Exports, establishes the fees that, considering the classification of goods, will be used to determine General Taxes on Import and Export, that is, the tariff rate applicable to the import and export of goods in the national territory, which has been amended by various provisions published in the same official diffusion body;

That, on December 24, 2020, the Decree that amends the tariff of the General Taxes on Import and Export of the Law of General Taxes on Imports and Exports, the Decree for the support of the competitiveness of the terminal automotive industry and the promotion of the development of the internal car market, the Decree establishing the general import tax for the border region and the northern border strip, the Decree establishing various Programs for Sectoral Promotion and those establishing tariff-quota, creating the three tariffs of Chapters 38 and 85 of the Law of General Taxes on Imports and Exports, respectively, were published in the Official Gazette of the Federation, with the purpose of maintaining the prohibition of the merchandise covered by the measure described in paragraph seven of this Decree;

That, among the tariffs referred to in the previous paragraph, tariff item 8543.70.18 is included, which classifies the Electronic Nicotine Delivery Systems (ENDS), Alternative Nicotine Delivery Systems (ANDS), Electronic Non-Nicotine Delivery Systems (ENNDS), electronic cigarettes and vaporizing devices with similar uses;

That, on December 26, 2020, the Agreement that announces the national notes of the Law of General Taxes on Import and Export is published in the Official Gazette of the Federation, whose application is mandatory to determine the tariff classification of goods; wherein including the national note 16 of chapter 85 “Electric machines, apparatus and electric equipment, and parts thereof; sound recording or reproducing devices, television image and sound recording or reproducing devices, and parts and accessories of these devices”, referring to the tariff item 8543.70.18;

That, the Second Chamber of the Supreme Court of Justice of the Nation (SCJN), analyzed in the revision of the *amparo* action 853/2019 the constitutionality of section VI of article 16 of the General Law for Tobacco Control, which establishes the prohibition of trading, selling, distributing, displaying, promoting or producing any object that is not a tobacco product, which contains any of the elements of the brand or any type of design or audio signal that identifies it with tobacco products;

That, in that sense, SCJN noted that in terms of the Report submitted at the Conference of the States Parties to the Framework Agreement for Tobacco Control (Document adopted in Geneva, Switzerland, 21 May 2003, ratified by the Mexican Senate on April 14, 2004, and published in the Official Gazette of the Federation on February 25, 2005) by the World Health Organization in August 2016, it is explained that there is a wide variety of devices or instruments of different functioning and nature, that can be classified as follows: Alternative Nicotine Delivery Systems (ANDS), products made out strictly of tobacco that run through heating it, but not burning it; b) Electronic Nicotine Delivery Systems (ENDS), artifacts that heat liquid substances that may or may not contain nicotine, that is, are devices that do not burn or use tobacco leaves but sometimes vaporize a solution that the user then inhales, and c) Electronic Non-Nicotine Delivery Systems (ENNDS), systems artifacts that, operating under an identical mechanism or similar to that described for the ENDS devices, the device does not use the substance called nicotine, so that under any circumstance it cannot be considered as a product of tobacco;

That, derived from what was indicated in the previous paragraph, the Second Chamber of the SCJN concluded that the prohibition provided for in Article 16, section VI of the General Law for Tobacco Control is constitutional in what has to do with the limitation and prohibition established thereof, however, it cannot comprise the devices that strictly work from tobacco, which is why it is important to monitor its correct application;

That, for the aforementioned, it is necessary and urgent to keep updated those measures that allow ensuring effective health access, for its correct application, so it is essential to amend the description of the tariff item 8543.70.18, to eliminate from it the Alternative Nicotine Delivery Systems (ANDS), and they will be included in the tariff item 8543.70.99, section in which they were classified prior to the entry into force of the measure referred to in the seventh paragraph;

That, additionally and in order to grant greater legal certainty to stakeholders of international trade in the interpretation of the tariff's nomenclature with respect to tariff item 8543.70.18, the national note 16 of chapter 85 "Electric machines, apparatus and electric equipment, and parts thereof; sound recording or reproducing devices, television image and sound recording or reproducing devices, and parts and accessories of these devices" of the Law of General Taxes on Import and Export to eliminate the reference to Alternative Nicotine Delivery Systems (ANDS), and

That, in accordance with the provisions of the Foreign Trade Act, the tariff measures referred to in this Decree have the opinion of the Committee on Foreign Trade, I have issued the following

DECREE

Article 1.- The description of the tariff item 8543.70.18 is **amended** from the rate of the Law of General Taxes on Import and Export, published in the Official Gazette of the Federation on July 1, 2020 and its subsequent amendments, as indicated as follows:

CODE	DESCRIPTION	UNIT	TAX	
			IMP. (%)	EXP. (%)
8543.70.18	Electronic Nicotine Delivery Systems (ENDS) and Electronic Non-Nicotine Delivery Systems (ENNDS), electronic cigarettes and vaporizing devices with similar uses, except the heating devices of cartridges or removable units with tobacco.	Prohibited	Prohibited	Prohibited

Article 2.- The National Note 16 of Chapter 85 “Electric machines, apparatus and electric equipment, and parts thereof; sound recording or reproducing devices, television image and sound recording or reproducing devices, and parts and accessories of these devices” of the Tariff of the Law of General Taxes on Imports and Exports, published in the Official Gazette of the Federation on July 1, 2007, and its subsequent amendments, is **amended**, to read as follows:

National Notes:

1. to 15. ...

16. Tariff item 8543.70.18 includes devices consisting of at least one power supply or battery (integrated or not); a heating unit; a nozzle and a vaporization chamber, container or receptacle, among other elements which, by heating various substances or materials, liquid/solid (e.g., propylene glycol, glycerin and flavoring mixture or, if applicable, nicotine), by thermal decomposition generate vapor, aerosol, etc., which are inhaled orally.

These devices generally include the following:

- a) Electronic Nicotine Delivery Systems (ENDS): These are devices that, by heating the liquid release vapor or aerosol that contains nicotine, in any amount, even mixed with other substances, and
- b) Electronic Non-Nicotine Delivery Systems (ENNDS): These are devices with a similar function to the ENDS devices; however, the vapors or aerosols generated do not contain nicotine.

17. and 18. ...”

TRANSITORY

Unique.- This Decree shall enter into force on the day following its publication in the Official Gazette of the Federation.

Given at the residence of the Federal Executive Power, in Mexico City, on July 15, 2021.-
Andrés Manuel López Obrador.- Signature.- The Secretary of Finance and Public Credit,
Arturo Herrera Gutiérrez.- Signature.- The Secretary of Economy, **Tatiana Clouthier Carrillo.-** Signature.