

DOF: 02/19/2020

DECREE amending the Tariff of the Law on 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, on June 18, 2007, the Law on General Taxes on Importation and Exportation was published in the Official Gazette of the Federation, establishing the Tariff rate applicable to the importation and exportation of goods in the national territory (Tariff);

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, in recent years, the economic, social, cultural, and environmental rights of the entire population have been eroded in favor of the economic interests of some minorities, which led the National Development Plan 2019-2024 to provide for this in its Strategy II. SOCIAL POLICY "Building a country with welfare" that the most important objective of the Federal Government is that by

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2024, the population of Mexico is living in an environment of welfare, so it should focus on implementing public policies designed to ensure effective access to health;

That, the International Covenant on Economic, Social and Cultural Rights, ratified by Mexico in 1981, states in article 12 that States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, to which end they shall take steps to prevent and treat diseases of all kinds;

That, to guarantee effective access to health, the Federal Government must operate articulated public policies to prevent, control and reduce chronic non-communicable diseases, throughout all stages of the life cycle, and considers it is essential to strengthening the model of preventive, comprehensive and quality care in order to promote well-being;

That, the National Institute of Respiratory Diseases Ismael Cosío Villegas (INER, by its Spanish acronym) issued on September 11, 2019, an important alert to the general population, stating that the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA), both of the United States of America (USA), reported more than 200 documented cases of patients with severe lung injury related to electronic cigarette use, mostly adolescents and young adults, in at least 25 of their states;

That, on September 28, 2019, the Ministry of Health released the epidemiological warning for the use of electronic cigarettes or vaping, which has the purpose of timely identifying the presence of cases of severe pulmonary disease associated possibly with the use of these devices, issued by the National Committee for Epidemiological Surveillance;

That, there are several types of devices including electronic nicotine delivery systems (ENDS), electronic non-nicotine delivery systems (ENNDS) and alternative nicotine delivery systems (ANDS), the first two popularly known as "electronic cigarettes" or "vapers", which have cartridges or refillable tanks (claromizer) containing a liquid mixture (called e-liquid) composed mainly of propylene glycol or glycerol and nicotine, as well as various flavorings and other chemicals, and "heat-not-burn" ANDS, which are tobacco products that produce aerosols that release nicotine (contained in tobacco) and other chemicals, contain non-tobacco additives and are usually flavored;

That, it is essential to emphasize the imminent danger that represent the mentioned devices, since they generate vapor or aerosol and chemical compounds produced by the heating of the components of the liquid, a mixture of propylene glycol, glycerin and aromatizer or, in its case, nicotine and tobacco, that when being inhaled they enter directly to the respiratory system with a broader affectation than other substances, as much in conduction airways as in alveolar zones, due to the small size of the generated particles (100-160 nm);

That, it has been reported that the use of these devices generates inflammation of the airways, increased white blood cells in the blood, as well as bilateral pulmonary opacities (spots in the lung), low oxygenation of the blood or even respiratory failure, in addition to an increased sensitivity of the airway cells to viral infections. Its long-term use is expected to increase the risk of chronic obstructive pulmonary disease and lung cancer. As of February 4, 2020, the CDC has registered 2,758 hospitalized patients (from all U.S. states) with severe pulmonary disease, including 64 deaths (from 27 U.S. states), associated with the use of a vaping device;

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That, in this regard, the Secretariat of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) issued note verbale CS/NV/19/14 WHO-FCTC, to increase surveillance for new and emerging nicotine and tobacco products and consider the possibility of banning them (or maintaining the ban). The Secretariat also informed countries that in order to encourage the reporting and registration of cases known as "vaping related disorders", WHO introduced a new code U07.0 in the International Classification of Diseases ICD-10, to facilitate the reporting of these cases in a uniform manner and their immediate use in health registration systems;

That, ENDS/ENNDS have been promoted by distributors as low-risk devices, which can help cigarette smokers quit; however, their use has spread rapidly in adolescents who have never smoked and, as a result, there are increased health risks, including nicotine addiction;

That, it has not been scientifically proven that ENDS/ENNDS help stop smoking like the drugs approved in the clinical practice guidelines for prevention, diagnosis, and treatment of tobacco use and second-hand smoke, at the first level of care, based on scientific evidence that is still valid and therefore such devices cannot be recommended for that purpose. In fact, one group of smokers remain dual users of tobacco and ENDS/ENNDS, and no health benefits have been demonstrated;

That, WHO concluded that the health risks for people in the environment exposed to the aerosol exhaled by users of ENDS/ENNDS, is a new source of air pollution by particles, including fine and ultrafine particles, as well as 1,2-propanediol, certain Volatile Organic Compounds (VOCs) and heavy metals (such as nickel and chromium), and nicotine; therefore the increase in the concentration of toxic substances in the aerosol of others, in relation to the levels in the ambient air, represents a higher risk to the health of any exposed person;

That, as a result of the above, Decision FCTC/COP7(9), "Electronic nicotine delivery systems and electronic non-nicotine delivery systems" was issued in which the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control, recognized that Parties have already adopted different regulatory strategies concerning ENDS/ENNDS, such as a total ban on their sale, for which it invites its members to consider taking measures in accordance with their national legislation;

That, in January 2020, the WHO issued a statement, which recognizes the damage associated with the use of these devices, and the addictive potential of the same mainly in young people, so it recommends that in countries where these products are banned continue with the ban;

That, as of January 14, 2020, of the 2,022 hospitalized patients for whom information on substances used was available, the CDC has reported that 82% of patients have reported using tetrahydrocannabinol (THC) products; of which 33% used only THC; 57% said using nicotine products, of which 14% reported using nicotine products only. Also, a close link of the outbreak to vitamin E acetate is reported. To date, the FDA and the CDC have not identified the cause or causes of lung injuries, and the only coincidence among all the cases is that patients refer to the use of vaping products;

That, it is a constitutional mandate that the organs of the State protect and guarantee human rights, so considering the antecedents mentioned above and the growth in the number of patients with acute respiratory ailments and the deaths mostly of young people, all linked to the use of the vaping devices, among which are electronic cigarettes and tobacco heating devices, It is necessary

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to make urgent use of the power provided for in article 131 of the Constitution in order to implement the necessary measures for the benefit of the country, and thus protect human life, prevent damage to the health of the population and obtain a healthy environment for their development and well-being, and therefore the entry into and exit from the national territory of such devices must be prohibited;

That, derived from the above, it is urgent and necessary to adapt the regulations in force in order to comply with the applicable national and international legal framework, for which purpose three tariff sections are created, which will allow for more detailed identification of said products and the correct implementation of the measures required;

That, in order to give the interested parties of foreign trade more legal certainty in the interpretation of the Tariff nomenclature concerning the creation of tariff item 8543.70.18, a second Explanatory Note of National Application is added to Chapter 85 "Electric machines, apparatus and material, and parts thereof; sound recording or reproducing apparatus, television image and sound recording or reproducing apparatus, and parts and accessories of these apparatus"; and

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

DECREE

Article 1.- The tariff sections of the Law of General Taxes on Imports and Exports, published in the Official Gazette of the Federation on June 18, 2007, and its subsequent amendments, are **created**, as indicated below:

CODE	DESCRIPTION	UNIT	TAX	
			IMP.	EXP.
3824.90.83	Solutions and mixtures, of those used for what is included in tariff item 8543.70.18.	PROHIBITED		
8543.70.18	Electronic Nicotine Delivery Systems (ENDS), Alternative Nicotine Delivery Systems (ANDS), Electronic Non-Nicotine Delivery Systems (ENNDS), electronic cigarettes, and vaporizing devices with similar uses.	PROHIBITED		
8543.90.03	Of those recognized for the purposes of tariff item 8543.70.18.	PROHIBITED		

Article 2.- The Explanatory Note of National Application is **added** to Chapter 85 "Electric machines, apparatus and material, and parts thereof; sound recording or reproducing apparatus, television image and sound recording or reproducing apparatus, and parts and accessories of these

apparatus" of the Tariff of the Law of General Taxes on Imports and Exports, published in the Official Gazette of the Federation on June 18, 2007, and its subsequent amendments, to read as follows:

"Chapter 85

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Notes.

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Explanatory Notes on National Implementation:

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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, tobacco, and their substitutes), 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.
- 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.
- c) Alternative Nicotine Delivery Systems (ANDS): These are devices that by heating cartridges or removable units with tobacco (rolled, granulated, chopped, and other presentations) generate a vapor or aerosol that contains nicotine".

TRANSITORY

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

Given at the residence of the Federal Executive Power, in Mexico City, on February 18, 2020.-
Andrés Manuel López Obrador.- Rubric.- The Secretary of Finance and Public Credit, **Arturo Herrera Gutiérrez.-** Rubric.- The Secretary of Economy, **Graciela Márquez Colín.-** Rubric.