

DECREE ESTABLISHING MEASURES TO COMBAT THE ILLICIT FUEL MARKET, RELATED TO THE IMPORTATION OF GOODS REGULATED BY THE MINISTRY OF ENERGY

OCTOBER 2023

EXECUTIVE SUMMARY:

- On October 23, 2023, the “Decree establishing measures to combat the illicit fuel market, related to the import of goods regulated by the Ministry of Energy” was published.
- Through this Decree, the importation of goods corresponding to sixty-eight (68) tariff fractions of the General Import and Export Tax Law is temporarily restricted in order to combat the illicit fuel market and smuggling.
- The holders of import permits for any of the 68 goods mentioned in the Sole Annex, must notify the Undersecretary of Hydrocarbons of the SENER of the continuity of their operations.



On October 23, 2023, the “Decree establishing measures to combat the illicit fuel market, related to the importation of goods regulated by the Ministry of Energy (“SENER” for its acronym in Spanish)” was published in the Official Gazette of the Federation (“DOF” for its acronym in Spanish).

By means of this Decree, the Executive seeks to eradicate and/or control certain practices that were occurring in the hydrocarbon processing industry in the sense of importing certain components that are used to blend them with other hydrocarbons or petroleum products to produce low-quality gasoline and/or diesel that will be sold illegally (another form of huachicol), which affects the quality of the product that the final consumer receives and represents serious risks to the environment and the health and safety of the consumer.



CONTENT OF THE DECREE:

- + The importation of goods corresponding to sixty-eight (68) tariff fractions of the General Import and Export Tax Law in force (the "TIGIE" for its acronym in Spanish), detailed in the Sole Annex of this Decree, is temporarily restricted in order to combat the illicit fuel market and smuggling, to avoid imminent damage to health and the environment, the violation of the health and safety of the population neighboring fuel handling centers, and the negative impact on private vehicles and public transportation.
- + Those interested in importing any merchandise included in the Sole Annex, must request and prove, before the Undersecretary of Hydrocarbons of the SENER, the volume and destination of the merchandise in question, as well as the productive process, and the purpose of the development or realization to corroborate that such importation is a lawful activity and that it does not contravene the Decree.

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IMPLICATIONS OF THE DECREE:

It is very important to point out that the holders of import permits for any of the 68 goods mentioned in the Sole Annex, must notify, within a maximum term of 30 laborable days from the entry into force of the Decree, to the Undersecretary of Hydrocarbons of the SENER, by means of a simple free writing or communication, the continuity of their operations and, in particular, to corroborate that the products destined to such import adjust to a volume and destination that are imperative for their productive process.

It is worth mentioning that permit holders will not be able to continue with the activities covered by their import permit without the proper accreditation of these elements.

Once the notification is received, the SENER will analyze the information provided by the applicant or permit holder and will decide, within a maximum period of 15 business days, whether such permit holder may import the goods subject to the Decree, which represents a significant change in the manner in which hydrocarbons will be imported and commercialized.

It is also important to consider the risk involved in the implementation of this measure, since SENER has not been efficient in the resolution of the procedures under its responsibility during this Administration.

Worse yet, in the case of permit holders whose import permit is in force, we would be facing a flagrant violation of the constitutional guarantees of the governed, who could be affected by a retroactive provision that violates, among others, the principle of legality.

Another risk that we observe from the implementation of the Decree consists in considering that, within a term of either 15 or 30 days, the Ministry of Economy, the Ministry of Environment and Natural Resources, the Ministry of Infrastructure, Communications and Transportation, the Tax Administration Service, the Mexican National Customs Agency, the Energy Regulatory Commission, the Security, Energy and Environment Agency, and/or the Federal Attorney's Office for Environmental Protection, according to the scope of their respective competences, referred to in Articles Three and Five of the Decree, will coordinate the adjustments to the registries, lists, systems and platforms, physical or electronic, related to the importation and traceability of the merchandise according to the Decree.

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In addition to such Decree, on October 25, 2023, the "Guide to comply with article one of the Decree (the "Guide")" was published on SENER's website so that permit holders can obtain the corresponding authorizations from the Undersecretary of Hydrocarbons of the SENER.

Publications links:

<https://sidof.segob.gob.mx/notas/5706285>

<https://www.gob.mx/sener/articulos/decreto-por-el-que-se-establecen-medidas-para-el-combate-al-mercado-ilicito-de-combustibles>



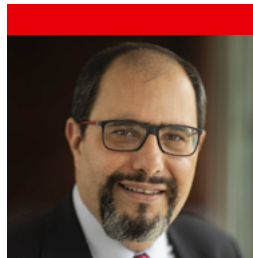
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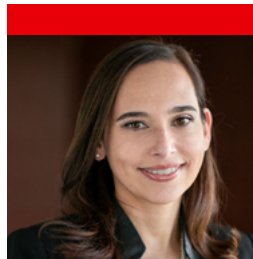
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