

Unconstitutionality of the National Customs Agency of Mexico Interior Regulation

Mexico City, January 18, 2024

On January 11, 2024, the First Federal Circuit Court issued a decision in an *amparo* trial (DA-411/2023), declaring that the National Customs Agency of Mexico Interior Regulation (hereinafter the “NCAMIR”) is unconstitutional.

The Federal Circuit Court concluded that, according to the Tax Administration Service Law (“SAT’s Law”), the faculties and powers originally granted to the Tax Administration Service (“SAT”) in tax and customs related matters, were established by a law issued by the Congress and were to be exclusively exercised by such authority. Therefore, for any other office with the same hierarchical level (i.e., another decentralized body under the Ministry of Finance and Public Credit’s umbrella) to exercise powers expressly assigned to the SAT, a modification at the legislative level is required, either in SAT’s Law or any other law issued by the Congress.

However, in the specific case of the NCAMIR, we face a regulation issued and published directly by the Executive Branch (the President of Mexico), establishing within article one, the nature and powers of the National Customs Agency and furthermore, specifying that the aforementioned authority will exclusively oversee the direction, organization, and operation of customs and inspection services to enforce compliance with legal norms regulating the entry and exit of goods from the national territory, as well as the collection of federal customs revenues. Therefore, because this amendment was implemented by a presidential decree instead of a legal amendment, the Circuit Court deemed the NCAMIR unconstitutional, precisely because those powers and faculties were exclusively assigned to the SAT through SAT’s Law and cannot be modified by an executive decree.

Thus, the Federal Circuit Court concluded that the NCAMIR is contrary to the Constitution as it goes against the principle of hierarchical subordination by granting the NCAM powers and faculties that SAT’s Law exclusively granted to the SAT itself. A regulation issued by executive decree cannot modify what has been established by a law enacted by Congress. As a result of this determination, the mentioned Federal Circuit Court also concluded that all the powers

distributed to the administrative units of the NCAM are contrary to SAT's Law, and therefore, all acts exercising such powers are illegal.

This precedent is extremely relevant, since the effects that could arise from this ruling, as it contains an unconstitutionality determination of the NCAMIR in its entirety, could mean that all acts performed and to be performed by the NCAM based on its Interior Regulation could be deemed illegal and inexistent in favor of the importers and exporters. We recommend a case-by-case analysis to determine if this court decision could be applicable to argue that a specific administrative act is illegal in application of the regulation declared unconstitutional.

It should be noted that the effects of this decision will be in force until the corresponding amendment to the law occurs.

For more information related to the content of this foreign trade restriction, please consult with specialists in the Customs and International Trade area of the Firm.

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