

ITEM: Electronic cigarette pod (0.7–0.8–1.2  $\Omega$ ): “replacement pods” designed for an electronic cigarette kit. With an inbuilt 1.2  $\Omega$  and 0.8  $\Omega$  meshed coil, it has the following features: 2 ml pod capacity, top-fill system hidden by mouthpiece, transparent juice viewing window, magnetic pod connection.

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## Suggested Tariff Classification

### Phase 1

#### Top 3 candidate chapters

Chapter	Justification
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| <b>85</b> | Under GRI 1, classify per heading terms and legal notes; e-cigarettes are expressly covered at 8543.40.01, so dedicated pods with an inbuilt heating coil are parts of Ch. 85 electrical apparatus, which includes “machines, electrical equipment, and their parts.”                       |
| <b>24</b> | Chapter 24.04 covers products containing tobacco/nicotine for inhalation without combustion and also disposable e-cigs that incorporate the product, as well as cartridges/units not designed to be replaced or tanks that contain liquids. Empty, replaceable pods do not meet this scope. |
| <b>39</b> | Only as residual for plastic articles if no other chapter applies; however, Chapter 39 excludes articles of Section XVI (electrical machinery/apparatus), so a pod with an integrated coil is excluded. GRI 3(a) favors the more specific Ch. 85 over generic plastics.                     |

### Phase 2

#### TARIFF CLASSIFICATION OPINION

I. Applicable regulatory framework • General Rule of Interpretation (GRI) 1: “The titles of Sections, Chapters, and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes...” • GRI 2(a): “Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article...” • GRI 3(a) and 3(b): when a good is prima facie classifiable under two or more headings, apply in order: (a) the heading providing the most specific

description; (b) the essential character; (c) where applicable, the heading which occurs last in numerical order (GRI 3(c)) • GRI 6: “For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules.”

• Chapter 24 (Legal Notes and National Note):

- Note 2: “Any product that can be classified in heading 24.04 and in another heading of this Chapter shall be classified in heading 24.04.”
- National Note to 24.04: this heading covers, among others, “disposable electronic cigarettes and similar disposable electrical or electronic personal vaporizing devices that incorporate the product, their components, cartridges, units not designed to be replaced or refilled, or tanks that contain liquids or solutions, including with other components (heating elements, atomizers, or batteries) intended for these products.”
- Structure of 24.04: “Products... intended for inhalation without combustion” with subheadings 2404.11; 2404.12 “Other, containing nicotine”; 2404.19 “Other” (includes the national mention 2404.19.01 “Of those designed for the goods covered by tariff item 8543.40.01”).

• Chapter 85 (Notes/NESA and relevant legal text):

- NESA Ch. 85, specific criterion: “Tariff item 8543.40.01 includes electronic cigarettes and personal vaporizing devices... consisting of at least a power source or battery (integrated or not); a heating unit; a mouthpiece; and a vaporization chamber, container, or receptacle...”
- Heading 85.43: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter” (heading context)
- Subheading 8543.40: “Electronic cigarettes and similar electrical personal vaporizing devices.”
- Subheading 8543.90: “Parts.”
- Heading 85.33: “Electrical resistors, other than heating resistors (including rheostats and potentiometers).”
- Heading 85.48: “Electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter.”

II. Legal-technical analysis Technical description of the good: “Electronic cigarette pod (0.7–0.8–1.2 Ω)... replacement pods... inbuilt meshed coil (1.2 Ω and 0.8 Ω), 2 ml capacity, top-fill system hidden by mouthpiece, transparent window, magnetic connection.” It is a tank/mouthpiece with an integrated heating coil, designed to magnetically couple to the electronic cigarette body (battery/power source not included).

- 1) Applicable chapter Under GRI 1, the texts of headings and legal notes govern. The good is an electrical component (tank/mouthpiece with heating coil and window) intended exclusively or principally for an electronic cigarette. The complete vaporizing device (e-cigarette) is classified in 85.43, subheading 8543.40, when presented as an apparatus with an individual function that includes, at minimum, a battery/power source, heating unit, mouthpiece, and chamber/tank, per the National Explanatory Notes (NESA) for 8543.40.01. In this case, the merchandise is a “replacement pod” without a power source, so it is not the complete apparatus and does not have the essential character of the complete apparatus for purposes of GRI 2(a), since the NESA requires, at minimum, the presence of a battery/power source to fall within 8543.40.01.
- 2) Heading and subheading Having identified the principal apparatus under 85.43, determine the heading/subheading for parts. The legal text of 85.43 provides, at subheading level, “8543.90 Parts,” applicable to parts of the machines/apparatus of 85.43 not specified elsewhere in Chapter 85. Under GRI 6, subheading selection is based on its own terms; “Parts” properly describes the replacement pod with integrated coil, as it is a component designed to complete the function of the 85.43 apparatus (electronic cigarette) and is not covered by a more specific heading in Chapter 85. Consequently, 8543.90 applies at the subheading level.
- 3) Consideration of Chapter 24 Chapter 24 regulates, among others, products intended for inhalation without combustion (24.04). The National Note to 24.04 includes cartridges/units or tanks that contain liquids or solutions, including with heating elements, atomizers, or batteries, when they incorporate the product for inhalation (e.g., liquid with or without nicotine). The merchandise analyzed is an empty pod (2 ml capacity and top-fill system), with no indication it contains liquids or solutions. As it does not incorporate the product intended for inhalation, heading 24.04 does not apply; the good is not, in itself, a “product intended for inhalation” of Chapter 24, but rather a part of an electrical apparatus of Chapter 85 (GRI 1).

Analysis conclusion: Applying GRI 1 and 6, and considering the NESA specific to 8543.40.01 (which defines when an assembly is considered an “electronic cigarette”), the

good, presented as a replacement pod/tank with an integrated coil but without a power source, is classified as a part of the apparatus of heading 85.43, subheading 8543.90.

III. Exclusion of alternative headings or chapters • Exclusion of 8543.40: The national NESA requires that goods in 8543.40.01 “consist of at least a power source or battery (integrated or not); a heating unit; a mouthpiece; and a vaporization chamber...” The replacement pod lacks a power source/battery and therefore does not meet the minimum elements for the complete apparatus. Likewise, GRI 2(a) does not permit classification as an incomplete apparatus, because it does not have the essential character of the e-cigarette as defined by the NESA (presence of a battery is a minimum condition). Consequently, 8543.40 is ruled out in favor of “parts” 8543.90. • Exclusion of 24.04: Chapter 24, National Note, includes in 24.04 cartridges/units or tanks that contain liquids or solutions (with or without components such as coils/atomizers), i.e., “products... intended for inhalation without combustion” that incorporate the product itself; an empty pod is not such a product and does not fall under 24.04. • Exclusion of 85.33: Heading 85.33 covers “Electrical resistors, other than heating resistors...,” so it is not appropriate to isolate the heating coil from the assembly or classify the merchandise as a resistor; moreover, the good is a specific assembly/part of an electronic cigarette, not a discrete general-use resistor. • Exclusion of 85.48: Heading 85.48 applies to “Electrical parts... not specified or included elsewhere in this Chapter.” Since 85.43 expressly provides subheading 8543.90 “Parts,” 85.48 is excluded as residual (GRI 1).

IV. Documentary requirements To support clearance:

- Manufacturer’s technical data sheet and manual for the pod, indicating model, compatibility, and function.
- Product photographs (disassembled if possible), showing: mouthpiece, tank, integrated coil, filling system, and magnetic connection.
- Statement/technical sheet indicating whether the pod is marketed empty or prefilled; if applicable, liquid composition and nicotine concentration (if any).
- Explicit indication whether the cartridge is disposable/prefilled or refillable, and whether it is designed as a replacement.
- Commercial packaging/labeling evidencing the condition as a “replacement pod” and the absence or presence of liquid.

V. Conclusion Proposed classification (at subheading level):

- Chapter: 85

118       •     Heading: 85.43

119       •     Subheading: 8543.90

120       •     National tariff item: Not determined in this opinion

121       •     NICO: Not determined in this opinion

122     Resolution: The good described as “Electronic cigarette pod (replacement pod) with  
 123     integrated coil, 2 ml, refillable/top-fill, magnetic connection,” presented without liquid and  
 124     without a power source, is classified in subheading 8543.90, as a part of the apparatus of  
 125     heading 85.43.

126     Conditional determination Given potential commercial variations not evidenced in the  
 127     request, the final classification may vary under the following conditions:

128       •     Option A (if the pod is prefilled with liquid containing nicotine): Subheading 2404.12  
 129     (“Other, containing nicotine”), as it is a product intended for inhalation without combustion  
 130     that incorporates the product (nicotine liquid) under the National Note to 24.04. • Option B  
 131     (if the pod is prefilled with liquid without nicotine): Subheading 2404.19 (“Other”), as a  
 132     product for inhalation without combustion that incorporates the liquid, without nicotine,  
 133     covered by 24.04 per the National Note; at the national level there is a specification “of  
 134     those designed for the goods covered by 8543.40.01” at 2404.19.01, without prejudice that  
 135     this opinion is limited to the HS subheading level (2404.19). • Option C (if presented as a  
 136     complete apparatus integrating at least a battery/power source, heating unit, mouthpiece,  
 137     and chamber/tank): Subheading 8543.40, as “electronic cigarettes and similar electrical  
 138     personal vaporizing devices,” according to the national NESA for 8543.40.01 (applicable to  
 139     determining the scope of the device type).

140     MISSING CRITERIA:

141       •     Confirm whether the pod is marketed empty or prefilled.

142       •     If prefilled: composition of the liquid and presence/concentration of nicotine.

143       •     Evidence that the good does not include a power source/battery or other elements  
 144     that constitute the complete apparatus (to rule out 8543.40 under GRI 2(a)).

145     Important note on the non-application of 8543.40 to the case at hand 8543.40 is ruled out  
 146     because, under the national NESA, goods of 8543.40.01 must be “comprised of at least a  
 147     power source or battery (integrated or not); a heating unit; a mouthpiece; and a  
 148     vaporization chamber...”; the replacement pod lacks a battery/power source and therefore  
 149     does not meet the minimum requirements of the complete apparatus. GRI 2(a) does not  
 150     allow it to be treated as “incomplete,” since it does not have the essential characteristics of

151 the complete article as defined by that NESA. Consequently, its nature is that of a part of  
152 an apparatus of 85.43 and it should be classified in 8543.90, not in 8543.40.