

THE STATE PRESIDENT

ORDER No. 04/2005/L-CTN OF JUNE 24, 2005, ON THE PROMULGATION OF LAW

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Article 103 and Article 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

Pursuant to Article 91 of the Law on Organization of the National Assembly;

Pursuant to Article 50 of the Law on Promulgation of Legal Documents,

HEREBY PROMULGATES:

The Law Amending and Supplementing a Number of Articles of the Customs Law,

which was passed on June 14, 2005, by the XIth National Assembly of the Socialist Republic of Vietnam, at its 7th session.

President of the Socialist Republic of Vietnam

TRAN DUC LUONG

LAW AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE CUSTOMS LAW

(No. 42/2005/QH11)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

This Law amends and supplements a number of articles of the Customs Law, which was passed on June 29, 2001, by the National Assembly of the Socialist Republic of Vietnam.

Article 1.- To amend and supplement a number of articles of the Customs Law as follows:

1. Article 2 is amended and supplemented as follows:

“**Article 2.-** Scope of regulation

This Law provides for the state management over customs with regard to import and export goods, goods in transit, means of transport on entry, exit or in transit within the customs territory of domestic and foreign organizations and individuals; and organization and operation of the customs service.”

2. To add the following Clause 18 to Article 4:

“18. Customs territory means areas within the territory of the Socialist Republic of Vietnam and in Vietnam’s exclusive economic zone and continental shelf, where the Customs Law applies.”

3. To add the following Article 5a to Article 5:

“Article 5a.- International cooperation activities of the customs service

Vietnam Customs shall, according to its functions and the provisions of law and within the scope of its authorized competence, have the responsibilities:

1. To exercise rights, perform obligations and enjoy interests of the State of the Socialist Republic of Vietnam at the World Customs Organization;
2. To negotiate, conclude and organize the implementation of bilateral agreements with foreign customs;
3. To organize the exploitation and exchange of information and enter into professional cooperation with customs services of other countries and relevant international organizations.”

4. Article 8 is amended and supplemented as follows:

“Article 8.- Modernization of customs management

1. The State shall prioritize the investment and encourage organizations and individuals to participate in developing advanced technologies and technical means in order to ensure the application of modern customs management methods; encourage organizations and individuals engaged in import and export activities to participate in setting up and carrying out electronic transactions and online customs procedures.
2. The Government shall specify the system of technical standards for exchange of electronic data and the legal validity of electronic vouchers in compliance with the provisions of law on e-transactions; the responsibilities and powers of customs offices at all levels, concerned state bodies, organizations and individuals engaged in import, export, exit and entry activities for the implementation of online customs procedures; and incentives defined in Clause 1 of this Article.”

5. Article 11 is amended and supplemented as follows:

“Article 11.- Tasks of the customs service

Vietnam Customs is tasked to inspect and supervise goods and means of transport; to prevent and combat smuggling and illegal cross-border transportation of goods; to organize the implementation of tax law applicable to import and export goods; to make statistics on import and export goods; to propose undertakings and measures for customs-related state management over the import, export, exit, entry and transit activities as well as tax policies applicable to import and export goods.”

6. Clause 1, Article 13 is amended and supplemented as follows:

“1. The organizational system of Vietnam Customs consists of:

- a/ The General Department of Customs;
- b/ Customs Departments of provinces, inter-provinces, and centrally-run cities;
- c/ Border-gate customs sub-departments, customs control squads and equivalent units.”

7. To add the following Clause 3 to Article 14:

“3. Customs officers are strictly forbidden to cover up or connive with others for smuggling, trade frauds or tax evasion; to cause harassments or troubles in filling in customs procedures; to take bribes; to appropriate or embezzle temporarily-seized goods, or commit other acts for self-seeking purposes.”

8. To add the following Clause 1a after Clause 1, Article 15:

“1a. Customs inspection shall be carried out on the basis of analyzing information and assessing the observation of law by goods owners and the possibility of customs law violations, so as to ensure the state management over customs and not to cause difficulties to import and export activities;”

9. Article 16 is amended and supplemented as follows:

“Article 16.- Customs procedures

1. While filling in customs procedures, the customs declarers shall have to:

a/ Fill in and submit the customs declaration forms; submit, produce documents of the customs dossiers; in cases where customs procedures are carried out online, the customs declarers may declare and submit the customs dossiers through the customs electronic data processing system.

b/ Take goods and means of transport to the designated places for the actual inspection thereof;

c/ Pay taxes and fulfill other financial obligations according to the provisions of law;

2. While carrying out customs procedures, the customs officers shall have to:

a/ Receive and register customs dossiers; in cases where customs procedures are carried out online, the reception and registration of customs dossiers shall be made through the customs electronic data processing system.

b/ Examine customs dossiers and conduct the actual inspection of goods and means of transport;

c/ Collect taxes and other levies according to the provisions of law;

d/ Decide on the customs clearance for goods and means of transport.”

10. Article 17 is amended and supplemented as follows:

“Article 17.- Places of customs procedures completion

The places of customs procedures completion are the head offices of the border gate Customs Sub-Departments or the head-offices of the Customs Sub-Departments outside border gates.

In cases where customs procedures are carried out online, the places of receipt and processing of customs dossiers may be the head-offices of the Customs Departments of provinces, inter-provinces or centrally-run cities.

In cases of necessity, the actual inspection of import and export goods may be conducted at other places decided by the General Director of the General Department of Customs.”

11. Clauses 1 and 2, Article 18 are amended and supplemented as follows:

“1. For import goods, they shall be carried out before, or within 30 days as from the date the goods arrive at the border-gates; the customs declaration forms shall be valid for the completion of customs procedures within 15 days as from the date of registration;

2. For export goods, they shall be carried out within 8 hours before means of transport leave Vietnam; the customs declaration forms shall be valid for the completion of customs procedures within 15 days as from the date of registration;”

12. Clause 1 of Article 20 is amended and supplemented as follows:

“1. Customs declaration shall be made uniformly according to regulations of the Ministry of Finance.”

13. Article 22 is amended and supplemented as follows:

“*Article 22.-* Customs dossiers

1. A customs dossier comprises:

a/ Declaration form;

b/ Commercial invoices;

c/ Goods sale and purchase contract;

d/ Permit of the competent State agency for import and export goods, goods in transit, means of transport on entry, exit or in transit, which require permits under the provisions of law;

e/ Other documents as provided for by law for each goods item, which the customs declarers must submit or produce to the customs offices.

Customs dossiers may be in written or electronic forms. The integrity and format of electronic customs dossiers must be ensured according to the provisions of law.

2. Customs dossiers shall be submitted or produced to the customs offices at their head offices. Where there are plausible reasons accepted by the heads of customs offices which receive the customs dossiers, the customs declarers may enjoy the extended time limit for submission or production of certain documents of the customs dossiers; amend, modify or replace the already-registered customs declaration forms before the time of actual inspection of goods and means of transport or before the time of deciding on the exemption

of actual inspection; submit brief customs declaration form and complete customs declaration forms within the prescribed time limit; and make single declaration for multiple importation or exportation within a certain period of time for certain goods items.

14. Article 23 is amended and supplemented as follows:

“Article 23.- Rights and obligations of customs declarers

1. The customs declarers shall have the right:

a/ To be supplied by the customs offices with information related to the customs declaration for import and export goods, goods in transit, means of transport on exit, entry or in transit and with guidance on carrying out the customs procedures;

b/ To have a prior look at the goods, take samples of the goods under the supervision by the customs offices before making customs declaration so as to ensure accurate customs declaration;

c/ To propose the customs offices to actually re-inspect the goods already inspected if they disagrees with the customs offices’ decisions, in cases where the goods are not permitted for customs clearance;

d/ To lodge complaints and denunciations about illegal acts committed by customs offices and/or customs officers;

e/ To claim compensation for damage caused by customs offices and/or customs officers according to the provisions of law;

f/ To use electronic customs dossiers for customs clearance;

g/ To request customs offices to make written certifications, if they are requested to produce or supplement dossiers and documents other than those required by customs law.

2. The customs declarers shall have the obligations:

a/ To make customs declarations and comply with the provisions of Clause 1, Article 16, and Articles 18, 20 and 68 of this Law;

b/ To be held responsible before law for the truthfulness of the declared contents and the submitted and/or produced documents, for the consistency between the paper dossiers archived at enterprises and the electronic dossiers.

c/ To abide by decisions and requests of customs offices and/or customs officers when they carry out customs procedures for goods and means of transport according to the provision of this Law;

d/ To keep customs dossiers of import and/or export goods already cleared from customs procedures for 5 years as from the date of registration of customs declaration forms; keep accounting books and vouchers and other documents related to import and/or export goods already cleared from customs procedures for a duration provided for by law; to produce dossiers, supply relevant information and documents for examination when so requested by customs offices according to the provisions of Articles 28, 32 and 68 of this Law;

e/ To arrange personnel in service of the actual inspection of goods and means of transport;

f/ To pay taxes and fulfill other financial obligations according to the provisions of law.

g/ Not to commit acts of smuggling, trade frauds, tax evasion, offering bribes or other acts for illicit profits.”

15. Clause 4 of Article 25 is amended and supplemented as follows:

“4. For import and export goods requiring the appraisal to determine if such goods have been exported or imported or not, if the goods owners request to take back the goods for preservation, the customs offices shall accept such requests only when all conditions on customs supervision have been satisfied.

In cases where goods are permitted for import or export, but price evaluation, appraisal, analysis or classification is required for determining the payable tax amounts, such goods shall be cleared from customs procedures after the goods owners fulfill tax obligations on the basis of tax self-declaration and self-calculation, meeting the conditions specified at Point b, Clause 2, and Clause 3 of this Article. The official payable tax amounts shall be determined after the results of price evaluation, appraisal, analysis or classification are available.”

16. To add the following Clause 2a to Clause 2, Article 27:

“2a. Making written certification when requesting the customs declarers to produce or supplement dossiers and/or documents other than those provided for by customs law;”

17. Article 28 is amended and supplemented as follows:

“**Article 28.-** Examination and registration of customs dossiers

The examination and registration of customs dossiers shall be carried out as follows:

1. Paper dossiers shall be examined and registered in one of the following forms:

a/ Customs dossiers of goods owners who have well observed the customs law shall be registered after the customs offices examine the completion of the customs declaration forms and the number of documents enclosed therewith;

b/ Customs dossiers not specified at Point a, Clause 1 of this Article shall be registered after the customs offices make specific inspection. When receiving customs dossiers, customs officers shall check the declarations according to the required contents on the declaration forms, documents of the customs dossiers, the compatibility of the declaration contents and the customs dossier documents; and register customs dossiers according to the provisions of law; in case of refusal to register the customs dossiers, they must inform the customs declarers of the reasons therefor.

2. Electronic dossiers shall be examined, registered and classified through the customs electronic data processing system.”

18. Clause 2, Article 29 is amended and supplemented as follows:

“2. The heads of the customs offices where the customs dossiers are received and processed shall decide on the forms of actual inspection of import and/or export goods and/or the change of the inspection forms provided in Article 30 of this Law.”

19. Article 30 is amended and supplemented as follows:

“Article 30.- Forms of actual inspection of import and/or export goods for customs clearance

1. Import and export goods in the following cases shall be exempt from actual inspection:

a/ Export goods, excluding those produced from imported raw materials and goods subject to conditional export;

b/ Goods brought from foreign countries into free-trade areas, entrepot ports or bonded warehouses; goods in transit; goods for emergency relief; special-use goods in direct service of national defense and/or security; humanitarian goods and goods temporarily imported for re-export within a definite time;

c/ Import goods being machinery and equipment for creation of fixed assets, which are exempt from tax, of investment projects.

2. Apart from the cases defined in Clause 1 of this Article, import and export goods of goods owners who have well observed the customs law, and goods in other special cases decided by the Prime Minister shall also be exempt from actual inspection.

3. Import and export goods of goods owners who have committed violations of customs law time and again; goods exempt from actual inspection specified in Clause 1 and Clause 2 of this Article but are detected to show signs of violation of customs law, must be subject to actual inspection.

4. Goods not specified in Clause 1 and Clause 2 of this Article, which, based on results of analyzing information from database, customs scouts, agencies, organizations, individuals or foreign customs, are determined as having possibly violated the customs law, must be subject to actual inspection.

5. The actual inspection of goods shall be conducted by customs officers either personally or with the aid of machinery, technical equipment and other professional measures in the presence of the customs declarers or their lawful representatives, after the customs dossiers have been registered and the goods brought to the inspection sites.

6. Goods being live animals or plants difficult to be preserved and other special goods shall be inspected first.

The Government shall specify the extents of actual inspection of goods defined in Clause 3 and Clause 4 of this Article.”

20. Article 32 is amended and supplemented as follows:

“Article 32.- Post-custom clearance inspection

1. Post-customs clearance inspection means inspection activities conducted by customs offices in order to:

a/ Verify the accuracy and truthfulness of the contents of the documents which goods owners, persons authorized by goods owners, organizations or individuals directly

conducting the import or export have declared, submitted or produced to the customs offices for import or export goods already cleared from customs procedures;

b/ Verify the observance of law in the course of filling in the customs procedures for import and/or export goods.

2. Post-customs clearance inspection shall be carried out in the following cases:

a/ There are signs of tax evasion, trade frauds or violations of regulations on import-export management;

b/ For cases not specified at Point a, Clause 2 of this Article, the decision on post-customs clearance inspection shall be made on the basis of the results of analyzing information from the database, customs scouts, agencies, organizations, individuals and/or foreign customs.

3. Directors of Customs Departments of provinces, inter-provinces or centrally-run cities may issue decisions on the post-customs clearance inspection within 5 years after the date of registration of customs declaration forms for export and/or import goods, which have been already cleared from customs procedures. In case of necessity, the General Director of the General Department of Customs shall issue decisions on the post-customs clearance inspection.

4. Basing themselves on the decisions on post-customs clearance inspection, customs officers shall personally examine accounting books and vouchers and other documents related to the lots of export or import goods already cleared from customs procedures at enterprises so as to make comparison with the customs declarations and documents of the customs dossiers; in case of necessity and if conditions permit, they may conduct the actual inspection of goods.

5. In the course of inspection, the relevant agencies, organizations and individuals shall, at the requests of customs offices, have to create conditions for, supply necessary accounting vouchers, information, documents in service of, the inspection by the customs offices.

The Government shall specify the post-customs clearance inspection.”

21. Article 57 is amended and supplemented as follows;

“**Article 57.-** Principles for temporary suspension of customs procedures

1. Holders of intellectual property rights already protected under the provisions of Vietnamese law shall have the right to request customs offices to temporarily suspend the customs procedures for export or import goods involving infringements of intellectual property rights on a long-term or case-by case basis.

2. The customs offices may decide to temporarily suspend the customs procedures for import or export goods only when all conditions specified in Article 58 of this Law are satisfied.

3. The provisions on the temporary suspension of customs procedures for import or export goods involving infringements of intellectual property rights defined in this Law shall not apply to non-commercial articles and goods in transit.”

22. Article 69 is amended and supplemented as follows:

“Article 69.- Responsibilities of the customs offices in organizing the collection of taxes and other levies

1. The General Department of Customs shall organize the uniform collection of taxes and other levies on import and export goods; and apply measures to ensure the correct and full collection of taxes and other levies according to the provisions of law.

2. The customs offices which carry out the procedures for import and export of goods shall, according to their authorized functions and competence, examine the tax declaration and calculation, effect the tax exemption, reduction, reimbursements and non-collection as well as the retrospective collection of taxes from customs declarers; collect taxes and manage tax payment; in cases where they discover wrong calculation of payable tax amounts by customs declarers, they must, after adjusting such amounts, notify the customs declarers thereof. The time limits for retrospective collection and payment of the payable tax amounts shall comply with the provisions of tax law.”

23. Article 71 is amended and supplemented as follows:

“Article 71.- Customs value

The customs value shall be used as a basis for the calculation of taxes and the statistics on import and export goods.

The customs value of import and export goods shall be determined according to the Law on Import Tax and Export Tax.

The Government shall specify the customs value of import and export goods.”

24. Clause 2 and Clause 3, Article 74 are amended and supplemented as follows:

“2. The Ministry of Finance shall bear responsibility before the Government for the uniform state management over customs.

3. Ministries and ministerial-level agencies, within the ambit of their respective tasks and powers, have to coordinate with the Ministry of Finance in performing the state management over customs.”

Article 2.- This Law takes effect as from January 1, 2006.

Article 3.- The Government shall detail and guide the implementation of this Law.

Chairman of the National Assembly

NGUYEN VAN AN