

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 42-2005-QH11

**LAW
ON
AMENDMENT OF AND ADDITION TO
A NUMBER OF ARTICLES OF THE
LAW ON CUSTOMS**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law amends and adds to a number of articles of the *Law on Customs* passed by the National Assembly of the Socialist Republic of Vietnam on 29 June 2001.

Article 1

A number of articles of the *Law on Customs* shall be amended and added to as follows:

1. *To amend and add to article 2 as follows:*

"Article 2 *Governing scope*

This Law regulates State administration of customs with respect to goods being imported, exported or in transit and means of transportation of domestic or foreign organizations and individuals entering, exiting or in transit in the customs territory; and regulates the organization and operation of Customs."

2. *To add a new clause 18 at the end of article 4 as follows:*

"18. *Customs territory* means the area within the territory of the Socialist Republic of Vietnam, the area in exclusive economic zones, the continental shelf of Vietnam and places where the *Law on Customs* is applicable."

3. *To add a new article 5a after article 5 as follows:*

"Article 5a *Activities of international co-operation by Customs*

Vietnam Customs shall, in accordance with its functions, in accordance with law and within the scope of the authority delegated to it, be responsible:

1. To exercise the rights, discharge the obligations and represent the interests of the Socialist Republic of Vietnam at the World Customs Organization.
2. To negotiate and sign bilateral international agreements with foreign Customs and to organize implementation of such agreements.
3. To organize the use and exchange of information and to co-operate professionally with Customs of other countries and with relevant international organizations."

4. *To amend and add to article 8 as follows:*

"Article 8 *Modernization of administration of customs*

1. The State shall give priority to investment in, and shall encourage organizations and individuals to participate in, the development of technology and advanced technical facilities in order to ensure the application of modern methods of administration of customs; and shall encourage organizations and individuals engaged in import or export activities to participate in the establishment and utilization of electronic transactions and electronic customs clearance procedures.
2. The Government shall issue specific regulations on a system of technical standards for exchange of electronic data and on the legal validity of electronic source documents consistent with the laws on electronic transactions; and on the responsibilities and powers of customs offices at all levels, of relevant State bodies, and of organizations and individuals engaged in import or export and entry or exit activities with respect to utilization of electronic customs clearance procedures and the encouraged measures stipulated in clause 1 of this article."

5. *To amend and add to article 11 as follows:*

"Article 11 Duties of Customs

Vietnam Customs shall have the duties to inspect and supervise goods and means of transportation; to prevent and combat smuggling and illegal transportation of goods across the borders; to organize implementation of the tax laws applicable to imported or exported goods; to collate statistics on imported and exported goods; to make proposals for policies and measures for State administration of customs with respect to activities of import, export, entry, exit and transit and for policies on tax with respect to imported or exported goods."

6. *To amend and add to clause 1 of article 13 as follows:*

"1. The organizational system of Vietnam Customs shall comprise:

- (a) General Department of Customs;
- (b) Customs Departments of provinces, inter-provinces and cities under central authority;
- (c) Customs Divisions at bordergates, customs inspection groups, and entities at the equivalent level."

7. *To add a new clause 3 to article 14 as follows:*

"3. It shall be strictly prohibited for State employees of Customs to cover up or to collude in order to smuggle goods, engage in commercial fraud or defraud tax; to cause inconvenience or to create difficulties while carrying out customs clearance procedures; to receive bribes; to appropriate or to embezzle goods which have been seized; or to conduct other acts for personal gain."

8. *To add a new clause 1a after clause 1 of article 15 as follows:*

"1a. Customs inspections shall be conducted on the basis of an analysis of information and an assessment of compliance with law by the goods owner and the level of risk of a breach of the law on customs in order to ensure State administration of customs and that difficulties are not caused for import and export activities."

9. *To amend and add to article 16 as follows:*

"Article 16 *Customs clearance procedures*

1. When performing customs clearance procedures, a customs declarant must:
 - (a) Make a declaration and submit a customs declaration; present source documents included in the customs file; in the case where electronic customs clearance procedures are conducted, the customs declarant shall make a declaration and send the customs file via the electronic database processing system of Customs;
 - (b) Take goods or means of transportation to the stipulated place for inspection of actual goods or means of transportation;
 - (c) Pay duties and perform other financial obligations in accordance with law.
2. When performing customs clearance procedures, a State employee of Customs must:
 - (a) Receive and register the customs file; in the case where electronic customs clearance procedures are conducted, the receipt and registration of the customs file shall be implemented via the electronic database processing system of Customs;
 - (b) Verify the customs file and inspect the actual goods or means of transportation;
 - (c) Collect duties and other charges in accordance with law;
 - (d) Decide to clear goods or means of transportation through customs."

10. *To amend and add to article 17 as follows:*

"Article 17 *Place for customs clearance procedures*

The place for customs clearance procedures shall be the office of the Customs Division at the bordergate or the office of the Customs Division outside the bordergate.

In the case where electronic customs clearance procedures are conducted, the place for receipt and registration of the customs file may be the office

of the Customs Department of a province, inter-province or city under central authority.

Where necessary, the inspection of actual goods being imported or exported may be carried out as decided by the General Director of the General Department of Customs."

11. *To amend and add to clauses 1 and 2 of article 18 as follows:*

- "1. In the case of imported goods, prior to the arrival of the goods at the bordergate or within thirty (30) days from the date on which goods arrive at the bordergate, a customs declaration shall be valid for performing customs clearance procedures for fifteen (15) days as from the date of registration.
2. In the case of exported goods, no later than eight hours prior to the departure of the means of transportation, a customs declaration shall be valid for performing customs clearance procedures for fifteen (15) days as from the date of registration."

12. *To amend and add to clause 1 of article 20 as follows:*

- "1. Customs declarations shall be made uniformly in accordance with regulations of the Ministry of Finance."

13. *To amend and add to article 22 as follows:*

"Article 22 *Customs files*

1. The customs file shall comprise the following:
 - (a) Customs declaration;
 - (b) Commercial invoices;
 - (c) Contract for purchase and sale of goods;
 - (d) Permit of the authorized State body in the case of goods being imported or exported or in transit or means of transportation entering, exiting or in transit which require a permit in accordance with law;
 - (dd) Other documents which a declarant is obliged to submit or present to the customs office as stipulated by law with respect to each item of goods.

The customs file may be a paper file or an electronic file. The integrity of an electronic customs file must be guaranteed and its form and format must be in accordance with law.

2. The customs file shall be submitted or presented to the customs office at its office. Where there is an appropriate reason which is approved by the director of the customs office at the place where the customs file is received, the declarant shall be entitled to an extension of the time-limit for submitting or presenting a number of documents included in the customs file; and for making additions to or amendments or replacements of the customs declaration which has been registered prior to the time of inspection of actual goods or means of transportation or prior to the time of exemption from inspection of actual goods; and for submitting a summarized customs declaration and for finalizing the declaration within the stipulated time-limit; and for making a single declaration in order to import or export on a number of occasions within a specific period as applicable to a number of specified goods lines."

14. *To amend and add to article 23 as follows:*

"Article 23 *Rights and obligations of declarants*

1. The declarant shall be entitled:
 - (a) To receive information relating to the customs declaration with respect to goods being imported or exported or in transit, or means of transportation entering, exiting or in transit, and guidelines for performance of customs clearance procedures provided by the customs office;
 - (b) To monitor goods in advance and take samples of goods under the supervision of State employees of Customs prior to making a customs declaration in order to ensure that the customs declaration is accurate;
 - (c) To propose a re-inspection by the customs office of the actual goods which were already inspected if it disagrees with the decision of the customs office, in the case where the goods have not yet been cleared through customs;
 - (d) To lodge a complaint or denunciation in relation to breaches of the law by any customs office or State employee of Customs;
 - (dd) To request compensation in accordance with law for any loss and damage caused by a customs office or State employee of Customs;

- (e) To use electronic customs files in order to clear goods;
- (g) To request the customs office to provide written verification of any request to present or add to a customs file or to provide documents other than the file or documents in accordance with the law on customs.

2. The declarant shall be obliged:

- (a) To make a declaration and perform strictly the provisions of articles 16.1, 18, 20 and 68 of this Law;
- (b) To be responsible before the law for the truthfulness of information declared and documents submitted or presented, and for the information in the paper file retained at the enterprise being the same as the information in the electronic customs file;
- (c) To comply with decisions and requirements of the customs office or State employees of Customs in relation to the performance of customs clearance procedures for goods or means of transportation in accordance with this Law;
- (d) To retain customs files relating to imported or exported goods which have been cleared through customs for five years from the date of registration of the customs declaration; to retain books of account, accounting vouchers and other data relating to imported or exported goods which have been cleared through customs for the period prescribed by law; to provide relevant information or documents at the request of the customs office for inspection in accordance with articles 28, 32 and 86 of this Law;
- (dd) To arrange personnel to facilitate inspection of actual goods or means of transportation;
- (e) To pay duty and perform other financial obligations in accordance with law;
- (g) Not to smuggle goods, engage in commercial fraud, defraud tax, offer bribes or engage in other conduct aimed at illegal personal gain."

15. *To amend and add to clause 4 of article 25 as follows:*

- "4. With respect to import or export goods which must be appraised in order to ascertain if they are permitted to be imported or exported,

if the goods owner requests to hold the goods for preservation, the customs office shall only accept such request in the case where all conditions for customs control have been satisfied.

With respect to goods which are permitted to be imported or exported but their value must be verified or they must be appraised, analysed and classified in order to determine the amount of duty payable, such goods shall only be cleared through customs after the goods owner has discharged the obligation to pay duty on the basis of a self-declaration and assessment of duty and has satisfied the conditions stipulated in clauses 2(b) and 3 of this article. The official amount of duty payable shall be fixed after the results of the verification of the value of the goods and of the appraisal, analysis and classification of the goods becomes available."

16. *To add a new clause 2a after clause 2 of article 27 as follows:*

"2a. To provide written verification of any request to a customs declarant to present or add to a customs file or to provide documents other than the file or documents in accordance with the law on customs."

17. *To amend and add to article 28 as follows:*

"Article 28 *Verification and registration of customs files*

Verification and registration of customs files shall be conducted as follows:

1. Paper files shall be verified and registered in one of the following forms:
 - (a) A customs file of a goods owner with good observance of the laws on customs shall be registered after the customs office has checked that all of the items required in the customs declaration form have been completed and that the number of documents attached with the customs declaration is sufficient;
 - (b) A customs file other than as stipulated in clause 1(a) of this article shall be registered after the customs office has conducted a detailed inspection. When a customs officer receives the customs file, he or she shall verify the information declared in the items required in the customs declaration form, the documents included in the customs file, and the conformity of the information declared in the customs declaration and documents included in the customs file; shall register the customs file in accordance with law;

and in the case of refusal to register the customs file, shall notify the declarant of the reasons therefor.

2. Electronic files shall be verified, registered and classified via the electronic database processing system of Customs."

18. *To amend and add to clause 2 of article 29 as follows:*

- "2. The director of the customs office of the place where a customs file is received and dealt with shall decide on the form of inspection of actual goods being imported or exported and any change of the form of inspection shall be as provided for in article 30 of this Law."

19. *To amend and add to article 30 as follows:*

"Article 30 *Forms of inspection of actual goods being imported or exported for customs clearance*

1. Goods being imported or exported in one of the following categories shall be exempt from inspection of actual goods:
 - (a) Goods being exported, except goods being exported which were manufactured from imported raw materials and goods being exported subject to conditions;
 - (b) Goods from overseas brought into free commercial zones, transit ports and customs bond warehouses; goods in transit; emergency relief goods; specialized use goods directly servicing national defence and security; humanitarian aid goods; and goods temporarily imported for re-export within a specified time;
 - (c) Goods being imported which are machinery and equipment to form fixed assets and which are tax exempt as part of an investment project.
2. In addition to the cases stipulated in clause 1 of this article, goods being imported or exported of goods owners with good observance of the laws on customs and goods in other special categories pursuant to a decision of the Prime Minister of the Government shall also be exempt from inspection of actual goods.
3. With respect to goods being imported or exported of a goods owner having breached the laws on customs on a number of occasions, and goods exempt from inspection of actual goods pursuant to clauses 1 and 2 of this article: if indications of a breach of the laws

on customs are discovered, there must be an inspection of actual goods.

4. With respect to goods not in the categories stipulated in clauses 1 and 2 of this article, based on the results of the analysis of information from the database processing system; from a reconnaissance by Customs; and on information from bodies, organizations, individuals and Customs in other countries which establish there is a possibility of a breach of the laws on customs, there must be an inspection of actual goods.
5. The inspection of actual goods shall be carried out directly by State employees of Customs or by machinery, technical equipment or other professional measures in the presence of the declarant or its legal representative after the customs file has been registered and the goods have been taken to the place of inspection.
6. Priority shall be given to inspection of goods which are live animals and plants, perishable goods or other special goods.

The Government shall issue specific regulations on the level of inspection of the actual goods stipulated in clauses 3 and 4 of this article."

20. *To amend and add to article 32 as follows:*

"Article 32 *Post-customs clearance inspection*

1. *Post-customs clearance inspection* means the conduct of an inspection by Customs aimed at:
 - (a) Evaluation of the accuracy and truthfulness of the contents of documents which any goods owner, person authorized by a goods owner, organization or individual having directly imported or exported goods has declared, paid or presented to the customs office in respect of imported or exported goods which have cleared customs;
 - (b) Evaluation of observance of law on customs during the process of conducting customs clearance procedures for imported or exported goods.
2. Post-customs clearance inspection shall be conducted in the following cases:
 - (a) Upon discovery of indications of tax fraud, commercial fraud or a breach of the provisions on administration of import and export;

- (b) With respect to cases not in the category stipulated in clause 2(a) of this article, a decision on post-customs clearance inspection shall be based on the results of an analysis of information from the database processing system; from a reconnaissance by Customs; and on information from bodies, organizations, individuals and Customs in other countries.
3. Within five years from the date of registration of the customs declaration in respect of imported or exported goods which have cleared customs, the director of a Customs Department of a province, inter-province or city under central authority shall be entitled to make a decision on post-customs clearance inspection. Where necessary, the General Director of the General Department of Customs shall make a decision on post-customs clearance inspection.
4. Based on the decision on post-customs clearance inspection, State employees of Customs shall inspect directly books of account, accounting vouchers and other documents relating to the consignment of imported or exported goods which has cleared customs at the enterprise concerned and compare them against the customs declaration and documents included in the customs file; and where necessary and possible, shall carry out inspection of actual goods.
5. During an inspection, the concerned bodies, organizations and individuals shall facilitate and make available any accounting vouchers, information and documents necessary for the inspection at the request of the customs office.

The Government shall provide specific regulations on post-customs clearance inspection."

21. *To amend and add to article 57 as follows:*

"Article 57 *Principle of temporary suspension of customs procedures*

1. An owner of intellectual property rights which are protected in accordance with the provisions of the law of Vietnam shall be entitled to make a request, on a long-term basis or on the basis of a particular case, to the customs office to suspend temporarily customs procedures with respect to imported or exported goods which infringe intellectual property rights.
2. The customs office may only make a decision on temporary suspension of customs procedures with respect to imported or

exported goods when all conditions stipulated in article 58 of this Law are satisfied.

3. The provisions in this Law on temporary suspension of customs procedures with respect to imported or exported goods which infringe intellectual property rights shall not apply to non-commercial goods or to goods in transit."

22. *To amend and add to article 69 as follows:*

"Article 69 *Responsibilities of customs offices in relation to collection of duties and other charges*

1. The General Department of Customs shall provide uniform directions for the collection of duties and other charges applicable to imported and exported goods; and the implementation of measures to ensure the correct collection of duties and other charges in full in accordance with law.
2. The customs office at the place where customs clearance procedures are conducted in respect of imported and exported goods shall, in accordance with the functions and authority delegated to it, check declarations and calculations of duty payable; shall implement exemption from or reduction of duty and refunds of duty; shall implement non-collection of duty or re-collection of duty; shall collect duty and administer payment of duty; and, if it discovers that a declarant has made an error in the calculation of duty payable, shall provide written notification thereof to the declarant to make an adjustment. The time-limit for re-collection or refund of duties payable shall be in accordance with the relevant provisions of the laws on tax."

23. *To amend and add to article 71 as follows:*

"Article 71 *Calculation of dutiable value*

Dutiable value shall be used as the basis for calculating duty payable and for compiling statistics on imported and exported goods.

Dutiable value of imported or exported goods shall be calculated in accordance with the relevant provisions of the law on import and export duties.

The Government shall issue specific regulations on calculation of dutiable value of imported and exported goods."

24. *To amend and add to clauses 2 and 3 of article 74 as follows:*

- "2. The Ministry of Finance shall be responsible before the Government for the exercise of uniform State administration of customs.
3. Ministries and ministerial equivalent bodies shall, within the scope of their respective duties and powers, be responsible to co-ordinate with the Ministry of Finance in the exercise of State administration of customs."

Article 2

This Law shall be of full force and effect as of 1 January 2006.

Article 3

The Government shall provide detailed regulations and guidelines for implementation of this Law.

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 7th Session on 14 June 2005.

The Chairman of the National Assembly

NGUYEN VAN AN