

Legal Reform of the Organic Customs Law



On November 13th, 2014, the President of the Bolivarian Republic of Venezuela enacted Decree No 1416, which was published in Official Extraordinary Gazette No 6155 dated November 19th, 2014 referring to the Legal Reform of the Organic Customs Law. The most relevant reforms are hereinafter presented:

[Title I General Provisions](#)

- Finance Ministry responsibilities, in terms of customs, are reduced.
- Responsibilities are reduced from 20 to 6.
- Establishing the tariff tax policy.
- More responsibilities on Customs Administration.

Decree No 1416,
published in
Extraordinary Official
Gazette No 6155

- Receiving and Dispatching goods intended to aid in case of a national emergency or a disaster decreed by the National Executive are totally or partially exempted in terms of tax, restrictions, registries, etc.

- Enacting regulations referred to electronic procedures.

- In terms of customs, it is observed that Ministries are prone to be exempted from regulation and operational responsibilities.

[Title II Good Smuggling](#)

[Chapter II Good load, unload and warehousing](#)

- Drivers, guards or their agents shall record cargo declarations up until 48 hours in advance at the time

of the vehicle arrival or departure through the automatic system. Ship load.

4 hours for air or land load.

Section III Customs Regimes

- The legal treatment applicable to the goods ruled by the customs control is established as Customs Legislation , according to the willing statement manifest contained in the customs declaration.
- All merchandise coming into national territory or being dispatched abroad shall be subjected by the importing, exporting, national or international transportation customs regimes and any other destination established within the Law.

Section IV Customs declarations

Declarations shall have the following modes:

Information Declaration in advance for goods entering into the country.

- 1) For goods entering by land or air, declaration must be presented within 15 days in advance and one (1) minimum arrival day.
- 2) For goods entering by sea, declaration must be presented with 15 days in advance and maximum (2) days from the arrival.

Not Applicable :

- baggage legislation – postal parcel – immediate deliveries
- goods sent to a foreign free zone.
- diplomatic officer, consular officers, diplomatic missions.
- international organizations credited in the country.

GOAL – Risk management

- Final Declaration for a customs regime or single customs declaration procedure

Goods shall be declared before or until the fifth (5) working days to the entering date in the country for imports or their entering into the warehousing area for exportation, with the exceptions established within the Law.

- The entities and organizations responsible for issuing the different legal regimes shall process and issue the corresponding documents in twenty five (25) working days prior the merchandise arrival date, so that importers record declarations in advance and present records, licenses and some other requirements before the corresponding customs office.

Section V Recognition

- A rule on the Legal reform, referring to the merchandise recognition off the primary customs zone is incorporated. Likewise, the Recognition act shall establish the delivery period to the customs and it shall not exceed thirty (30) continuous days
- The recognition procedure shall be regarded as invalid and dropped when the previous period has expired without effectively carrying out exporting.
- The exporter shall request before the customs office of departure with three (3) working days in advance, aiming at coordinating with the other organizations participating in the exportation load verification.

Section VI Liquidation, Payment and Withdrawal

- The applicable import tax payment and the customs regime rate calculation shall be conducted before or in the moment customs declaration is being registered.
- Once the tax is paid, neither reimbursement nor compensation is admitted due to loss or subsequent breakdown after conducting recognition.
- The payment due to exempted or exonerated customs operations is regarded as a withdrawal, without triggering reimbursement or compensation.
- The obligation extinguishment means are specifically mentioned in the Organic Law Code. Additionally, it incorporates other extinguishment means such as merchandise destruction, bargain sale and allocation.

Chapter XI Authorized Economic Operator

- This law creates the position **called Authorized Economic Operator** that may be implemented by the Customs Management aiming at guaranteeing security in the logistics chain and contributing to accelerate international trade operations by

determining simplified procedures of customers control and release.

- The **Authorized Economic Operator** shall be a legal person with residence in the country that is involved in the international logistics chain.
- Producers, manufacturers, importers, exporters, customs agents, drivers, customs warehouses, load consolidation agents, SMS Courier international company, ship agents and port operators shall be classified as **Authorized Economic Operators**.

- Requirements and conditions to classify as **Authorized Economic Operator**, as well as simplified procedure of customs control and release shall be established through the Administrative Ruling.

- The **Authorized Economic Operator** shall be granted by an undetermined period and it may be revoked or suspended at any time due to the reasons established in the Customs Management.

Title III Customs Obligations

- The customs valuation regulations shall establish the constitutive elements, scope, types, means and systems that must be used to determine the taxable base for customs levies.
- The taxable event or the reason for customs tax, with the exception stated within the Law, takes place at the recording date of import and export customs declaration.
- The applicable Customs tariff shall be effective on the declaration recording date.
- The imported merchandise customs value shall be determined in compliance with the valuation methods established in the Valuation Agreement of the World Trade Organization (WTO), its interpretation notes, general guidance as well as other Treaties, Arrangements and International Agreements.
- The Tax Administration comment due to enquiry regarding tariff or value classification shall be binding for the responsible public servant, the consultant and some other interested individuals in case of similar merchandise.

Title VII Customs Illegal Procedures

Section I Responsibilities to impose sanctions

- Smuggling is omitted since it is ruled by article 47 of the effective Anti-smuggling Law.

- The responsibility of public servant working on recognition is specifically established to fine consignees, exporters, senders, as well as Customs Administration Assistants from the declaration and good withholding.

- The public servants are responsible for conducting the subsequent or permanent customs control, fining and withholding merchandise in case of smuggling.

- The same management organization that granted authorization is responsible for suspensions and repeals of the Customs Administration Assistants.

Section II Common Provisions

- The following events are specifically established as exemptions from responsibilities due to customs illegal acts:

1. The unforeseeable circumstances and force majeure and
2. Excusable fact and law error.

- The currency amendment of debts due to sanctions is established by stating that when fines refer to the merchandise value for customs purpose, they shall be exchanged for a corresponding T.U equivalent at the moment of the commission of an illegal act, being settled using the effective T.U value when paying.

- When the commission of an illegal act event cannot be determined, the moment in which the Administration was informed is taken into consideration.

- For fines calculated based on the customs duty amounts, the Customs Tariff rate, plus the required surcharges, which are effective on the customs declaration date, shall be taken into consideration.

- Regarding goods from countries which have entered into Treaties, Arrangements or International Agreements with Venezuela that can be exchanged in a preferential tariff rate. This rate shall apply for sanction determining purposes.

- When merchandise is neither levied nor is subjected to restrictions, the fine equivalent to twenty five percent (25%) of the good value shall be applied.

Section III Sanctions on Customs Administration Assistants

General Application

- Fines ranging from 50 -500- to 1000 T.U due to obligation breaching, delay on good customs clearance, avoiding control and recognition work.
- Authorization Suspension.1- thirty (30) continuous days due to the lack of information about any amendment referring to the requirement taken into consideration to grant authorization or record; 2.- (90) continuous days due to the impact on tax security, trade interests or customs service users and for not keeping the books, records and other documents; 3.- (120) continuous days when sanctioned twice (2) or more with a fine due to the breaching committed during a (1) year period if the fine total does not exceed (600 T.U) and 4.- 180 continuous days, if exceeding 600 (T.U).
- Cancelling authorization to work as Customs Administration Assistant: 1.- Due to the non-renewal of the established period; 2.- Conducting activities, being subjected to the suspension measure; 3.- More than six (6) month inactivity; 4.- Authorization Transference to a third party. 5.- Obtaining the authorization through irregular means; 6.- Providing third parties with the access code to computer system of his/her electronic or handwritten signature; 7.- Due to breaching involved with smuggling; 8.- If sanctioned with suspensions twice (2) in 3-year period and 9.- For final judgment due to crimes related to their responsibilities, being the crime perpetrators, accomplices or co-perpetrator.

For cases established in number 1,2,3,7 and 9, the authorization revocation shall last five (5) years. For numbers 4, 5, 6, 8 and 10, revocation shall be the final.

Specific Applications

For drivers, porter or his/her legal representatives, the T.U was increased

- Sanctions ranging from 2- 5 – 30- 50 (T.U).

Due to formal duty breaching

For load consolidation companies, the T.U was increased.

- Sanctions ranging from 2- 50 (T.U)

Due to formal duty breaching.

For customs warehouse, the T.U was increased.

- Sanctions ranging from 30- 50 – 100 – 550 - 1000 (T.U).

Due to formal duty breaching

For Customs Agents and Agencies, the T.U was increased.

- Sanctions ranging from – 50 – 100 – 550 – 1000 (T.U).

Due to formal duty breaching

Section IV Sanctions on Customs regimes

- Prohibited import merchandise. It shall be confiscated whether it is not re-exported in the 30 working days to the declaration or recognition date.

- The aforementioned prohibition is not applicable to goods affecting intellectual property rights.

- Merchandise subjected to any restriction. When the corresponding permissions are not presented together with the Declaration, the goods shall be withheld and delayed certificate presentation shall be sanctioned with 20% of the merchandise customs value. The merchandise shall be confiscated after thirty (30) working days of the final Declaration or of the recognition, if the permission is not handed over or whether it has been re-exported.

- If the authorization of the Environment Ministry is not handed over before imported goods or dangerous substances arrive, they shall be considered as dangerous waste, banning the entry for them.

Regarding infractions due to good declaration in customs, the same aspects are maintained, but with a 30 and 50 T.U increase. Three (3) new regulations were incorporated:

- When foreign currency –related declaration or national currency exchange is incorrect, a fine

equivalent to differential tax double that the aforementioned declaration could have occasioned.

- When imported merchandises subjected to anti-dumping or compensation rights have not been declared, a fine equivalent to double of the differential tax that the aforementioned declaration could have occasioned shall be applied.
- Sanctions shall comprise 50 T.U for urgent deliveries and information declaration in advance when single custom declaration regulation is not conducted.
- Those individuals obtaining and trying to obtain refunds or improper reimbursements through action or omission by virtue of tax benefits, tariff reductions or any other reason by using special certificates or any other return type shall be sanctioned with a fine equivalent to three hundred percent (300%) of the declared merchandise value. Additionally, they lose the right to receive any other customs tax benefit during a five (5) -year period. The benefit shall be paid or returned.

Validity

It shall be effective ninety (90) days from its publishing date in Official Gazette dated November 19th, 2014.

Title VIII Resources and Questions

Regarding administrative and legal resources

- Articles referred to the administrative resources corresponding to the former law.

It is specifically established that administrative and legal resources against the Customs Administration Acts affecting managed individuals rights shall follow Organic Tax Code procedure.

Therefore, the effect suspensions of the administrative act resorted is omitted from the Organic Tax Code. In terms of customs, this event is applicable to impugn or to hierarchically refer to Customs Administration acts.

Final Provisions

- It is established that government organizations responsible for physically verifying goods in the main area are obliged to do it simultaneously with other recognition public servants.
- It is no longer applicable content referring to National Protection established in the Organic Law on Public Finance and General Warehouse Laws.

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