

Regulations of the PRC on Customs Administrative Penalty Implementation

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Adopted at the 62nd Executive Meeting of the State Council on September 1, 2004
Promulgated by State Council Order No. 420 on September 19, 2004
Effective: November 1, 2004

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Customs Law of the People's Republic of China (hereinafter referred to as the "Customs Law") and the relevant provisions of other laws and administrative regulations, for the purpose of regulating the implementation of customs administrative penalties, ensuring that customs authorities exercise their powers in accordance with the law, and protecting the legitimate rights and interests of citizens, legal persons, and other organizations.

Article 2 — Where customs authorities impose administrative penalties on acts that violate customs laws, administrative regulations, or rules and that are not subject to criminal liability (hereinafter referred to as "smuggling acts" and "acts in violation of customs supervision provisions"), the Administrative Penalty Law of the People's Republic of China, the Customs Law, and other relevant laws and administrative regulations and the provisions of these Regulations shall apply.

Article 3 — Customs administrative penalties shall be imposed by the customs authorities that have discovered the violation. Where two or more parties are involved in a violation that falls within the jurisdiction of two or more customs authorities, the case shall be under the jurisdiction of the customs authority that first discovered the violation. Where a dispute arises over jurisdiction, the parties shall report to their common superior customs authority for a designation of jurisdiction. In case of a major or complex case, the General Administration of Customs may designate a customs authority to exercise jurisdiction.

Article 4 — The customs authorities shall, in accordance with the law, protect the rights of citizens, legal persons, and other organizations to make statements, to defend themselves, to apply for a hearing, to apply for administrative reconsideration, and to file an administrative lawsuit. Where the legitimate rights and interests of a citizen, legal person, or other organization are harmed by an unlawful administrative penalty imposed by the customs authority, the party concerned shall have the right to claim compensation in accordance with the law.

Article 5 — Acts in violation of customs laws, administrative regulations, or rules shall be handled by the customs authorities in accordance with the law. Where such acts are suspected of constituting a crime, the customs authority shall transfer the case to the public security authority for investigation and shall not substitute an administrative penalty for criminal punishment.

Chapter II — Types and Application of Customs Administrative Penalties

Article 6 — Administrative penalties that may be imposed by the customs authority include:

- (1) a warning;
- (2) a fine;
- (3) confiscation of smuggled goods, articles, means of transport used for smuggling, or illegal gains;
- (4) suspension or revocation of customs declaration registration or other customs-related business qualifications;
- (5) other administrative penalties prescribed by laws and administrative regulations.

Article 7 — Where goods or articles are transported, carried, or mailed into or out of the territory without customs declaration, or where goods or articles declared for import or export are inconsistent with the actual goods or articles in respect of their description, quantity, specification, or other material aspects, with the intent to evade customs supervision, duties, or state-controlled or restricted import or export administration, the act shall constitute smuggling.

Article 8 — Where goods or articles are transported, carried, or mailed into or out of the territory without customs declaration, or where goods or articles declared for import or export are inconsistent with the actual goods or articles, which constitutes an act in violation of customs supervision provisions rather than a smuggling act, the penalty shall be determined in accordance with the relevant provisions on acts in violation of customs supervision provisions.

Article 9 — The following acts shall be punishable as smuggling acts:

- (1) transporting, carrying, or mailing goods or articles into or out of the territory without the permission of the customs authority, thereby evading customs supervision;
- (2) transporting, carrying, or mailing goods or articles whose import or export is prohibited or restricted by the state into or out of the territory;
- (3) purchasing or selling smuggled goods or articles, or transporting, acquiring, or storing smuggled goods or articles knowing them to be smuggled;

(4) engaging in any other act of evading customs supervision by fraudulent means, including making false declarations, concealing the truth, or presenting false documents.

Article 10 — Where a smuggling act is committed and no criminal liability is pursued, the customs authority shall:

(1) confiscate the smuggled goods, articles, and illegal gains, and may also impose a fine of not more than the equivalent value of the smuggled goods or articles;

(2) confiscate the means of transport or equipment specially designed or used for smuggling, and may also impose a fine;

(3) in the case of a smuggling act involving goods or articles whose import or export is prohibited by the state, impose a fine of not more than RMB 1,000,000, in addition to confiscation.

Article 11 — Where customs declaration enterprises, customs brokers, or other enterprises or individuals provide false information or forge, alter, or trade in customs documents, they shall be subject to administrative penalties in accordance with the applicable provisions and may have their registration as customs declaration enterprises revoked.

Article 12 — For acts in violation of customs supervision provisions, the customs authority may impose a warning, a fine, or suspend or revoke the relevant qualification. The specific fine amounts and penalties shall be determined in accordance with the seriousness of the violation, the circumstances, and the amount of duties involved.

Article 13 — Where a party has committed multiple violations of customs supervision provisions, the customs authority shall impose separate penalties for each violation and shall execute the penalties in aggregate, except where the aggregate amount of fines exceeds the statutory maximum.

Article 14 — Where a party voluntarily reports its own violation to the customs authority before the violation is discovered by the customs authority, or where the party voluntarily eliminates or mitigates the harmful consequences of the violation, the penalty may be mitigated or exempted in accordance with the law.

Article 15 — Where a violation is minor and is promptly corrected without causing harmful consequences, no administrative penalty shall be imposed. Where a party is under the age of 14, no administrative penalty shall be imposed, but the guardian shall be ordered to provide discipline. Where a party has attained the age of 14 but is under the age of 18, the penalty shall be mitigated.

Chapter III — Investigation of Violations

Article 16 — The customs authority shall conduct investigations into suspected violations of customs laws, administrative regulations, or rules in accordance with the law. During the investigation, the customs authority may take the following measures:

(1) examining, reproducing, or seizing contracts, invoices, account books, documents, records, correspondence, audio and video recordings, electronic data, and other materials relating to the suspected violation;

(2) conducting inspections of the premises, means of transport, and articles connected to the suspected violation;

(3) inquiring of the parties, witnesses, and other persons connected to the suspected violation;

(4) examining and detaining goods, articles, and means of transport suspected of being involved in a violation;

(5) inquiring into the bank accounts and fund transfers of the parties suspected of a violation, with the approval of the director of the customs authority;

(6) pursuing and intercepting means of transport or persons suspected of a violation within the customs surveillance zone or the coastal or border areas adjacent thereto.

Article 17 — When conducting investigations, customs officers shall present their identification documents. Where there are two or more parties to the investigation, they shall be examined separately. Written records of inquiries shall be made and shall be signed or sealed by the person examined after verification.

Article 18 — The customs authority may detain goods, articles, or means of transport suspected of being involved in a violation. The period of detention shall not exceed one year, and may be extended for a further period not exceeding one year with the approval of the director of the customs authority at the level directly under the General Administration of Customs or the director of a customs authority authorized by the General Administration of Customs, provided that the total period of detention shall not exceed two years. The parties shall be notified in writing of the detention and the extension.

Article 19 — The customs authority may, with the approval of its director, seal or seize documents, materials, financial assets, or other property relating to the suspected violation. The sealing or seizure shall be recorded in writing, and a list of the items sealed or seized shall be prepared and signed or sealed by the parties and the customs officers.

Article 20 — The customs authority shall complete the investigation within one year from the date of initiation of the case. Where the case is complex and the investigation cannot be completed within the prescribed period, the investigation may be extended with the approval of the superior customs authority, provided that the total investigation period shall not exceed two years.

Chapter IV — Procedures for Customs Administrative Penalty Decisions

Article 21 — Customs administrative penalty decisions shall follow the procedures prescribed by the Administrative Penalty Law, the Customs Law, and these Regulations. The customs authority shall, before making an administrative penalty decision, inform the party concerned of the facts, grounds, and legal basis for the proposed penalty, and of the party's rights to make statements and to defend itself, and to apply for a hearing where the penalty meets the statutory threshold.

Article 22 — The simplified procedure (decision on the spot) may apply to customs administrative penalties where:

- (1) the illegal facts are clearly established and the legal basis is definite;
- (2) the penalty is a warning or a fine of not more than RMB 1,000 for an individual, or a fine of not more than RMB 30,000 for an enterprise or organization.

A written penalty decision shall be issued on the spot and delivered to the party concerned. The party shall sign for receipt.

Article 23 — For administrative penalties that do not qualify for the simplified procedure, the general procedure shall apply. The customs authority shall conduct a comprehensive, objective, and fair investigation, shall collect evidence, and shall prepare an investigation report before making a penalty decision.

Article 24 — The customs authority shall notify the party concerned in writing of the proposed administrative penalty and the facts, grounds, and legal basis therefor. The party shall have the right to submit a written statement and defense within the period specified in the notice. The customs authority shall consider the party's submission and shall not impose a heavier penalty on the party solely on account of the party's defense.

Article 25 — Where the customs authority intends to impose a penalty of suspension or revocation of a qualification, confiscation of goods, articles, or illegal gains of substantial value, or a fine exceeding a

prescribed amount, the party shall have the right to request a hearing. The customs authority shall organize the hearing in accordance with the law and shall not charge any fee to the party.

Article 26 — After the completion of the investigation and the hearing (if any), the customs authority shall make a written administrative penalty decision. The decision shall state:

- (1) the name or title and address of the party concerned;
- (2) the facts and evidence establishing the violation;
- (3) the type and legal basis of the administrative penalty;
- (4) the manner and time limit for enforcement of the administrative penalty;
- (5) the means and time limit for applying for administrative reconsideration or filing an administrative lawsuit against the penalty decision;
- (6) the name of the customs authority that made the penalty decision and the date of the decision.

Article 27 — The administrative penalty decision shall be delivered to the party concerned. Where the party is present, the decision shall be delivered on the spot. Where the party is not present, the customs authority shall serve the decision within seven days in accordance with the relevant provisions of the Civil Procedure Law.

Chapter V — Enforcement of Customs Administrative Penalties

Article 28 — A customs administrative penalty decision shall be enforced after it has been served and has become legally effective. Where the party concerned applies for administrative reconsideration or files an administrative lawsuit within the statutory period, enforcement of the penalty decision shall not be suspended, unless otherwise provided by law.

Article 29 — A party that is ordered to pay a fine shall do so within 15 days of receipt of the penalty decision. Where the party fails to pay the fine within the prescribed period, a late payment surcharge of 3% of the fine amount shall be imposed for each day of delay, and the customs authority may apply to the people's court for compulsory enforcement.

Article 30 — Confiscated goods, articles, or illegal gains shall be disposed of by the customs authority in accordance with the law through public auction, in accordance with the relevant state regulations. Perishable goods, fresh and live commodities, goods that are difficult to store, or goods whose value is likely to depreciate may be disposed of before the expiry of the detention or seizure period, with the prior approval of the director of the customs authority and after notifying the party concerned. The proceeds of disposal shall be preserved in lieu of the goods.

Article 31 — Goods, articles, or means of transport that are confiscated by the customs authority may not be claimed by the party concerned after the penalty decision takes effect. Where goods, articles, or means of transport are detained or seized but are not confiscated, they shall be returned to the party concerned after the case is concluded or after the relevant formalities are completed.

Article 32 — Where a party is unable to pay a fine in a lump sum due to genuine financial difficulty, it may apply to the customs authority for payment by installments or for a deferral of payment. Upon verification by the customs authority, the application may be approved, and the party shall execute an undertaking to pay.

Chapter VI — Supplementary Provisions

Article 33 — The customs authority shall indemnify the party concerned for any loss caused by wrongful detention, seizure, confiscation, or imposition of a fine, in accordance with the State Compensation Law. The party concerned may apply for compensation from the customs authority that made the wrongful decision.

Article 34 — Personnel of the customs authority who abuse their powers, neglect their duties, engage in malpractices for personal gain, or otherwise violate the law in the administration of customs penalties shall be subject to administrative sanctions. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 35 — The Customs Law and other relevant laws and administrative regulations shall apply to acts of violating customs laws committed by means of electronic data transmission or other means of modern communication technology. These Regulations shall apply, *mutatis mutandis*, to customs administrative penalties for such acts.

Article 36 — The proceeds from customs administrative penalties, including fines, confiscated property and the proceeds of its auction, and late payment surcharges, shall be fully remitted to the state treasury. The customs authority and its personnel shall not retain, withhold, or share any portion of such proceeds.

Article 37 — These Regulations shall take effect as of November 1, 2004. The Measures of the Customs of the People's Republic of China for the Implementation of Administrative Penalties, approved by the State Council on January 25, 1987 and promulgated by the General Administration of Customs on June 30, 1987, and the Provisions of the General Administration of Customs on the Imposition of Fines for Violations of Customs Supervision Provisions, promulgated by the General Administration of Customs on March 10, 1993, shall be repealed simultaneously.

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