Regulations on Customs Administrative Penalty of the PRC

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Chapter I — General Provisions

Article 1 — These Regulations are enacted in accordance with the Customs Law of the People's Republic of China (hereinafter referred to as the "Customs Law") and other relevant laws for the purpose of regulating customs administrative penalty procedures, safeguarding and supervising customs authorities in performing their duties in accordance with law, and protecting the lawful rights and interests of citizens, legal persons, and other organizations.

Article 2 — These Regulations shall apply to the imposition of administrative penalties by customs authorities in accordance with law for acts of smuggling and other acts in violation of customs supervision and administration regulations. These Regulations shall not apply to the administrative sanctions imposed on staff members of customs authorities.

Article 3 — Customs administrative penalties shall be based on facts and proportionate to the circumstances and degree of social harm of the illegal acts. In imposing customs administrative penalties, the principles of openness and fairness shall be adhered to. In imposing customs administrative penalties, punishment shall be combined with education, and citizens, legal persons, and other organizations shall be educated to consciously abide by the law.

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Article 4 — The General Administration of Customs shall be responsible for organizing and directing customs authorities nationwide in handling administrative penalty matters. All customs authorities shall be responsible for handling administrative penalty matters within their respective jurisdictions in accordance with law.

Chapter II — Types and Application of Customs Administrative Penalties

Article 5 — The types of customs administrative penalties shall include: (1) warning; (2) fine; (3) confiscation of illegal gains; (4) confiscation of smuggled goods, articles, means of transport, and special equipment exclusively used for smuggling; (5) order to suspend the relevant business operations, order to suspend customs declaration business, or revocation of registration; (6) administrative detention; and (7) other administrative penalties stipulated by laws and administrative regulations.

Article 6 — The customs authorities shall publicly announce the laws, administrative regulations, and rules on the basis of which the administrative penalties are imposed. Without public announcement, they shall not serve as the basis for the imposition of administrative penalties.

Article 7 — Before imposing an administrative penalty, the customs authorities shall inform the party of the facts, reasons and basis for the decision to impose the administrative penalty and shall inform the party of the rights it is entitled to in accordance with law. The customs authorities shall fully hear the party's statements and arguments. Where the facts, reasons or evidence put forward by the party are valid, the customs authorities shall adopt the same. No party shall be given a heavier penalty for making statements or arguments.

Article 8 — No customs administrative penalty shall be imposed where the illegal act is minor and is promptly corrected without causing harmful consequences. Where an illegal act is minor and the party has promptly corrected it without causing harmful consequences, no customs administrative penalty shall be imposed; where the illegal act is committed for the first time and the harmful consequences are minor, no customs administrative penalty shall be imposed. Where a party has evidence to prove that there is no subjective fault in the illegal act, no customs administrative penalty shall be imposed. Where laws or administrative regulations provide otherwise, such provisions shall prevail.

Article 9 — Where an illegal act constitutes a crime and criminal liability is pursued in accordance with law by the judicial authorities, the customs authorities shall not impose an administrative penalty of the same type. Where the illegal acts are suspected of being criminal and are transferred to the judicial authorities, the customs authorities shall attach the confiscated property to the case when transferring the case. Where, after transferring the case, the judicial authorities decide not to pursue criminal liability or to exempt from criminal punishment in accordance with law, but an administrative penalty shall still be imposed, the case shall be dealt with in accordance with the provisions of these Regulations.

Article 10 — Where a party commits any of the following acts in violation of the provisions of the Customs Law and other relevant laws and administrative regulations, it shall be punished in accordance with the provisions of the Customs Law: (1) smuggling goods or articles that are prohibited or restricted from import or export by the State, or goods or articles subject to tax payment in accordance with law; (2) transporting, purchasing, or selling goods or articles smuggled into or out of the country without a lawful certificate; (3) forging, altering, purchasing, or selling customs documents; (4) conspiring with smugglers to provide them with loans, funds, account numbers, invoices, certificates, or customs documents; (5) failing to truthfully declare to the customs authorities the import or export goods; or (6) other acts in violation of customs supervision and administration regulations.

Article 11 — Customs authorities may impose a fine on a party based on the following circumstances: (1) the nature and circumstances of the illegal act; (2) the amount of goods involved in the illegal act; (3) the amount of taxes evaded; (4) the consequences or harm caused by the illegal act; (5) the attitude of the party in admitting the violation and cooperating with the investigation; and (6) other circumstances that shall be taken

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into consideration.

Article 12 — Customs administrative penalties shall be imposed within two years from the date the illegal act is committed. Where the illegal act is of a continuous or continuing nature, the time period shall be calculated from the date the illegal act is terminated. Where a crime is constituted and criminal liability is pursued in accordance with law, the time period for imposing an administrative penalty of the same type shall be recalculated from the date the penalty is imposed.

Chapter III — Investigation of Illegal Customs Acts and Collection of Evidence

Article 13 — In investigating illegal acts, customs authorities shall ensure that there are at least two law enforcement officers who shall present their law enforcement credentials to the party or relevant persons.

Article 14 — When investigating cases in accordance with law, customs authorities may take the following measures: (1) inspecting and searching inward and outward means of transport, goods, and articles; (2) consulting and copying the contracts, invoices, account books, documents, records, documents, business correspondence, audio and video recordings, and other materials relating to the inward and outward means of transport, goods, and articles; (3) inspecting the bodies of persons suspected of smuggling; (4) searching the means of transport and premises suspected of harboring smuggled goods and articles, and detaining the means of transport, goods, and articles suspected of being involved in smuggling; (5) inquiring into the deposit accounts of enterprises and institutions suspected of smuggling with financial institutions; (6) ordering the suspension of loading, unloading, delivery, and shipment of inward and outward goods and articles; and (7) other measures prescribed by laws and administrative regulations.

Article 15 — Customs authorities shall collect evidence in accordance with the legal procedures and in a comprehensive, objective and fair manner. Evidence may be verified before it may be used as the basis for determining the facts of a case. Evidence includes: (1) documentary evidence; (2) physical evidence; (3) witness testimony; (4) statements of the parties; (5) expert conclusions; (6) inspection records; and (7) audio and video recordings and electronic data.

Article 16 — Customs authorities may conduct sampling inspections of goods in accordance with law. The inspected party shall cooperate and shall not refuse to allow the inspection. The customs authorities shall promptly issue a notice of inspection results to the party.

Article 17 — Goods, articles, means of transport, account books, documents, and other materials that may be evidence of an illegal act shall be subject to the formalities of seizure or detention by the customs authorities in accordance with law. The maximum period of seizure or detention shall not exceed one year. The period may be extended upon approval of the head of the customs authority directly under the General Administration of Customs or the head of the customs authority authorized by such customs authority, but the extension shall not exceed one year.

Article 18 — Customs authorities shall, within 30 days from the date of completion of investigation, make a decision on the administrative penalty. Where the case is complex and a decision cannot be made within the time limit, an extension of 30 days may be granted upon approval of the person in charge of the customs authority. Where the circumstances are special, the time limit may be further extended upon approval of the General Administration of Customs.

Chapter IV — Handling and Execution of Customs Administrative Penalty Decisions

Article 19 — Before imposing an administrative penalty, the customs authorities shall inform the party of the facts, reasons, and basis for the proposed penalty and shall inform the party of its right to request a hearing in accordance with law. Where the party makes statements, arguments, or requests a hearing, the customs authorities shall organize a hearing in accordance with law. The customs authorities shall not increase the

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penalty on the grounds of the party's statements, arguments, or hearing request.

Article 20 — A written decision on an administrative penalty shall be made for the imposition of an administrative penalty. The written decision on the administrative penalty shall specify the following: (1) the name and address of the party; (2) the facts and evidence of the violation of laws, administrative regulations, or rules; (3) the type and basis of the administrative penalty; (4) the manner and time limit for the execution of the administrative penalty; (5) the means and time limit for applying for administrative reconsideration or bringing an administrative lawsuit where the party is dissatisfied with the administrative penalty decision; and (6) the name of the customs authority imposing the administrative penalty and the date of the decision. The written decision on the administrative penalty shall be affixed with the seal of the customs authority imposing the administrative penalty.

Article 21 — The written decision on the administrative penalty shall be delivered to the party on the spot after being pronounced; where it is impossible to deliver on the spot, delivery shall be made within seven days from the date of announcement. In delivering the written decision on the administrative penalty, the customs authorities shall attach a notice of the party's rights to apply for administrative reconsideration or bring an administrative lawsuit.

Article 22 — Where the customs authorities impose an administrative penalty of a fine or confiscation of illegal gains of less than 200 yuan on a citizen, or a fine or confiscation of illegal gains of less than 3,000 yuan on a legal person or other organization, the customs law enforcement officers may collect the fine on the spot.

Article 23 — A party shall, within 15 days from the date of receipt of the written decision on the administrative penalty, pay the fine to the designated bank. Where a fine is collected on the spot, the customs law enforcement officers shall produce a receipt uniformly made and issued by the financial department. They shall, within two days from the date of collection of the fine, hand over the fine to the customs authority, which shall, within two days, deliver the fine to the designated bank.

Article 24 — Where a party fails to perform the administrative penalty decision within the prescribed time limit, the customs authority imposing the administrative penalty may take the following measures: (1) where the fine is not paid upon expiry of the time limit, an additional fine of 3% of the amount of the fine shall be imposed per day; (2) applying to a people's court for compulsory execution in accordance with law; or (3) where the customs authority has the power to execute compulsorily in accordance with law, executing compulsorily on its own.

Article 25 — Where a party is genuinely in financial difficulty and needs to postpone or pay the fine in installments, the party may apply to the customs authority for approval; upon approval by the customs authority, the fine may be postponed or paid in installments.

Article 26 — Goods, articles, and means of transport confiscated by customs authorities through administrative penalty decisions shall be disposed of in accordance with the provisions of the Customs Law.

Article 27 — Customs authorities shall supervise the execution of administrative penalty decisions and shall handle issues arising during the execution in accordance with law. Where a party is dissatisfied with the administrative penalty decision and applies for administrative reconsideration or brings an administrative lawsuit, the execution of the administrative penalty decision shall not be suspended, unless otherwise provided for by law.

Chapter V — Supplementary Provisions

Article 28 — The meanings of the following terms used in these Regulations are: "illegal gains" means the illegal income obtained by the party from the illegal act. "Goods involved in the case" means the goods, articles, and means of transport relating to the illegal act. "Smuggled goods, articles, and means of transport"

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means the goods, articles, and means of transport obtained through smuggling.

Article 29 — Where a party or a relevant person is dissatisfied with a specific administrative act of a customs authority, the party may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Article 30 — The General Administration of Customs shall be responsible for the interpretation of these Regulations.

Article 31 — These Regulations shall come into force as of November 1, 2004.

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