

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Liberty – Happiness

No.: 45/2005/QH11

NATIONAL ASSEMBLY

OF

THE SOCIALIST REPUBLIC OF VIETNAM

XI Legislation, 7th Session

LAW ON EXPORT AND IMPORT DUTIES

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

This law prescribes export and import duties.

Chapter I

GENERAL PROVISIONS

Article 1. *Governing Scope*

This Law prescribe export and import duties of goods permitted to be exported and imported accross border gates of Vietnam; goods exchanged and traded by residents in border areas and other exchanged goods are considered as exports and imports.

Article 2. Dutiable subjects

Dutiable subjects shall consist of the followings, except for those prescribed in the Article 3 of this Law:

1. Goods permitted to be exported or imported across the border of Vietnam;
2. Goods from domestic market entered export processing zones and from duty-free zones to the domestic market

Article 3: Non-dutiable subjects

The following goods shall not be subject to export or import duties:

1. Goods in transit or being transported to other countries across borders of Vietnam; goods transited at border-gates of Vietnam as stipulated by the Government;
2. Humanitarian goods and non-refundable aids;
3. Goods exported abroad from duty-free zones; goods imported from abroad to duty-free zones and only used in duty-free zones; and goods passed between duty- free zones;
4. Goods exported as oil subject to property tax as stipulated by the government.

Article 4. Dutiable objects

Organizations and individuals having goods, which are dutiable subject as stipulated in Article 2, shall have to pay export or import duties.

Article 5. Definition

In this Law, the words below are understood as follows:

1. *Duty-free zones*: are economic zones inside Vietnam territory, having definite geographic boundary, established under decisions of the Prime Minister; trading transactions between these zones and outside are import and export transactions.
2. *Safeguard tax measures* are measures applicable to a certain type of goods which are imported excessively into Vietnam in order to prevent or diminish serious injury to relevant domestic production.
3. *Excessively importing* is the action of importing a certain type of goods with the volume and quantity increasing suddenly in absolute or relative amount in comparison with the volume and quantity of similar goods or directly competitive goods produced domestically.
4. *Specific tax* is a tax fixed with a certain amount of money for each unit of exports and imports.

5. *Moving property* are belongings, equipments for the purposes of living activities or work withdrawn by individuals, families and organizations when they stop their residency, activities in Vietnam or abroad.

6. *Goods traded, exchanged by residents in border areas* are goods used for production and daily living activities of residents in border areas.

Article 6. Application of international treaties

In case international treaties of which the Socialist Republic of Vietnam is a member stipulate regulations on export and import duties different with regulations of this Law, the regulations of the international treaties are applicable.

Article 7. Duties on goods traded and exchanged by residents in border areas

Based on regulations of this Law, the Government set export and import duties on goods traded and exchanged by residents in border areas reasonable for each period.

Chapter II

DUTY CALCULATION BASE AND TARIFF SCHEDULE

Article 8. Duty calculation base, method and currency paying duties

1. Base for calculating export or import duties payable are unit quantity of each goods actually imported, exported indicated in customs declaration, dutiable price and tariff rate at percentage; as for the goods subject to specific tariff, base for calculating duty payable shall be the quantity of goods in customs declaration and the duty level imposed on one unit of goods.

2. Duty calculation method:

a. The amount of duty payable shall be equal to unit quantity of goods, which actually exported or imported as indicated in the custom declaration, multiplied by dutiable price and tariff rate applied to each item of goods as prescribed in the tariff schedule at the time of calculation.

b. As for the goods subject to specific duties, the amount of duty payable is equal to quantity of goods multiplied with the specific duty level imposed on one unit of goods at the time of calculation.

3. Currency paying duties is Vietnamese Dong; in case foreign currency is permitted to pay duties, foreign currency used must be converted easily.

Article 9. Dutiable price and exchange rate

1. For exports, dutiable price shall be the actual selling price paid by the buyer at the border gate as indicated in the contract;

2. For imports, dutiable price shall be the actual settlement price the buyer has to pay up to the first port of entry as indicated in the contract.

3. The exchange rates between Vietnamese Dong and foreign currencies used to determine dutiable price shall be the exchange rate published by the State Bank of Vietnam at the time of calculation.

The Government shall stipulate provisions on dutiable price as prescribed in this Article.

Article 10. Duty rate

1. For exports, export duty rate for each goods is prescribed in the export tariff schedule.

2. Import duty rates include preferential duty rate, special preferential duty rate and ordinary duty rate, as follows:

a. The preferential duty rates shall apply to goods imported from countries, which have agreements on most favored nation treatment in their trade relations with Vietnam.

b. The special preferential duty rates shall apply to goods imported from countries, which have agreements with Vietnam on the special preferential treatments on import duty.

c) The ordinary duty rates shall apply to goods imported from countries or groups of countries, which do not have agreements on the most favored nation treatment and thus do not have special preferential duty in their trade relations with Vietnam. The ordinary duty rates shall not be 70% higher than the preferential duty rates for the same commodity items stipulated by the Government;

Article 11. Safeguard, anti-dumping, anti-subsidy, and anti-discrimination measures against importation

In addition to being dutiable as stipulated by Section 2 Article 10 of this Law, imports are subject to one of the following tariff measures:

1. Increased import duty on excessive imports into Vietnam as per regulations on safeguard measures in importation of foreign goods into Vietnam;

2. Anti-dumping duty on goods dumped into Vietnam as per regulations on anti-dumping measures in importation of foreign goods into Vietnam;

3. Anti-subsidy duty on subsidized imports into Vietnam as per regulation on anti-subsidy measures in importation of foreign goods into Vietnam;

4. Anti-discrimination duty on imported goods into Vietnam originated from countries, group of countries and territories where there is duty discrimination or other discriminatory measures as per regulations on MFN and national treatment in international trade.

Article 12. Authority to issue tariff schedules and rates

1. The Government submit to National Assembly Standing Committee for enactment of export duty schedule by dutiable item groups and tariff rate brackets on each item group; preferential import duty schedule as per list of dutiable groups of items and preferential duty bands on each group of items; regulations on safeguard duty, anti-dumping duty, anti-subsidy duty and anti-discrimination duty.

The Prime Minister shall decide items subject to specific duty and specific duty rates as necessary.

2. Based on Export duty schedule by list of dutiable items and duty rate bands on each group of items, preferential import duty schedule as per list of dutiable groups of items and preferential duty brackets on each group of items issued by National Assembly Standing Committee, Minister of Finance stipulates export and import duty rate on each item of goods as per Government procedures, ensuring the following principles:

- a) Compatible with list of dutiable items and within the duty rate brackets as enacted by National Assembly Standing Committee;
- b) To contribute to ensuring budget revenues and market stabilization;;
- c) To protect domestic market on a selective conditional and time-limited basis and in line with international treaty to which SR Vietnam is a member.

Chapter III

DUTY DECLARATION AND PAYMENT

Article 13. Responsibilities of duty payer

Export and import duty payers have the responsibility to declare duty fully, accurately, transparently and are held accountable before the law on declared contents; lodge custom declaration form to custom authority, calculate duty and make payment to state budget.

Article 14. Time for calculating duty

Time for calculating export or import duty shall be the date of registration of custom declaration with the customs authorities.

The amount of duty payable shall be calculated based on the tariff rates, dutiable prices and exchange rates prevailing at the time calculating duties.

Article 15. Deadline to pay duty

1. The time limit for export or import duty payment is prescribed as follows:

a) For exports, time-limit for duty payment shall be 30 days from the date the duty payers lodge their customs declaration

b) For imported consumer goods, duty payers must pay taxes before receiving their goods; In cases where the payable tax amounts are guaranteed the tax payment time limit shall be guarantee period, but not exceeding 30 days since the duty payers lodge registration of custom declaration. Responsibilities of guarantor are prescribed by item 2 section 2 of this Article;

c) For good which are materials and raw materials imported for the production of the export goods, the tax payment time limit shall be 275 days from the date the duty payers register custom declaration. For exceptional cases, the tax payment time limit may be extended beyond 275 days to suit the enterprise's production cycles and the need to reserve materials and raw materials under the Government's stipulations;

d) For goods which are temporarily exported for re-import or temporarily imported for re-exported, the time limit shall be 15 days from the end of the period permitted by the competent agencies for the goods to be temporarily exported for re-import or temporarily imported for re-export;

e) In addition to case stipulated at items c and d, section 1 of this Article, time limit for paying duty on imports shall be 30 days since the duty payers register for custom declaration.

2. Duty payers satisfying either one of the following condition are eligible for time limit prescribed at item c,d and e, section 1 of this Article:

a) Duty payers having been engaged in export or import activities for at least 365 days as to the date when registration for custom declaration is verified by custom authority not to have trade fraud, tax evasion, tax arrears, penalty arrears, and to observe financial reporting regulations;

b) Duty payables are guaranteed by credit institutions or other organizations which are permitted to conduct banking activities under the Law on Credit Institutions. In these cases, the time -limit for making duty payment shall be the guarantee period, but not exceeding the period prescribed by items c,d and e section 1, of this Article. Past this time- limit, if the duty payers fail to pay duties, the guaranteeing organizations shall have to pay such duty amounts and penalty for late payment on behalf of the duty payers.

In cases duty payers not satisfying the two conditions prescribed by this section, the duty payers must complete tax payment before receiving the goods.

Chapter IV

DUTY EXEMPTIONS, REDUCTIONS, REFUNDS AND ARREAR DEMANDS

Article 16. Exemption

The following goods shall be exempted from export or import duties:

1. Temporary imports and re-exports, temporary exports and re-imports for exhibitions and promotions; machines, equipment and devices temporarily imported and re-exported or temporarily exported and re-imported for use within a specified period of time;

2. Moveable assets as stipulated by the Government;

3. Exports and import of organizations and individuals whose are eligible to enjoy diplomatic immunities as stipulated by the Government in accordance with the provisions of international treaties to which Vietnam is a signatory or a participant;

4. Goods imported for outward processing and re-exported or goods exported to foreign individuals or organizations for inward processing and re-imported in accordance with processing contracts;

5. Exports and imports of individuals entered or leaved Vietnam within immunities stipulated by the Government ;

6. Goods imported to form fixed assets by investors having projects funded by the Official Development Assistant (ODA); by investors having projects under the list of preferential projects, including:

a) Equipment and machinery;

b) Specialized means of transportation being part of a technological line and means of transportation used to transport workers;

c) Components, details, parts, spare parts, fittings, moulds and accessories accompanying the above machinery, equipment and specialized means of transportation referred to in item a and c of this section;

d) Raw materials, materials used to manufacture equipment and machinery in technological lines or to manufacture components, details, parts, spare parts, fittings, patterns and accessories accompanying machinery, equipment are prescribed in the sub-clause (a) of this clause;

®) Construction materials which are not yet domestically produced;

e) Goods as equipments firstly imported according to the list stipulated by Government of investment projects of hotels, offices, departments for lease, houses, commercial center, technical services, supermarket, golf-course, tourism area, sport area, entertainment area, medical treatment campus,

training, culture, finance, bank, insurance, audit, consultancy services.

The exemption from import duty on the imported goods referred to in the sub-clause a, b, c, d and đ of this clause shall also apply to cases of expanding the scale of a project, replacing and renewing the technology.

7. Goods are imported to facilitate oil and gas activities, includes:

a) Equipment, machinery, spare parts, specialized means of transportation used for oil and gas activities;

b) Materials for oil and gas activities can not be produced domestically;

8. Imported goods used directly for scientific research activities and technology development, includes machinery, equipments, spare parts, materials, means of transportation which can not be produced domestically yet; documents, scientific books;

9. Raw materials, materials, components imported for production of projects in sectors where investment is especially encouraged or in regions with especially difficult socio-economic conditions shall be exempted from import duty for duration of five years from the commencement of production;

10. Goods are produced, processed, reprocessed and installed in the free duty zone without using raw materials, components imported from foreign countries when imported into domestic market; in case of using raw materials, components are imported from foreign countries, when imported into domestic market must pay import duty levied on the scale of imported materials, component in those goods;

11. Other specific cases are prescribed by Prime Minister.

Article 17. Consideration of Duty exemption

The exemption from export and import duties on the exported and imported goods shall be considered and assessed in the following cases:

1. Goods imported in exclusive service of national defense, security, education and training; Goods imported in exclusive service of scientific research, except for prescribing in the Clause 8 of Article 16 of this Law;

2. Goods are gifts, donations or samples of foreign organizations or individuals to Vietnamese organizations or individuals or vice versa within the permitted amount set by the Government.

Article 18. Duty reduction

Export and import goods are still under the supervision of the Custom authorities, in case genuinely damaged or lost and certified by the competent appraisal organizations, shall be eligible for duty reduction.

The extent of duty reduction shall be assessed in proportion to the degree of losses of the damaged goods.

Article 19. Duty refund

1. Duty payers shall be refunded in the following cases:

a) Imported goods already paid import duty, remained in a warehouse or at the port of entry and are still under the supervision of the Custom authorities, to be re-exported;

b) Exported and imported goods already paid export and import duties but are not exported;

c) Goods already paid export or import duties but the amount of goods actually exported or imported is smaller than that stated in the Custom declaration;

d) Goods are materials already paid import duty, imported for productions of exports;

đ) Goods temporary imports for re-export already paid imported duty or temporary exports for re-import already paid exported duty, except prescribed in the Clause 1 of Article 16 of this Law;

e) Exported goods already paid export duty but to be re-imported;

g) Imported goods already paid import duty but to be re-exported;

h) Goods, which are machine, equipment, tools, means of transportations of organizations and individuals, temporarily imported for re-export for

use in their investment projects, constructions, installations, productions or others already paid import duty.

2. In case the duty payers or the customs authorities made an error in declaring or calculating duties, over- payment of duty within 365 days from the date of discovery such error shall be refunded.

Article 20. Responsibilities and time limit for making duty refund

1. Within 15 days after receipts of full documents for request of duty refund, the competent authorities shall be responsible to refund the duty for duty payers; In case deficiency in documents or unconformity documents with stipulations of law, within 05 working days after receipts of refundable documents, the State competent authorities must ask in written the duty payers for completing the refundable documents.

2. If the payment deadline stipulated in the Clause 1 of this Article is not meet, the State competent authorities shall be responsible to pay the duty payers who are eligible for duty refund both the refundable duty and interest thereon for the overdue period at the rate payable on commercial bank deposits at the time the refund is made.

Article 21. Duty Demand

The duty payer who has goods to be exempted or considered duty exemption in accordance with the provisions of the Artical 16 and 17 of this Law, but after that used for other purposes to be exempted or considered duty exemption, shall be re-collected in full.

The Government shall stipulate the cases of duty demand, the basic of duty demand and time limitation of paying on duty demand prescribed in this Artical.

**CHAPTER V
COMPLAINS AND HANDLING OF VIOLATIONS**

Article 22: Complaints and handling of complaints.

Where a duty payer do not agree with the decision of customs authorities on the amount of duty payable, amount of fine and penalty method, he or she shall have to make full payment of the duty, comply with penalty method and at the same time have the right to lodge a claim for review in accordance with the provisions of the existing laws and regulation on complaints and denunciations;

Article 23: Handling of custom duty-related violations committed by tax payers:

Duty payers violating the provisions of this Law shall be handled as follows:

1. If delaying the payment of duty and/or fines as compared with the prescribed payment date or the deadline stated in the duty handling decisions, the duty payer shall, apart from paying fully the tax and/or fines amount, have to pay an amount equal to 0.1% of the delayed payment amount for each day of delayed payment; if delaying the payment over 90 days, the duties shall be judicial collected as provided in the Paragraph 4 of this Article.

2. If failing to comply with the provisions on declaration and registration for duty payment as prescribed by this Law, the duty payer shall, depending on the nature and seriousness of their violations, be subject to administrative sanctions against duty- related violations;

3. If falsely declaring or evading duty, the duty payer shall, apart from having to fully pay the duty amount according to the provision of this Law, be imposed a fine being one to five times the fraud tax amount, depending on the nature and seriousness of their violation;

4. Failing to pay duty and/or fine under duty-handling decision, the duty payers shall be judicially handled as follows:

a. Deductions from the deposits of the taxpayers at banks, other credit institutions or treasuries to pay tax and/or fines. The concerned banks, other credit institutions or treasuries shall have to make deductions from deposit account of the duty payers to pay tax and/or fine in to the State budget under duty handling decision of customs authorities or other State competent authorities before collecting debt.

b. Customs authorities are entitled to seize goods and/or material evidences to ensure the full collection of tax and/or fines. After 30 days from the date the customs authority issued the decision on seizure of goods and/or materials, the duty payer still not pay the obligatory duty, the customs authorities shall be eligible to sell off the goods to ensure the full collection of duty and/or fine arrears.

d. The customs agencies must not fill the export or import procedures for the duty payers' subsequent shipment until such duty payers pay the full duty amounts and/or fines.

5. If detecting and concluding that there is tax fraud or evasion, the customs authorities shall have to collect all duty and fine arrears that occurred within five years back from the date of inspection and detection of the duty fraud or evasion; in cases where duty payers make declaration mistakes, the tax agencies shall have to collect tax arrears or refund such wrongly- calculated tax amounts that occurred within 360 days back from the date of inspection and detection of such mistakes. In cases where duty payer discover declaration mistakes by themselves and actively pay the short-payment to the State budget within 60 days back from the date of decleration, the duty payer shall be exempted from being penalized.

6. Evading large duty amounts or despite having been administratively sanctioned for a duty- related violation but still re-commit such violation, the duty payers shall be be prosecuted for criminal offence according to the provision of law.

Article 24: Handling violation committed by customs officials and other individuals

1. Customs officer or individual who take advantage of his or her position and powers to illegally seize or appropriate duty paid on dutiable exports or imports shall have to repay to the State budget the whole misappropriated or embezzled amount and shall, depending on the nature and seriousness of their violation, be subject to administrative punishment or be prosecuted for criminal offence according to the provision of law

2. Customs officials or individuals who are irresponsible, or deliberately breach the provisions of this Law or commit other acts in violation the

provisions of this Law or protect violators shall, depending on the nature and seriousness of their violation, be disciplined or prosecuted for criminal offence according to the provision of law; if customs official cause damages, they responsible to pay compensation according to the provision of law

CHAPTER VI

ORGANIZATION OF IMPLEMENTATION

Article 25: The rights and responsibilities of the Government

The Government shall exercise unified management of the collection of export and import duty, provide for the right and procedure of duty exemption, consider duty exemption, consider duty reduction , make duty refund , make duty re-collection and handle duty-related violations as prescribed in the Article 16, 17, 18, 19, 20, 21 and 23 of this Law.

Article 26: Responsibilities of the Minister of Finance, Chairman of People's Committee of central provinces and cities

1. The Ministry of Finance shall be responsible for instructing the organization and management of the collection of export and import duties.

The Chaiman of People's committee of central provinces and cities shall be responsible for instructing the coordination with the Ministry of Finance in organizing the collection of export and import duties in their provinceds and cities.

CHAPTER VII

IMPLEMENTATION PROVISIONS

Article 28:

1. This Law takes effect as from January 1, 2006

2. The Law on Export and Import Duty 1991 and the Law amending and supplementing a number or Article of the Law on export and import tax 1993 and the Law amending and supplementing a number or Article of the Law on export and import tax 1998; Article 25 of the Law on Domestic Investment; Article 46 of the Law on foreign direct investment in Vietnam; Article 42 of the Law on science and technology and Article 34 of the Law on Petroleum shall cease to be effective as from the effective date of this Law

3. Investement encouraged projects already granted investment licenses and certificates of investment

preferences with preferential levels that are higher than preferential levels provided in this law shall continue enjoying the tax preferences provided for in their investment licenses or certificates of investment preferences. In cases where their investments licenses or certificates of investment preferences provide for preferential level lower than the tax preferential levels provided for in this Law, they shall be eligible to enjoy the preferential levels as provided for in this Law for the remaining preferential durations.

Article 25: Implementation guideline

The Government shall guide the implementation of this Law.

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

CHAIRMAN OF THE NATIONAL ASSEMBLY

Nguyen Van An