

Chapter 14

Customs Violations and Penalties

Article 164 (Customs Police Administration)

- (1) A Customs Police Administration shall be created jointly by the Ministry of Finance and the Ministry of the Interior for the purpose of detecting and preventing violations of the provisions of this law and for arresting the relevant suspects throughout the Customs Territory of the State, in accordance with section 3 of this Article.
- (2) Customs Police officials shall be part of the organization of the Ministry of the Interior. The Ministry of the Interior shall be responsible for:
 - 1- Approval, Employment, and dismissal of customs police, on recommendation of the Ministry of Finance,
 - 2- Providing the Customs Police with salaries and any other incentives as provided by law
 - 3- Recruiting, of Customs Police candidates, and maintaining their records (personnel files)
 - 4- Providing appropriate uniforms and other equipment in accordance with the duties they perform, as agreed with the Ministry of Finance
 - 5- Providing training for police candidates required to carry out their police duties
- (3) The Ministry of Finance, as the agency responsible for directing and managing the work of the Customs Police shall have the following duties and authorities:
 - 1- Determining the duties and scope of authority of Customs Police and determining their locations of work.
 - 2- Providing for the necessary training for Customs Police concerning the administration and enforcement of the customs legislation
 - 3- Recommending [to the Ministry of the Interior] remunerations and punishments for Customs Police and other personal matters of Customs Police affecting their work.
- (4) The Ministry of Interior and the Ministry of Finance may jointly provide additional inter-ministerial guidelines implementing section 2.
- (5) The Ministry of Finance may, as required, provide procedures implementing paragraph 3.

- (6) Section 2 of this Article shall be effective for three year period upon enforcement of this law. The Ministry of Finance and the Ministry of the Interior may recommend its retention, amendment or deletion to the Council of Ministers. The approval of the Council of Ministers shall be regarded effective in this regard.
- (7) Customs Police shall be obliged to perform their assigned duties in accordance with the provisions of this law, (the anti-smuggling law) and other guidelines and procedures only under the direction of the Ministry of Finance

Article 165 (Customs Violations)

Violations of customs law and other customs legislation shall be of the following two types:

- 1- Administrative violations; which are violations from all the provisions of this law ,except article 170
- 2- Smuggling of goods, in accordance with chapter 14 of this law.

Article 166 (Administrative Violations and Sanctions)

Administrative violations shall be classified in the following three categories:

- (1) category one violations are as follows:

1- Delay

For delays in violation of Articles 36(2), 39(3), 51(1), 54 (1), 80, 87, 95, 112, 118, the penalty imposed shall be 0.01% of the duty payable for each day, or the proportionate amount for each part of a day, or such other rate as may be, as needed, established by the Ministry of Finance taking into account the circumstances.

2- Misrepresentation

Providing information about quality, quantity, value, or origin that is incomplete or inaccurate in violation of Article 45(1), 48(1), 64 (1), 80, 83(1) Differences in quantity or value that are smaller than 5% of the quantity or value indicated in the declaration or other customs documents shall receive a written warning. If the customs duty is calculated according to the customs declaration and is 5% or more deficient than the actual amount, a fine shall be imposed as indicated below:

- 5-15% deficiency - a fine equal to the deficiency,
- 15-25% deficiency - a fine of two times the deficiency,
- 25-40% deficiency - a fine of three times the deficiency, and
- 40 - 60% deficiency - a fine of four times the deficiency
- 60-80% deficiency - a fine of five times the deficiency
- 80-100% deficiency - a fine of six times the deficiency

3- In cases of understatement of quantity of more than 5%, in addition to the fine, the undeclared goods shall be confiscated. In case of committing the violations in transit process, the above penalties shall be applied only if the violation is repeated after a written warning. In repetition of violation in other cases a fine of from one to two times the amount of the deficiency in the payment of the customs duty shall be paid provided that the person committing the offence has been given prior warning.

4- The penalties and warning provided in this Article may be waived by customs if it is proven that the misrepresentation was caused by a mistake of calculation or errors made in good faith during the preparation of the customs declaration.

(2) Class 2 Offences are as following:

- 1- a person who violates Articles 17, 46, and 48, and is provided a written warning of violation and an order to correct, and fails to comply with such written warning within the time required by Customs
- 2- A person who fails to comply with Articles 39 and 49(1) or fails to comply with the instructions of Customs concerning goods under customs supervision or control in violation of 34(5) and 49(2)
- 3- A person who moves customs goods mentioned in Articles 34(5), 35, 38(1), 36, 80, 83, 123, and 132, from an authorized location to a non-authorized location.

(3) Class 3 Offences are:

- 1- Intentional misrepresentation of facts required to be submitted to customs for the purpose of benefiting from a more favorable customs tariff
- 2- Executions in violation of Articles 50(2), 61(2), 66, 134, and 135, with the intent to frustrate the enforcement of customs legislation

Article 167 (Penalties)

- (1) Persons committing class 2 Offenses shall be punished by a fine of 10 to 50% of the value of goods, taking into account the condition provided for in Article 20, in accordance with guidelines of the General Directorate of Customs.
- (2) Persons committing class 3 offenses shall be punished by a fine of 50 to 100% of the value of goods taking into account the conditions provide for in article 20, in accordance with the guidelines of the General Directorate of Customs.
- (3) The payment of cash penalties under this Article does not negate the payment of the principle customs debt.

Article 168 (Multiple Offenses)

If a violator commits more than one administrative violations at the same time a separate fine will be applied for each violation.

Article 169 (method for Collection of Fines)

cash fines and other proceeds authorized by this chapter shall be collected in accordance with relevant procedures.

Article 170 (Discretionary administrative penalties)

- (1) Smuggling of goods of a value less than Afghani 10,000 shall be dealt with as a Class 3 offense, unless aggravating circumstances are present.
- (2) If the value of goods is in excess of Afghani 10,000, the Director General of Customs may settle the case administratively without referral to the *justice authorities* upon a request by the offender taking into account the simple circumstances and non aggravating circumstances, provided:
 - 1- the judicial prosecution has not started;
 - 2- the amount of the customs duty due on the goods involved in smuggling is less than Afghani 20,000;
 - 3- the offender pays the amount of the customs duties and fines
 - 4- the offender agrees to give up their right of appeal referred to in Article 18.

- 5- the amount of 10,000 Afghani referred to in this paragraph may be changed by the Minister of Finance upon the approval of the Council of Ministers.
- (3) The fine applicable to the customs offense described in Paragraph 2 can be from 1 to 3 times the penalty of a Class 3 offense in accordance with the guidelines of the General Directorate of Customs. If the offender accepts payment of the mentioned fines, there shall be no criminal charges brought against the offender. Otherwise, Customs officials are obliged to refer the case to the competent authorities for prosecution.
- (4) The seized goods and the violator shall be released from customs control immediately after the customs verify that all the conditions and obligations referred to in paragraphs 1 and 2 of this Article are fulfilled by the violator.
- (5) This provisions of paragraphs (1, 2,3) and 4 shall not apply when:
- 1- the act is committed by a customs employee, a customs broker, or any other person whose activity is connected to that of customs in any way
 - 2- the violator possesses any smuggled or smuggling object as a consequence of another criminal act; or
 - 3- the goods are prohibited or restricted goods, as referred to in Article 53 (2)
 - 4- the person is repeatedly a violator.
- (6) Any Class 3 offense shall be referred directly to the competent authorities for prosecution if committed together with any of the conditions mentioned in paragraph 5 of this article.
- (7) In cases where section (5) or (6) applies, the report mentioned in paragraph 1 Article 184 shall be attached to the decision of the customs regarding the fulfillment of the conditions mentioned in that article.

Article 171 (License Revocation)

The Ministry of Finance may revoke licenses granted pursuant to Articles 16, and 70 for repeated or serious violations of the conditions under which they are granted.

Article 172 (Smuggling of Goods)

- (1) Carrying out the following activities is deemed to be smuggling and the offender shall be punished in accordance with this law and any other customs legislation :
 - 1- Introduction of goods into the customs territory of the State, or the exit of goods, in violation of the provisions of this Law and other customs legislation, with the intent of avoiding (*ejtinab*) customs control or supervision.
 - 2- To carry prohibited goods for the purpose of import, export, or storing without permission of the relevant authorities.
 - 3- Selling or purchasing of goods in a transit process without paying customs duties

- (2) carrying out the following activities repeatedly, or showing intent to carry out the following activities shall be considered smuggling:
 - 1- Violate the conditions for use of goods that occasioned a partial or total relief from customs debt by reason of their end-use pursuant to Article 66.
 - 2- possess goods against the provisions of article 61, paragraph 2 ;
 - 3- remove or falsify the identification number of the means of transport;
 - 4- purchase, sell, store, and possess imported goods with knowledge that they are smuggled goods; such knowledge will be presumed in the case of a warehouse keepers who stores imported goods without copies of the related customs declarations.
 - 5- Break the seal or substitute or change other security verifications placed on the means of transport or goods.
 - 6- Load, unload, or move goods, travelers or their luggage, from one means of transport to the other without permission from the customs, in an unauthorized place.

- (3) Smuggling is considered to have been committed by the Captain of an aircraft who:
 - 1- transports goods without the relevant manifest, or with a manifest that misrepresents the goods on board;
 - 2- has not presented goods to customs which were brought into the customs territory of the State according to the manifest but are not on board at the time of departure ,
 - 3- Lands out of a customs airport, and does not notify its landing to the customs or other relevant authorities within the shortest time.

Article 173 (Sanctions Applicable to Smuggling)

- (1) The violators referred to article 172 shall be punished with:
 - 1- Confiscation of the smuggled goods;
 - 2- A fine from two to five times the amount equal to the applicable customs debt of the smuggled goods; and
 - 3- Punishment in accordance with Article 179.
- (2) In case of committing a violation by more than one person, each one shall be fined proportionate to that person's participation in the violation.
If one of the parties pays the full amount, the others are free of any obligation to Customs for the fine in question.
- (3) When the same violator commits at the same time several violations referred to in chapter 14, the violator shall be punished for each of the violations separately.

Article 174 (Smuggling Objects)

- (1) "Smuggling objects [means] any objects (*wassaïel*) involved directly in the act of smuggling, including arms, and the means of transport and other objects used to transfer or to hide smuggling goods. Smuggling objects will be seized by the customs and, upon decision of the competent courts may be confiscated and treated as abandoned goods. The means [objects] mentioned in paragraphs 3 and 4 are an exception to this rule.
- (2) The seizure of smuggled goods will take place regardless of the amount and the degree in which the owner of the goods took part in the smuggling action.
- (3) Where the person convicted of smuggling took possession of the seized objects as a consequence of a criminal act, the objects will be returned to the owner.
- (4) Means of transport are exempted from the seizure, whenever:
 - 1- on the basis of evidence, the owner is not proven to be involved in the act of smuggling;
 - 2- The owner provided the means of transport in good faith in the ordinary course of business. (Without knowledge of its use for smuggling or other illegal activities).

(5) The court, is obliged to take a decision ordering the confiscation of the means of transport and other objects of smuggling within 5 days of referral of the case. The transporting vehicle and other objects of smuggling shall be put up for auction in accordance with the order of court.

Article 175 (Vehicles)

The owner, or driver, of the vehicle transporting smuggled goods shall be punished as follows:

- 1- If the owner of the vehicle carrying smuggled goods seized together with the vehicle and there is proof that the owner of the vehicle is aware of the existence of smuggled goods, the owner of the vehicle shall be sentenced to the punishment of a cash fine equal to the cost of the smuggled goods.
- 2- If the owner of the transporting vehicle commits the above crime repeatedly, the transporting vehicle shall be expropriated.
- 3- If it is proved that the driver of the transporting vehicle is aware that the goods he is transporting are smuggled, the driver shall be punished as an accomplice to the crime.

Article 176 (The Seizure of Smuggling Objects)

- (1) Smuggled objects are seized in the following cases:
 - 1- the act of smuggling is being witnessed,
 - 2- the goods are in movement,
 - 3- the goods are in an insecure public place,

Except in the case where smuggling is witnessed, seizure of goods from private property shall take place only upon the prior order of the authorized court.

- (2) The smuggled goods and the means thereof, when seized, shall be delivered promptly against receipt to the customs administration or to the district administration office in places where there are no customs organizations.
- (3) In case of a dispute concerning prohibited or smuggled goods, the goods will be retained by Customs at the

expense of the importer until the dispute is resolved, or turned over to the relevant authorities for legal action.

Article 177 (Perishable Goods; Livestock.)

- (1) The authorized courts, must issue an order regarding the auction of perishable goods (goods which very soon change in quality or spoil) livestock and other goods, the keeping of which requires expenses , promptly after seizure, but in no event later than 24 hours after seizure.
- (2) If the order of the court is not issued or reached in due time, custom authorities shall be responsible to sell the goods under the supervision of the of Customs with the agreement of the owner of the suspected goods, if present, and shall deposit the money in trust until receiving the order of the court.

Article 178 (Compensation for Damages)

No compensation for damages may be obtained that occurred during an act of seizure or confiscation of smuggled goods in the course of anti smuggling activities.

Article 179 (Range of Penalties)

The committer, in addition to confiscation of the smuggled goods and the objects, shall be sentenced to imprisonment in the following conditions:

- 1- For one to three years imprisonment if the smuggled goods are allowed goods and cost more than Afghani 75, 000.
- 2- For six months to one year years imprisonment if the smuggled goods are banned goods and cost less than Afghani,20,000

- 3- For one to six years imprisonment if the smuggled goods are banned goods and cost more than Afghani, 20,000.

Article 180 (Aggravating Circumstances)

- (1) The maximum penalty included in article 179 of this law shall be imposed if the act of smuggling is committed with the help of two or more persons, or in case of repetition of the crime,
- (2) If smuggling is committed through a network of smugglers the organizer of the network of perpetrators shall be penalized by an imprisonment of two times the punishments allowed by Article 179.
- (3) In cases where the smuggler shows armed resistance to the customs, whether injury results or not, the perpetrator shall be imprisoned for a period of 15 to 20 years.
- (4) If the smuggler kills a customs official and / or other persons who assist them in their duties, the smuggler shall, in addition to the confiscation penalty, be sentenced to capital punishment. Accomplices in the killing shall be sentenced to a punishment of 10 to 15 years imprisonment.

Article 181 (Participation of Government Employees in Smuggling Activity)

Officials, military employees and other persons that are related *in some way* to the state, who participate in the organization and management of smuggling network shall be punished two and one - half times the punishment included in article 179 of this law.

Article 182 (Evaluation of Administrative Violations)

The evaluation (*barrasi*) of administrative violations shall be undertaken by two officials of customs assigned by the authority of the related customs administration .

Article 183 (Authority for Access to Information)

In order to search for evidence of violations, Customs may be authorized in writing by the Director General of Customs to access commercial records and information records which are either maintained by Customs, or required by Customs to be maintained by others. Customs with a view to detecting and preventing administrative violations may carry out all necessary measures at offices, factories, warehouses and other locations and premises where accounts may be found or actions take place relating to customs affairs.

Article 184 (Report and Collection of Evidence)

- (1) The written report of evaluation prepared and signed in triplicate, shall contain:
 - 1- the place, the date and the time where the violation occurred
 - 2- the names of the persons who sign the report and their position;
 - 3- the name and address and other identifying information of those accused of a violation;
 - 4- the classification of the violations mentioned in this law
 - 5- the location of the goods;
 - 6- a description and identification of the means used to commit the violation;
 - 7- the indication of the kind, quantity, quality, value, origin and tariff classification of the goods;
 - 8- the amount of duty and other customs debt due;
 - 9- the Articles of this law on the basis of which the proposed fines are assessed;
 - 10- The signatures of the customs employees and that of the violator in accordance with article 170.
- (2) Customs must notify immediately the person or persons suspected of the violation about the registered report mentioned in paragraph 1.

- (3) Customs must conduct a hearing for violations of the Customs Law, collect documents and proofs, and record the declaration of witnesses. Customs will set a date and time and place for that purpose. The time limit for holding the hearing may not exceed 72 hours from the date of notification.
- (4) The persons charged or witnessing the violation may be allowed by Customs to present and record their statement to the charges instead of being present at the hearing.
- (5) The statements [and declarations] mentioned in paragraph 4 shall be signed by the persons charged with the violation and witnesses when they are present, and both the customs officers who preside over hearing.
- (6) When any persons charged with the violation, or a witness, does not speak Dari or Pashtu, the hearing will be carried out in the presence of an interpreter who shall be responsible for the translation of the proceedings

Article 185 (File Administration)

Customs, after compiling the documents and reviewing the report concerning the administrative violation, shall sign and issue the decision disposing of the case.

Article 186 (Appeal Against the Decision for Payment of a Fine)

- (1) A customs decision to impose a fine under this law has to be delivered and notified to the person accused within 24 hours from the time of the decision by customs officials.
- (2) The person responsible for paying the fine may object to the decision of the customs imposing a fine in accordance with Article 18.
- (3) In case of appeal in accordance with Article 18(4) the appellant must deposit, in addition to the customs debt deposited in accordance with Article 18(2) an amount equal to 40% of the total amount of the fine, provided that the total amount of the deposit shall not exceed the value of the goods subject of the violation.

- (4) If the decision of the Customs Arbitration Administration is unacceptable to the appellant, the appellant shall deposit the remaining 60% of the fine prior to appealing from the opinion of the Customs Arbitration Administration which has been issued in accordance with article 18.
- (5) In accordance with articles 20 and 21 of this law, the deposit shall be returned within 5 days after any decision, customs opinion or order of court rendered in favor of the appellant becomes final.