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法律新知—— 淺析海關緝私條例修正

Legislation Update - A broad profile of impending revisions to the the Customs Illicit Trafficking Crackdown Act

壹、前言

我國自民國 91 年加入 WTO 後，為提升我國的競爭力及國際形象，維持國際貿易秩序，政府作了多項努力，尤其近年來對智慧財產權（以下簡稱智產權）的重視，從此次的海關緝私條例修正（94.1.19 總華總一義字第 09400004881 號令修正公布第 37 條條文；增訂第 39-1 條條文）即可看出政府保護智慧財產權的決心。

本文對此次修正的海關緝私條例淺析，期對職司走私查緝工作的海岸巡防機關同仁有所助益。

Part 1 Foreword

Following Taiwan's WTO entry in 2002, in an effort to excel Taiwan's competitiveness and global image, and to maintain international trade order, the Taiwan government has made several crucial efforts, particularly emphasizing on the importance of intellectual property rights (hereinafter collectively refer to as the Intellectual Property Rights hereon). The revision enlisted to Article 37 and the appendage of provisions stipulated under Article 39-1 enlisted to the latest amendment of the Customs Illicit Trafficking Crackdown Act, announced by presidential order 09400004881 dated Jan. 19, 2005, are ample evidence of the Taiwan government's determination in upholding and protecting intellectual property rights.

The article intends to provide a broad profiling to the amended Customs Illicit Trafficking Crackdown Act in anticipation to bring tangible yield to Coast Guard agency associates who are at the frontline of conducting illicit trafficking crackdown investigation and crackdown work.





貳、修正理由

從立法院公報第93卷第35期委員會紀錄及第94卷第1期院會紀錄內容可知，由於近年來國內多次發生仿冒物品非法出口之情事，政府為求落實智產權的保護，減少對經濟成長及國家競爭力影響，故針對侵害智產權的進出口案件增修訂加重行政處罰的規定。

又近年來不肖業者藉由不實文件報運貨物出口藉以矇混出口非法貨物案件如贓車藉貨櫃以廢五金名義出口事件等，為遏阻此類犯罪行為持續發生，俾對該等案件提高罰鍰額度。

參、修正重點

本次修正第37條第2項條文，並增訂第39條條文等2條，茲將修正重點分述如下：

一、修正第37條第2項：

該條文修正重點係指凡「報運貨物出口」有虛報所運貨物、繳驗偽造、變造或不實之發票或憑證及其他違法行為等方式規避檢查，矇混出口非法貨物，爰將原行政罰鍰「2千元以上3萬元以下」修正為「1百萬元以下」，修正條文中未如先前罰鍰處罰規定其上下限，乃因犯罪情節有所輕重，若一體適用恐有違比例原則，故未定其下限而保留給行政機關依修正之罰鍰上限訂出「量罰標準」。

Part 2 Grounds for the amendment

As can be extrapolated from the contents of Executive Yuan public announcement Volume 93 of the 35th term of council records and Volume 94 of the first session records are the fact that a number of illegal export of counterfeit goods has been reported locally, the Taiwan government, in search of enforcing intellectual property rights protection, and lessening its probable impact to economic growth and national competitiveness, has issued stepped-up severe administrative penal code zeroing in on illegal import and export cases involving the infringement of intellectual property rights.

Furthermore, with unscrupulous exporters who attempt to disguise illicit goods, such as stolen cars in container-load of scrap metals through untrue customs declaration documents, in order to curb the spread of such criminal behaviors, the penal code governing the roof of penalty fines has been brought up against such cases.

Part 3 Focus of the amendment

The current legislative amendment entails two parts, which are amending provisions enlisted under par 2, Article 37 and appending provisions of Article 39; below provides a focus profiling on the amendments as follows,

1. Amending par 2 of Article 37:

The main focus of the article's revision lies in modifying the previous provisions governing the administrative fine of over 2,000 and up to 30,000, to up to 1 million N.T. dollars in bogusly declared, forged inspection submission, modification, untrue invoice/voucher filing or other illegal act in declaring and shipping export cargoes to circumvent the inspection and camouflage illicit goods for export purpose; in which the revised legal provisions provide no low lowest cap of the penalty fine lies in how cases vary, and a fixed lower cap would poise to conflict the percentage principle, hence the revised legal provision has forfeited setting up a lower cap but leaving it for the administrative agencies to define a set of measured penalty criteria based on the revised penalty clauses.



二、增訂第 39 條之 1：

政府為打擊侵害智產權的不法行為，基於維持國際貿易秩序，依循 WTO 的智產權協定之規定，故增訂報運進出口貨物，有非屬真品平行輸入之侵害專利權、商標權或著作權者，處貨價一倍至三倍之罰鍰，並沒入其貨物。增訂該條的最主要理由是取得法源，以杜絕智產權因走私進出口而受到侵害，期藉強化邊境管制措施，查緝侵害智產權貨物之進出口案件。

該條文之通過乃經協商後之版本，原行政院提案包含郵遞及旅客攜帶之進出口貨物，只要有侵害智產權之情事均列為處罰對象，於立法院聯席會審查時立委諸公認為對人民權益影響甚鉅，蓋我國有關智產權之立法概分為專利權、著作權及商標權等三大類，此等法令均有除罪要件，而海關緝私條例卻牴觸現行法律規定；另對真品之平行輸入部分違背該條保護智產權處罰仿冒品之立法目的，且已有經濟部主管智產權相關法令競相規範，為免產生競合故該條文經由協商修改原提案條文而予以送交三讀通過。

II. Appending Article 39~1:

The Taiwan government, in search of infiltrating the illicit act of intellectual property rights infringement and for maintaining international trade order, has moved to append provisions governing those that declare, transport, import or export goods, other than genuine goods brought in through parallel import, at risk of infringement patent claim, trademark claim or copyright claim a punitive fine rated to one to three times the value of the goods in accordance with WTO intellectual property protocol guidelines, and subject to confiscating of the goods. The purpose of appending the article lies in providing a legal premise that would serve to curtail the infringement of intellectual property claim arisen from illicit importation or exportation, and in search of cracking down import and export cases involving the infringement of intellectual property rights by stepping up border control measures.

The passing of the article has been a negotiated version, contrasting to the previous Executive Yuan proposal, which stipulates that any infringement act, either by parcel post or passenger hand-carried goods, that infringes intellectual property rights would be enlisted as subjects punishable by the penal code. Yet a majority of the lawmakers have reckoned that such penal code may put the people's equity in grave jeopardy during Legislative Yuan's plenary review sessions, being that Taiwan's legislation governing intellectual property rights has it divided into three categories of patent claim, copyright claim and trademark claim, which all require incriminating elements; however, the Customs Illicit Smuggling Crackdown Act is however running against the current legal stipulations. Moreover, the portion governing parallel import of authentic goods that has also come to breach the legislative purpose of the particular legal provision in instigating penal code against counterfeit goods to better protect intellectual property rights, notwithstanding that competent authorities at the Ministry of Economic Affairs has already promulgated equivalent legal and regulatory provisions, hence the article has been proposed through negotiations for amending the article enlisted in the prior proposal and pending its passage through the third and final legislative reading.



肆、策進作為

本署依法職司海域及各類港口之安全檢查工作，對該條例本次之修正在本署執行工作上，以現行小三通之安全檢查工作與本署有關，故對職司此工作人員應有幾點作為：

一、加強教育宣達：

對走私偽品行為之處罰規定各級主管應於各種集會場合予以宣教，使同仁在執行工作上對於法律之適用合乎新修法律之規定。

二、落實人員訓練：

科技日新月異，仿冒物品與真品的相似度趨近一致，而本署同仁面對各類型之貨物，對於真偽品之辨識，須加強訓練，期能由各類型查獲有關仿冒品之案件，或與相關單位經驗交流，瞭解真品之樣式，以能有效打擊犯罪。

三、策進查緝技巧：

目前本署同仁於執行工作時均秉便民之原則，減少作業時效以利人民申辦各項業務，故在查緝技巧上如何藉由交談、書面審查或其他方式，對具犯罪嫌疑者，進一步查察犯罪事實與證據，有待平時專業訓練及經驗傳承之策進。

伍、結語

查緝非法走私行為乃我海岸巡防機關重要工作職掌及執行事項之一，對法令之修正我等同仁須瞭解條文之精髓，期能於執法時熟諳法令之規定，合乎比例原則落實依法行政，有效打擊犯罪。

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Part 4 Strategic implementations

The administration has identified its missions following the revision of the foresaid legal provisions in conjunction its jurisdictional security inspection work throughout Taiwan's jurisdictional water territories and at various harbors and ports, focusing on the limited three-way access which concerned the responsibility of the administration, in which personnel in charge of these area need to be well versed in the following areas,

I. Stepping up awareness education and campaigning:

In stipulating the punitive action against the act of smuggling counterfeit goods, the competent government authorities of all levels are to promote the awareness through various gathering functions that would familiarize the associates with stipulations that fully comply with the last revised legal provisions.

II. Practicable personnel training:

With technology undergoing leaps and bounds making the quality of counterfeit goods almost nearly as good as the genuine articles, this presents a need to step up administration associates' ability to tell fake goods from the real ones in an attempt to discern the configuration and style of genuine goods through a host of counterfeit crackdown experience, with experience sharing with other relevant law enforcement agencies, to truly infiltrate the crime.

III. Improving investigation and crackdown techniques:

At present, administration associates have consistently heeded to a public convenience approach in work execution and to facilitate various filing processes by cutting down the operating time in order to offer greater convenience to the public to devise techniques in how best to screen out suspicious individuals through dialoging, written review or other means that would help the administration discern and gather criminal facts and evidence, which still depend on routine professional training and experience sharing.

Part 5 Conclusion

Cracking down illicit trafficking moves remains one of the vital functions and missions of Taiwan's Coast Guard agency, and the better that administration associates are able to discern and interpret the legal provisions the better they are in a position to enforce the law of a proportional principle to effective infiltrate the crime.

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附表：海關緝私條例第三十七條、第三十九條之一修正條文對照表

三讀通過條文

第三十七條 報運貨物進口而有左列情事之一者，得視情詳輕重，處以所漏進口稅額二倍至五倍之罰鍰，或沒入或併沒入其貨物：

- 一、虛報所運貨物之名稱、數量或重量。
- 二、虛報所運貨物之品質、價值或規格。
- 三、繳驗偽造、變造或不實之發票或憑證。
- 四、其他違法行為。

報運貨物出口，有前項各款情事之一者，處一百萬元以下之罰鍰，並得沒入其貨物。

有前二項情事之一而涉及逃避管制者，依前條第一項及第三項論處。

沖退進口原料稅捐之加工外銷貨物，報運出口而有第一項所列各款情事之一者，處以溢額沖退稅額二倍至五倍之罰鍰，並得沒入其貨物。

第三十九條之一 報運之進出口貨物，有非屬真品平行輸入之侵朗專利權、商標權或著作權者，處貨價一倍至三倍之罰鍰，並沒入其貨物。但其他法令有特別規定者，從其規定。

修正條文

第三十七條 報運貨物進口而有左列情事之一者，得視情詳輕重，處以所漏進口稅額二倍至五倍之罰鍰，或沒入或併沒入其貨物：

- 一、虛報所運貨物之名稱、數量或重量。
- 二、虛報所運貨物之品質、價值或規格。
- 三、繳驗偽造、變造或不實之發票或憑證。
- 四、其他違法行為。

報運貨物出口，有前項各款情事之一者，處一百萬元以下之罰鍰，並得沒入其貨物。

有前二項情事之一而涉及逃避管制者，依前條第一項及第三項論處。

沖退進口原料稅捐之加工外銷貨物，報運出口而有第一項所列各款情事之一者，處以溢額沖退稅額二倍至五倍之罰鍰，並得沒入其貨物。

第三十九條之一 報運、郵遞或旅客攜帶之進出口貨物，有侵朗專利權、商標權或著作權者，處貨價一倍至三倍之罰鍰，並沒入其貨物。

現行條文

第三十七條 報運貨物進口而有左列情事之一者，得視情詳輕重，處以所漏進口稅額二倍至五倍之罰鍰，或沒入或併沒入其貨物：

- 一、虛報所運貨物之名稱、數量或重量。
- 二、虛報所運貨物之品質、價值或規格。
- 三、繳驗偽造、變造或不實之發票或憑證。
- 四、其他違法行為。

報運貨物出口，有前項各款情事之一者，處二千元以上三萬元以下之罰鍰，並得沒入其貨物。

有前二項情事之一而涉及逃避管制者，依前條第一項及第三項論處。

沖退進口原料稅捐之加工外銷貨物，報運出口而有第一項所列各款情事之一者，處以溢額沖退稅額二倍至五倍之罰鍰，並得沒入其貨物。

說明

行政院提案：

- 一、第一項未修正。
- 二、現行條文第二項係採定額罰鍰。為因應時代變遷，加強遏阻不法物品如贓車等，以虛報方式出口，爰取消其罰鍰下限，提高其罰鍰上限至一百萬元。
- 三、第三項未修正。
- 四、第四項未修正。

審查會：

照案通過。

行政院提案：

- 一、本條新增。
- 二、為加強打擊侵朗智慧財產權之不法行為，強化邊境管制措施，全面查緝侵朗智慧財產權貨物之進出口案件，就報運進出口貨物，及郵遞或旅客攜帶之進出口貨物，有侵朗智慧財產權者，特予明定並加重其處罰，以利海關執行，並有效遏阻各項不法情事，爰增訂本條。

審查會：

依朝野協商修正條文通過。通過條文如上。



Annexed tables: Comparison table on amended provisions of Article 37 and Article 39~1 of the Customs Illicit Trafficking Crackdown Act

Legislative articles that passed through the third legislative reading

Article 37 Those declaring and shipping imported or exported cargoes that fall under the following described scenarios, may depending on the severity of the incident, be levied with a punitive fine rated at twice to five times the value of the goods, and/or subject to the seizure or confiscation of the cargoes,

1. Falsely declare the name, quantity or weight of the cargo being transported.
2. Falsely declare the quality, value or specification of the cargo being transported.
3. Submit forged, tempered or untrue invoices or vouchers.
4. Any other illegal acts.

Those declaring and shipping imported or exported cargoes that fall under any one of the foresaid circumstances are punished by punitive fine of up to one million N.T. dollars, and subject to the confiscation of whose cargo.

In the wake of the foresaid incidents that involve civil or criminal liabilities, the offender shall face corrective action prescribed under par 1 and par 3 of the preceding paragraph.

Those filing for tax credit on imported raw materials for re-export goods, in which the goods shipped should fall under any one of the circumstances described in the preceding paragraph, are punishable by punitive fine rated two to five times the value of the tax credit premium, and subject to the confiscation of the cargo.

**Article 39~1**

Those whose declared and shipped import/export cargoes that go beyond parallel import of genuine goods and are infringing patent claim or trademark claim or intellectual copyright claim, are punishable by a punitive fine rated one to three times the value of the goods, and subject to confiscation of the goods, except under circumstances where specific stipulations have been specified by other relevant laws and regulations.

Amended legislative articles

Article 37 Those declaring and shipping imported or exported cargoes that fall under the following described scenarios, may depending on the severity of the incident, be levied with a punitive fine rated at twice to five times the value of the goods, and/or subject to the seizure or confiscation of the cargoes,

1. Falsely declare the name, quantity or weight of the cargo being transported.
2. Falsely declare the quality, value or specification of the cargo being transported.
3. Submit forged, tempered or untrue invoices or vouchers.
4. Any other illegal acts.

Those declaring and shipping imported or exported cargoes that fall under any one of the foresaid circumstances are punished by punitive fine of up to one million N.T. dollars, and subject to the confiscation of whose cargo.

In the wake of the foresaid incidents that involve civil or criminal liabilities, the offender shall face corrective action prescribed under par 1 and par 3 of the preceding paragraph.

Those filing for tax credit on imported raw materials for re-export goods, in which the goods shipped should fall under any one of the circumstances described in the preceding paragraph, are punishable by punitive fine rated two to five times the value of the tax credit premium, and subject to the confiscation of the cargo.

Article 39~1

Those attempting to declare, transport, post forward import/export goods that go beyond parallel import of genuine goods and are infringing patent claim or trademark claim or intellectual copyright claim, are punishable by a punitive fine rated one to three times the value of the goods, and subject to confiscation of the goods.

Current legislative articles

Article 37 Those declaring and shipping imported or exported cargoes that fall under the following described scenarios, may depending on the severity of the incident, be levied with a punitive fine rated at twice to five times the value of the goods, and/or subject to the seizure or confiscation of the cargoes,

1. Falsely declare the name, quantity or weight of the cargo being transported.
2. Falsely declare the quality, value or specification of the cargo being transported.
3. Submit forged, tempered or untrue invoices or vouchers.
4. Any other illegal acts.

Those declaring and shipping imported or exported cargoes that fall under any one of the foresaid circumstances are punished by punitive fine of at least NT\$2,000 and up to NT\$30,000, and subject to the confiscation of whose cargo.

In the wake of the foresaid incidents that involve civil or criminal liabilities, the offender shall face corrective action prescribed under par 1 and par 3 of the preceding paragraph.

Those filing for tax credit on imported raw materials for re-export goods, in which the goods shipped should fall under any one of the circumstances described in the preceding paragraph, are punishable by punitive fine rated two to five times the value of the tax credit premium, and subject to the confiscation of the cargo.



Footnote

The Executive Yuan proposal:

1. No amendment is made to par 1.
2. Par 2 of the existing article has taken to a fixed sum of penalty fines. In response to changing times, and to step up deterring falsely declared exports of illicit goods, such as stolen cars, cancel lower limitations of fine, and raise the upper limitations of fine to one million dollars .
3. No amendment is made to par 3.
4. No amendment is made to par 4.

The review board:

The resolution is passed as is.

The Executive Yuan's proposal:

1. The provision has been newly appended.
2. In search of stepping up cracking down the illegal act of intellectual property rights infringement, an across-board inspection and crackdown against import/export cases involving the infringement of intellectual property rights on declared and shipped cargoes, or post forwarded or passenger hand carried cargoes at risk of infringing intellectual property rights, is clearly stipulated in written legal provision to facilitate the Customs' implementing the law enforcement, and in search of effective curtailing various illegal acts, by which the article has been introduced and appended.

The review board:

The article has been passed through plenary discussions among all legislative branches.

The article has been passed as shown above.

