

Customs Legislation Amendments¹

Amended by Justine Mbabazi, Litigation Advisor

Article 27: Exemption of the philanthropic societies, NGOs and charities” from the customs duties:

According to this provision, and in reference of the Laws governing philanthropic societies, NGOs and charities, the conditions and controls for exempting the imports of philanthropic societies, NGOs and charities from the customs duties shall be as follows:

The charity benefiting from exemption shall be registered with the competent inside the country and the purpose for establishing it shall be to provide services in the humane, social, educational, scientific or religious fields or any other charitable purpose not being a profitable one. Societies with political purposes shall not benefit from exemption from the customs duties.

To benefit from exemption from the customs duties, imports of the charities shall:

1. be of a nature suitable for the purposes and activity it performs according to its articles of incorporation; and
2. the volume and quantity of the imports to be exempted shall be proportional to the actual needs that enable it to perform its charitable activity; and
3. Such imports shall be directly imported in the name of the charity
4. The charity may not dispose of the exempted imports for purposes other than those for which they have been exempted and the management of the charity shall be held responsible for that vis-à-vis customs.
5. Should the charity wish to sell the consumed or used materials and supplies that were exempted from customs duties, the charity shall apply in writing to the customs administration to obtain approval of the sale after conducting the necessary inspection thereof.
6. The competent ministry or related government authority shall address the customs administration the need for exemptions of the imported goods an each shall be handled on a case by case basis.

Article 75: Documents Required during Transit

¹ The relevant amendments are were inserted in relevant parts of the law on December 13, 2007

The rules and regulations governing the transit of trucks and goods passing Afghanistan territories with intent of moving through shall be required to comply with the rules recognized by international laws, rules and conventions.

For any transit goods passing through, the customs declaration must be presented to the customs authorities, together with the following documents:

1. The delivery order from the ship, airline agent or any other transportation method used.
2. The invoices of the goods.
3. The packing list, and
4. The certificate of origin

Article 164: Imposing fines applicable to persons acting under customs laws

All acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal customs officer or other officer of the Department of the customs, or under any offices connected thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any customs law, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money

Article 166 (b) Customs Crimes and Criminal Procedure

Whoever knowingly affects any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification as to quality or value, or by the payment of less than the amount of duty legally due, shall be fined with three times the equal value of the amount under violation or imprisoned not more than three years, or both.

(b) Entry of goods by means of false statements

Whoever enters or introduces, or attempts to enter or introduce, into Afghan territory any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto, without reasonable cause to believe the truth of such statement shall or may be deprived of any lawful duties; or Whoever is guilty of any willful act or omission shall or may be deprived of any lawful duties accruing upon merchandise embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission shall be fined with three times the equal value of the amount under violation or imprisoned not more than three years, or both.

(c) Entry of goods for less than legitimate duty

Whoever, being a customs officer or business owner, customs broker or any other of officer connected to the customs, knowingly admits to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due, shall be fined with three times the equal value of the amount under violation or imprisoned not more than three years, or both.

(d) Smuggling goods into Afghanistan territory

Whoever knowingly and willfully, with intent to defraud Afghanistan, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the Afghanistan any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse boarder post, any false, forged, or fraudulent invoice, or other document or paper; or Whoever fraudulently or knowingly imports or brings into Afghanistan, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into Afghanistan contrary to this law, shall be fined with three times the equal value of the amount under violation or imprisoned not more than five years, or both.

In such case, a proof of defendant's possession of such goods, unless explained to the satisfaction of the relevant court of law, shall be deemed evidence sufficient to authorize conviction for violation of this law and this section. Merchandise introduced into Afghanistan in violation of this law and this section, or the value thereof, to be recovered from any person described in the first or second third and forth paragraph of this section, shall be punished under the punishment prescribed in this section.

(e) Removing and or smuggling goods from customs custody; breaking seals

Whoever, without authority, affixes or attaches a customs seal, fastening, or mark, or any seal, fastening, or mark purporting to be a customs seal, fastening, or mark to any vessel, vehicle, warehouse, or package; or Whoever, without authority, willfully removes, breaks, injures, or defaces any customs seal or other fastening or mark placed upon any vessel, vehicle, warehouse, or package containing merchandise or baggage in bond or in customs custody; or Whoever maliciously enters any bonded warehouse or any vessel or vehicle laden with or containing bonded merchandise with intent unlawfully to remove therefore any merchandise or baggage therein, or unlawfully removes any merchandise or baggage in such vessel, vehicle, customs warehouse or otherwise in customs custody or control; or whoever receives or transports any merchandise or baggage unlawfully removed from any such vessel, vehicle, or warehouse, knowing the same to have been unlawfully removed, Shall be fined with three times the equal value of the amount under violation or imprisoned not more than three years, or both.

(f) False claim for refund of duties

Whoever knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation, importation of merchandise, or knowingly or willfully makes or files any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself/herself or others of any drawback, allowance, or refund of duties, on the importation or exportation of merchandise, greater than that legally due thereon, shall be fined with three times the equal value of the amount under violation or imprisoned not more than three years, or both.

(g) Concealing or destroying invoices or other papers

Whoever willfully conceals or destroys any invoice, book, or paper relating to any merchandise imported into Afghanistan, after an inspection thereof has been demanded by the customs officer any other officer charged with this mandate, or
Whoever conceals or destroys at any time any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, Shall be fined with the amount of equal value or imprisoned not more than Five years, or both.

(h) Importing and or aiding importation of obscene or treasonous books and articles

Whoever, being a customs officer, customs agent, business person, or employee of Afghan customs or government employee, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against Afghanistan laws including this law or forcible resistance to any law of Afghanistan, or containing any threat to take the life of or inflict bodily harm upon any person in Afghanistan, or other articles of indecent or immoral use or tendency, shall be fined the amount of equal value, the imported goods shall be ceased and destroyed by competent authority, and shall be imprisoned not more than ten years.²

² Note, technical amendments was prepared by the advisor, there other many translation errors that originated from the first version that had to be amended and final official copy will be translated into English once approved by the parliament. The customs law has been sent to the Present's legal advisor for their final comments.