

CUSTOMS POLICING IN CAMBODIA

The Code des Douanes (Customs Code), Kram No. 86-CE of March 14, 1962, regulates all matters concerned with customs policing in Cambodia. Title II of the Code, which contains provisions regarding the organization and functions of the Service des Douanes or Customs Department, states in its Article 36 that the Department normally has authority within the customs area, but that under certain conditions specified in the present Code, it will also have authority in parts of the customs territory of Cambodia not actually within the customs area. According to Article 37, the customs area consists of a maritime zone and a land zone; the specifications thereof are also given.

Also under Title II, Chapter 3 describes the immunities and obligations of customs officials. Article 44 states that customs officers are under the special protection of the law, and that it is forbidden for anyone to injure, mistreat, or trouble them in the exercise of their functions, or to oppose such exercise. Both civil and military authorities are required, as soon as asked, to assist customs officials in the carrying out of their missions.

According to Article 45, customs officials must be sworn in before the Court or Tribunal, according to their rank. This procedure is registered and transcribed upon the warrants mentioned in the article following. Article 46 says that in the exercise of their duties, customs

officials must have on them their warrants of employment, which must mention the swearing-in. They are obliged to display these warrants as soon as asked to do so.

Article 47 gives customs officials the right to bear arms in the performance of their duties. Other than in cases of lawful defense, they also can use arms in certain specific cases. Arms can be used when acts of force or violence are directed at them or when they are threatened by armed individuals. They can be used when the customs officials cannot otherwise stop vehicles, boats, and other means of transport, the drivers of which will not comply with the order to stop. However, this must be done without the intent to kill. If a death should be involved, the circumstances of each specific case will be taken into consideration. Arms may also be used by customs officials when they cannot otherwise prevent the traffic of a gathering of persons who will not stop when ordered to do so. They may be used also when officials cannot capture alive dogs, horses and other animals being used for fraudulent purposes, or which some one is trying to export or import fraudulently, or which are moving about in irregular circumstances.

Chapter 4 of Title II is on the powers of customs officials. Section 1 has to do with the right of search of merchandise, means of transport, and persons. Article 50 states that they have this right, for the application of the provisions of the present Code and for the purpose of investigating fraud. Article 51 says that all drivers of means of

transport are obliged to obey the commands of customs officials. The latter can make use of any device to immobilize means of transport when the drivers do not stop as ordered. Article 52 gives customs officials the power to search all ships not exceeding 100 tons net which are inside the maritime zone of the customs area. According to Article 53, customs officials may go on board all vessels, including war-ships, in port or in dry-dock, ascending or descending streams or canals. They can stay on board until the ship has been unloaded or until it leaves. The captains and officers of the ship must receive the customs officials, accompany them, and if requested, must open the hatchways, cabins and closets of their vessels, as well as packages picked out for search. In case of refusal, the officials may ask for the assistance of a judge, or of an officer of the Judiciary Police, who must open the hatchways, cabins, closets and packages. A report must be submitted of such opening and of the statements made. The officials charged with the duty of inspecting ships and cargos can, at sunset, close the hatchways, which can then only be opened in their presence. On warships, searches cannot be carried out after sunset.

The next section deals with the right to search domestic premises. Article 54 states that in investigating merchandise being held fraudulently, within the customs area, as well as in investigating, in any place whatsoever, merchandise falling under the provisions of Article 198, ^{1/} customs officials may search domestic premises when accompanied by an officer of the Judiciary

^{1/} Merchandise specially designated by Prakas of the Ministry of Finance.

Police. However, in no case may search be made between sunset and sunrise. In certain cases, customs officials may enter without the help of an officer of the Judiciary Police, e.g., when pursuing merchandise, which have been followed without interruption and which are then taken into a house or other building situated outside the customs area. If there is a refusal to open the doors, the customs officials can have them broken open in the presence of an officer of the Judiciary Police.

Section 3 of the same Title gives further powers to customs officials having the rank of Inspector, or of Controller, or of Customs Officers. These officials may require the production of papers and documents of all kinds which are relative to operations concerning the Customs Department. There follows, in the Code, a rather broad list of types of documents which may be asked for in specific locations, e.g., in railroad stations, they may demand the production of way-bills, invoices, forms for changes, books, registers, etc. Those concerned with sending consignments must therefore keep the various documents described in the above section for a period of three years from the date that the packages are sent, for consignors, and from the date of their receipt, for consignees. By the terms of the same article, it is provided that in the course of inspections and inquiries effected in the places described earlier in the article, customs officials of the ranks listed therein may seize documents of all types relevant to facilitating the accomplishment of their mission.

Under Section 4, customs officials have additional powers as regards postal matter. They have access to post offices, including sorting

rooms, in trying to find, in the presence of postal officials, consignments, whether closed or not, of domestic or foreign origin, with the exception of consignments which are in transit, which contain or appear to contain objects of the nature described further on in the article, i.e. consignments prohibited from being exported or imported, liable to taxes and duties levied by the Customs Department or subject to restrictions or regulations regarding export or import. The Postal Administration is authorized to submit such consignments to customs control.

Under Section 6, Article 58 states that customs officials may investigate the identity of persons entering or leaving the customs territory, or moving around within the customs area.

Chapter 1 of Title XII contains the provisions concerning investigation of customs violations. Section 1 of this chapter deals with persons called upon to effect seizures, and the rights and obligations of those making seizures. Article 257 states that violations of customs laws and regulations may be investigated by an official of the Customs Department or of any other department. Those who are investigating a customs violation have the right to seize all objects liable to confiscation, to detain dispatches and all other documents relating to the objects seized, and to detain objects set aside as security for penalties. However, they cannot detain anyone except

in the case of a flagrant delict.

Articles 258 through 262 deal with the formalities regarding the report of seizure. The report must be submitted when the seized merchandise or means of transport have been taken to the near customs station or bureau. When seizures are made in a house, the report may be drawn up therein. If the merchandise and means of transport that have been seized cannot be taken immediately to the bureau, they may be entrusted to the accused, or to a third person. The report must contain various data such as the date and the cause of the seizure, the declaration made by the accused, the names, qualities and addresses of the persons making the seizure and of the person responsible for the investigation, the nature of the objects seized and their quantity, etc. If the accused is present, the report will mention that it has been read to him, that he has been called upon to sign it, and that he has received a copy thereof. He will be required to appear within twenty-four hours before the justice of the peace of that locality. Should the accused be absent, a copy of the report is to be attached within twenty-four hours to the door of the customs station or bureau, or the Salakhum of the place where it has been drawn up if no customs station or bureau exists there.

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