



# KEY ASPECTS OF THE NEW CUSTOMS SANCTIONING REGIME

## Decree 920 of 2023

### 1 NEW WAYS OF SANCTIONING

- ❖ Customs users who commit a minor infraction may be sanctioned with a **warning instead of a fine**, as long as they have not committed the same infraction more than twice, in a period of three years.
- ❖ Minimum Sanction: No sanction, even those reduced by acquiescence, can ever be less than 10 UVT (currently \$424,000) and, in the case of sanctions for: (i) simulating import or export operations; (ii) report or include an address other than the one verified, or (iii) submit supporting documents that do not correspond to the commercial operation, will have a **minimum sanction** of 12,000 UVT (today \$508,944,000).
- ❖ Before, customs users were sanctioned for each import declaration, now the **foreign trade operation carried out by transport document will be sanctioned**.

### 2 SEIZURE AND CONFISCATION

- ❖ A **Seizing Review Committee** is created to issue recommendations on the appropriateness of enforcing this precautionary measure, in order to unify criteria between the different custom territories.
- ❖ The **release cancellation procedure** is eliminated as a procedure prior to the apprehension or the imposition of a sanction due to impossibility of seizure.
- ❖ The **sanction for impossibility of seizure may be reduced to 80%**, when the acquiescence occurs before the date of firmness of the sanction.
- ❖ An extensive list of grounds for arrest is seizure (42 grounds), including grounds for formal reasons.

### 3 AUDITS AFTER SHIPMENT

In compliance with the commitments of the Trade Facilitation Agreement, as well as the guidelines of the WCO and the WTO, the DIAN is allowed to carry out Post-Shipment Audits, to **facilitate and promote voluntary compliance with obligations and to prevent the commission of offences or the repetition thereof**.

This Audit is subject to regulation.

### 4 TAX FREE ZONE USERS

- ❖ Failure to comply with the obligations derived from the **consolidated payment** will no longer give rise to the indefinite loss of this benefit, without prejudice to the relevant fine.
- ❖ The infraction for operator users for carrying out the **activities without having obtained guarantee approval** from the DIAN was eliminated.
- ❖ The non-authorization of the entry or exit of goods through the **Goods Movement Form** within 15 days following the respective entry or exit, is sanctioned.

### 5 BLANK SANCTIONED CONDUCT DESCRIPTIONS

With the aim of adapting this sanctioning regime to the next **substantial customs regime**, **blank punishable conducts** are established, linked to the categories of obligations that will be determined in said future regime.

### 6 SANCTIONING PROCEDURE

- ❖ The **terms** to issue the Administrative Acts that impose sanctions and decide the appeal for reconsideration **are increased**.
- ❖ The DIAN can **suspend**, for up to 1 month, **the term** to issue the Act that imposes the sanction.
- ❖ You can go to the contentious-administrative jurisdiction via **Per Saltum**, this is regardless of the filing of the appeal for reconsideration.
- ❖ An **abbreviated procedure** is established for minor infractions.
- ❖ Appeals for reconsideration can be submitted through the **Electronic Remedies' System**, or physically.
- ❖ Following the jurisprudence of the Council of State, it includes the **obligation of notification of Administrative Acts** to customs users, allowing the application of **Tacit Consent**.

### 7 RIGHT TO MAKE A MISTAKE

There will be no sanction when, within a period of three years, a minor infraction is incurred **for the first time** and the person proves that the error has been corrected.

### 8 NEW SANCTIONS

- ❖ **Simulating export and import operations** will have a fine of 100% of the FOB value of the merchandise, and it can never be lower than 12,000 UVT (today \$508,944,000).
- ❖ A penalty of 400 UVT is included for the failure to submit in a timely manner the report with the list of import declarations that were supported in the **Functional Unit Tariff Classification Resolution**.
- ❖ **Authorized Economic Operators (AEO), Simplified Procedure Users and Free Zone Users** who do not make the **consolidated payment** under the terms and conditions established in the regulation will be subject to the following sanctions:

1st Breach	100% of the value of customs taxes not paid.
2nd breach (Within 12 months of the first breach)	150% of the value of customs taxes not paid.
3rd breach (Within 12 months of the first breach)	200% of the value of customs taxes not paid.

- ❖ Modification in the wording of the grounds for **suspension and cancellation of the AEO authorization** and the applicable procedure.
- ❖ **Industrial Users** can now be penalized for simulating foreign trade operations.

### 9 VALIDITY AND TRANSITION REGIME

- ❖ The New Customs Sanctioning Regime will enter into force on **June 9, 2023**.
- ❖ The applicable sanctioning regime will be the one **in force at the time the foreign trade operation took place**, without prejudice to the application of the **principle of favourability**, if applicable.
- ❖ Sanctioning administrative processes will be governed by the regulations in force **at the time the respective terms began to run**.