

Compliance Management for Importing and Exporting Companies in Cross-Border E-Commerce or the Story of Smuggled Tobacco in Vietnam

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Abstract

Compliance management is a vexing issue for customs around the world. However, this is a missing and weak content of state management in the customs field of Vietnam. This is inspired by the story of smuggling foreign tobacco products at the southwestern border of Vietnam when compliance is not available because the profits from illegal activities are enormous. This article focuses on studying the compliance management process for import-export businesses through e-commerce when online transactions become a habit in the consumption behavior of digitalized societies. Through the analysis of the development context of e-commerce in the region and the world, the current status of management policies in the field of customs related to the compliance management of import-export enterprises by means of e-commerce and the actual status of compliance of these enterprises in the period 2016-2019, the author's research has pointed out a number of policy implications for the State and the customs industry in order to enhance the legal compliance of trading enterprises. cross-border sales through the online environment.

Keywords: compliance management, customs, e-commerce, exporting, importing, Vietnam.

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Introduction

Vietnam is currently one of the 15 countries with the highest number of tobacco users in the world. This fact has led to up to 62% of deaths in Vietnam, which are related to tobacco's negative impacts. Tobacco in Vietnam also causes great economic damage to society. Each year about 8,213 billion VND is spent on this item, 3.6 times higher than the cost of studying; 2.5 times the spending on clothes and nearly double the spending on medical examination and treatment. 11.3% of poor households with smokers could be lifted out of poverty if the money spent on tobacco was used to buy food. Because tobacco is a hazardous product, the Government of Vietnam is maintaining high import tax to limit the import and consumption of foreign tobacco products. The import tax rate is currently maintained at 135% of the import price. After the imposition of import tax, excise tax and value added tax are to be applied on the price that is already included with import tax. Therefore, according to calculations, if a pack of cigarettes has an initial import price of 10,000 VND, after applying taxes, the selling price will

have to be over 50,000 VND per pack. That is also the most direct reason leading to tobacco smuggling through the southwestern border with Cambodia. Recently, besides traditional cigarettes, e-cigarettes are also a commodity smuggled across the border in huge quantities. Therefore, the problem with Vietnam's legal corridor is how to manage the compliance of enterprises importing and exporting goods with high tax rates so that there is no violation of the provisions of law as for tobacco products in general.

The draft version 1.0 of the National Digital Transformation Project [13] mentions the economy's goals by 2025, such as: bringing information technology, especially 4.0 technology to become popular in Vietnam, or there are more than 80,000 digital enterprises and up to 50% of small and medium enterprises that have successfully transformed on the digital platform. This is a political determination showing that the digital environment and applications of e-commerce such as online goods transactions, public services, online training, financial technology, remote healthcare technology, will be connected not only domestically but also globally, and cross-border e-customs freight forwarding will become popular in Vietnam (including basic forms such as B2C, C2C and B2B). In fact, the Department of E-commerce and Digital Economy (VECITA) of the Ministry of Industry and Trade estimates that the number of online shopping customers in Vietnam will increase by about 52% in 2020, the fastest increase in the world recent times (beyond the figures of Japan) [2]. Thus, the development of e-commerce in Vietnam is an indispensable thing from both the policy and practical perspective of the current development process of international trade.

In the context of online retail e-commerce (B2C) transactions development, goods have a longer and more diversified transportation cycle, even across borders. The practical example of Lazada (owned by Alibaba, China) has shown that retail goods from China to Vietnam market happen regularly with relatively cheap shipping and clearance costs compared to other countries with the cost of goods sold by similar methods. This is a content that needs special attention when the flow of goods from neighboring Asian countries to Vietnam always tends to be higher than exports, leading to a large trade balance deficit with ASEAN, China and Korea (2018 data) [10]. Moreover, Vietnam's main imports also come from countries like China and South Korea. This shows that the demand for trading goods originating from these countries in Vietnam is very high, it is necessary to have attention from the state management policy to avoid unnecessary impacts.

With the expected development of Vietnam's e-commerce, such forms of goods transported across borders need to be better managed in terms of declared data and tax (transfer pricing, tax avoidance, tax evasion), on quality standards, on transaction processes and on other technical issues in Vietnam's international trade with partner countries because of their potential risks in those areas [3]. In terms of compliance management, Vietnam Customs will also have to perform its operations in accordance with the general orientation in accordance with international practices, which is to provide the most timely and accurate processing information within a limited time, mechanisms, strengthening risk management earlier to facilitate customs clearance, applying technology and automated management processes so that there are less administrative interventions in these activities [4]. Therefore, this is also a dilemma for customs authorities when they want to speed up customs procedures (declaration, presentation of goods,

goods inspection, tax collection) to expedite customs clearance, but wanting to ensure compliance management for imported and exported goods through e-commerce approach.

Literature Review& Research Findings

Compliance management policy for enterprises importing and exporting goods by means of e-commerce in Vietnam and the perspective of the World Customs Organization

Regarding the policy process, the Prime Minister's Decision No. 149/2005/QD-TTg (then the Decision No. 103/2009/QD-TTg) of the Prime Minister on the pilot implementation of electronic customs procedures and the Decision No. Decree No. 52/2007/QD-BTC of the Minister of Finance on the pilot implementation of electronic customs procedures have laid the first foundation for the approval of electronic customs procedures. The method by which goods traded across the border are partially completed in the form of e-commerce began to be applied in Vietnam. In general, these Decisions show that e-customs procedures must comply with the following bases: Customs Law, laws and sub-law documents on taxes related to import and export goods, Law on Electronic Transactions and guiding documents on law enforcement, and international treaties to which Vietnam is a signatory. However, the citation of many legal sources and related sub-law documents makes the management complex, overlapping and difficult to achieve certain standards when domestic and international legal documents are cited, because they may have different views on the same thing. Therefore, at present, regulations related to compliance management for goods imported and exported by e-commerce method are being implemented by interleaving the provisions of Vietnamese law since the milestones of time, such as 2005 and 2009 when semi-electronic customs clearance and electronic customs clearance were implemented.

Regarding policy content, Law on Electronic Transactions No. 51/2005/QH11 has provided legal grounds for the establishment of electronic contracts through digitized data messages with electronic signatures and electronic signatures, a secure and unique form of transaction confirmation in the online environment (Article 33). This has contributed to confirm the legal value of all transactions through e-commerce methods and electronic contracts and goods traded between the parties. This is also confirmed in Article 15 (Section 2, Chapter 1) of the Commercial Law No. 36/2005/QH11 when data messages in commercial activities are recognized as having the same legal value as paper documents in commercial activities for traditional trading environment. Thus, goods, after being transacted through electronic contracts between countries, will be imported and exported goods and are subject to tax according to the provisions of the Law on Import and Export Tax No. 107/2016/QH13. Regarding the taxation of goods, the law stipulates that goods are exempt from import tax for gifts and gifts with a customs value not exceeding VND 2,000,000 or with a customs value of over 2,000. 000 VND but the total payable tax amount is less than 200,000 (Article 8, Decree No. 134/2016/ND-CP) but this tax exemption is conditional, not exceeding 04 times/year. This makes it impossible for businesses selling cross-border e-commerce goods to continuously declare their goods as gifts and gifts to achieve the above tax exemption when the transaction volume will be much larger than 04 times/year. At that time, Article 29 of Decree No. 134/2016/ND-CP, which is often used by e-commerce businesses when sending goods by express delivery, will be exempt from tax for goods with a customs value of less than VND 1,000,000 or have a

tax payable of less than 100,000 VND. However, one can also see that the tax exemption provisions for goods by express delivery are not limited to the number of times a year when the goods are sent from the same seller; this will lead to a significant loss of tax revenue if the number of duty-free goods of this type is very large.

Thus, even if goods imported or exported by e-commerce transaction method are declared as gifts, they must also go through customs procedures through all steps as prescribed by law (Article 49, Law on Customs, No. 54/2014/QH13). According to the Customs Law, goods of this type will be managed for compliance in all stages of declaration, presentation, inspection, clearance and post-customs clearance inspection. In addition, according to Article 5 of the Law on the application of international treaties, customs and international practices related to customs, we will give preference to the application of international standards if they are not inconsistent with the basic principles of Vietnamese law. According to statistics of Vietnam Customs, as of 2019 Vietnam has participated in more than 100 regional, international, bilateral and multilateral treaties on many aspects of cooperation content. Therefore, this is a great difficulty for state management offices in reviewing regulations to ensure the compliance of enterprises with export and import activities through e-commerce. .

If the definition of compliance management is the control in the recognition, the correct, complete and voluntary compliance by the export and import business community with respect to legal regulations that the Customs sector must enforce [5], Vietnam currently has no specific legal document for compliance management for export and import enterprises in general and export and import enterprises by e-commerce method in particular. Therefore, we need to consult the opinion about this policy from the World Customs Organization (WCO), which gathers all the experiences of implementing customs policy of 180 customs organizations in the world.

The WCO has released the two most important reports related to the Framework Principles on Voluntary Compliance [6] in 2015 and the Framework Standards on Cross-Border E-commerce [4] in mid-2018 to show that the importance of cross-border goods management in the new context. Accordingly, the Luxor (Egypt) Resolution in 2017 is said to have emphasized 8 management principles for goods imported and exported by e-commerce method[4] which are: (1) Advanced risk and electronic data management, (2) Simplified and accelerated procedures, (3) Safety and security, (4) Ensuring revenue, (5) Measurement and analysis, (6) Contract partners, (7) Community understanding, advocacy and compliance capacity building, and (8) Legal framework. Thus, risk management is still emphasized as the leading tool in compliance management for goods imported and exported by e-commerce method, and the issue of a modern electronic data management system. This is also highly appreciated in implementing electronic customs procedures for this type of goods. In addition, the issues of customs procedures, system security, avoiding tax loss for the country, international cooperation, education and propaganda on compliance and building a legal corridor for state management are also mentioned and can be asserted as a need to be implemented in a consistent manner with the risk management process mentioned above to achieve the best results.

According to Figure 1, enterprises' compliance actions, while being placed under state management policy, are all geared towards voluntary compliance. The two-way intervention of state management agencies also shows the "carrots and sticks" when businesses show signs of non-compliance. It will be a form of strict management, even prosecution with other acts. Serious violations to deter, on the contrary, when the enterprise has a clean customs record and has high compliance, the management measures will be a little bit relaxed. However, we also realize that in order for businesses to be able to comply voluntarily, the Customs industry itself must prepare some foundations such as: (1) Effective policy communication, (2) Qualifications and professional experiences of customs officers (direct inspection, customs intelligence), (3) Data analysis system and modern probabilistic testing model, and (4) Scanning equipment screening and testing to meet international standards.

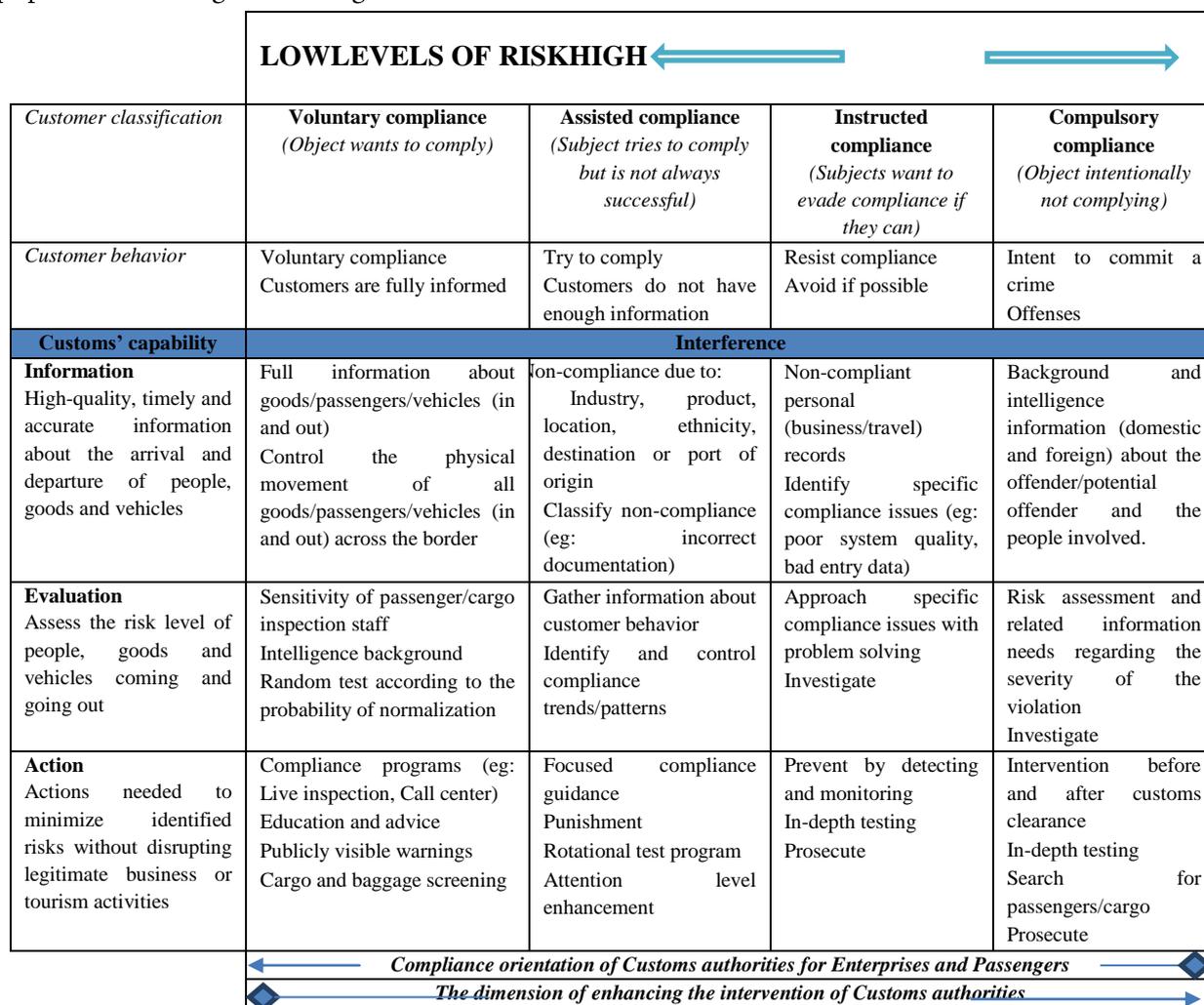


Figure 1. Model approach to the WCO's compliance management process

Source: [1]

Compliance status of goods import and export enterprises in Vietnam, period 2016 - 2019:

According to data reported by the General Department of Customs, in 2018 out of 103,958 enterprises with import-export activities across the country, the number of compliance and priority enterprises accounted for more than 11.5%; the number of non-compliant enterprises accounted for only 1.5% and those of other types 86.8% (Table 1). Thus, when the compliant enterprises (about 11.5%) will

voluntarily comply with the provisions of the law, we can see that enterprises with high risk need to be forced to comply with the provisions of the law, accounted for 1.5%. But an important issue for compliance management is to have a management policy and a reasonable classification for businesses in group 86.8% to be of higher certainty. There should be classification method for the compliance, in which those enterprises will move to a higher level of compliance (voluntary compliance) and will be able to continue to maintain regular business operations. The figure of 86.8%, on the other hand, shows that a part of import-export enterprises have not yet reached the time of compliance requirements because most Vietnamese enterprises are small and medium-sized, operating in moderation, often involving change, and even suspending their operations and then returning to operate as a start-up business. Therefore, it is difficult to assess the compliance of an enterprise when the continuous operation time of the enterprise is not more than 365 days to be included in the statistics and evaluation. The Customs sector needs to apply modern and automated information technology platforms to be able to closely monitor the business situation of these small and medium enterprises in import and export to take necessary promotion measures. to bring them into stable business processes. And, we all know that when businesses operate regularly and with high compliance, the benefits for the country will be fruitful.

Regarding improving the capacity of information collection, assessment and action to limit risks and increase compliance of import and export enterprises, in the period 2016 - 2018 the General Department of Customs has taken necessary steps for administrative reform and modernization of customs procedures. Specifically, the National Single Window mechanism has now been implemented with the participation of 12 ministries and sectors, with 148 administrative procedures, handling about 1.8 million dossiers of more than 26,000 enterprises [2]. This is being further expanded for seaports and air routes. The ASEAN Single Window is currently connected with four countries in the region (Singapore, Indonesia, Malaysia and Thailand). In addition, the automatic customs management system at ports, warehouses and yards (VASSCM) was officially implemented from December 2017 at the Customs Department of Ho Chi Minh City and Hai Phong [10]. Automated Cargo Clearance System (VNACCS) and Vietnam Customs Intelligence System (VCIS) have been deployed and continuously upgraded with branch software such as e-Declaration, e-Invoice, e-Invoice, and e-Invoice, e-Payment, e-C/O and e-Manifest (Electronic Manifest for Ships)[4]. In addition, in order to serve the direction of providing level 4 online public services, Vietnam Customs is also completing the e-Customs (version 5), EdocCustoms, and Outbound Support Information systems. business decisions, and equipped with scanners, inspection machines, electronic scales, drug detectors, surveillance cameras and other electronic/digital devices to continue modernizing work of the industry.

Table 1. Compliance assessment of import-export enterprises in 2018

Compliance classification	Number of Enterprises	Rate (%)
Priority business	69	0.066
Compliant business	12,030	11.572
Non-compliance business	1,562	1.503
Other businesses	90,297	86.859
Total number of import-export enterprises	103,958	100

Source: [12]

However, the number of violations after inspection of declarations, scanning of goods and after inspection after customs clearance still exists significantly even in the process of modernization and improvement of the compliance management capacity of the Vietnam customs (Table 2). First of all, we find that violations occurred during the implementation of customs procedures with a variable percentage from year to year, especially in 2018 with significantly fewer containers being physically inspected manually compared to the 2 previous years, but the violation rate was exceptionally high. Next, the inspection data of the customs authorities after the goods have been cleared from the customs have tended to decrease and the actual amount of fines and financial liabilities of enterprises has decreased steadily in the last 2 years. Although in 2016, there was a sudden increase, compared to 2015. If the number of cases of post-clearance inspection is less, it is because the number of enterprises showing signs of less violation after customs clearance is real, not because of a mechanical decrease according to the regulations. According to the subjective will of the management agencies, this is a positive development of the legal compliance process for import and export enterprises after the customs clearance process. However, the customs of Vietnam still has to admit that violations still exist, accounting for a certain percentage after the customs clearance of goods and an unpredictable proportion in the process of carrying out mandatory customs procedures. This is also an important motivator that promotes Vietnam customs to collect, analyze and produce statistics related to compliance management for goods import and export enterprises through the E-commerce platforms when this phenomenon gradually becomes popular.

Table 2. Inspection and detection of violations in the customs field, 2016 - 2018

<i>Inspection Number</i>	<i>- When carrying out customs procedures</i>			<i>(2) - After the goods have been cleared</i>		
	2016	2017	2018	2016	2017	2018
<i>(1) Designated customs declaration for screening</i> <i>(2) Post-clearance inspection</i>	43,852	58,206	52,618	9,693	8,987	6,320
<i>(1) Illuminated Containers</i> <i>(2) Post-clearance inspection at the customs office</i>	50,979	80,920	44,198	8,318	7,722	5,007
<i>(1) Containers are physically inspected manually</i> <i>(2) Post-clearance inspection at the customs declarant's office</i>	3,519	1,731	809	1,375	1,265	1,313
<i>(1) In case of violation</i> <i>(2) Real state budget revenue (billion VND)</i>	564	198	172	2,442	2,231.5	2,080
(1) Violation rate (%) (2) Rate of change over the same period last year (%)	16.02	11.43	21.26	+ 21	- 14	- 7

Source: Compiled from the reports of the General Department of Vietnam Customs (2019)

Methodology

Historical research comes with the reviewing of historical events that have influenced the research objectives in the past, in the present and even in the future [7]. The chronological timeline of the events that should contribute to the formation of the impacts on the researching objects play an important role with the researchers; through which, conclusions and recommendations can be inferred from the several unstructured data of the past. This method is used widely in the social science research.

Therefore, this paper adopts the qualitative researching method [8]. The compliance information of the import-export enterprises in Vietnam should be analyzed through outstanding events of each year in the period of 2016 - 2019. They are the key motivators for changes in the way the customs office adapt themselves to the complexity of compliance records. The changes shall be carefully considered and reviewed by the milestone figures of the assessments and inspections. The similarities and differences therein pave the way to the possible conclusions of the author.

Recommendations and Conclusion

Implications for State policy

Firstly, the State needs to create a legal corridor for compliance management for goods imported and exported by e-commerce method, especially in the early stages of the industrial revolution 4.0. Accordingly, policy priorities for the development of e-commerce platforms need to be considered, but managers must also smartly identify binding conditions to avoid businesses taking advantage of policies, to evade taxes, failing to ensure the quality of products traded on the market, or harming the environment, safety and security of Vietnam.

Second, the legislative activities need to be specific, fully covering practical situations, not "hands-on" but highly instructive and easy to understand. In particular, legal documents should avoid relying too much on citations and links with other law sources, making the application of the law enforcement agencies and the enforcement of the business community confusing if they lack expertise in the field of law. Such legislation will not only "puzzle" businesses in enforcement, but also easily push businesses into non-compliance, losing their motivation to comply and lacking respect for the incentives of the State to their own community.

Third, in the new context of international trade, the State needs to reconsider the tax exemption policy for goods that go through customs procedures of express delivery to avoid taking advantage of the policy to "torn small" goods into packages whose value is within the tax exemption and reduction rate of the State. In particular, it is necessary to adjust the binding conditions for tax exemption and reduction cases.

Fourth, the State must play the role of conductor, creating an inter-agency coordination mechanism, such as between Tax, Customs, Border Guard, Economic Intelligence, Economic Police, Market-managing Ministries and other related sectors, to establish strict compliance management rules of thumb at the border lines. This mechanism should clearly define functions, tasks, coordination procedures as well as sanctions for units that do not operate in the common interest of the country.

Implications for the industry management policy of Vietnam Customs

Firstly, Vietnam Customs must clarify the development trend of e-commerce, the necessity of cross-border trade through electronic/digital platforms. Accordingly, the industry will identify the objects of transnational e-commerce activities and related objects to put in the sights in its professional management activities.

Second, Vietnam Customs needs to do a good job of digitizing specialized management activities, becoming the leading agency in the application of digital government (to a higher level than e-government) that we are aiming for. Only with the digitization and modernization of the management process, can we expect the customs industry to handle highly complex information and cases like in the current 4.0 era. However, industry leaders should pay attention to directing the unification of data platforms, simplifying their use through the unification of e-management content and applications, and implementing measures to improve capacity, and to force using such applications by the team of customs officials and the business community.

Third, Vietnam Customs needs to propose competent authorities to issue legal documents specifically for compliance management and for enterprises' voluntary compliance in importing and exporting goods through e-commerce methods. These specialized guiding documents that should be established on the basis of a thorough review of all relevant contents of domestic law and of international treaties to which Vietnam is a contracting party. In doing so, compliance management activities will be detailed, methodically implemented and more in line with international practices.

Fourth, Vietnam Customs needs to actively study and learn to refine and apply an advanced compliance management model on the basis of the World Customs Organization's risk assessment and typical models, which have been shown with implementation effectiveness in other member customs organizations. In particular, compliance management needs to go hand in hand with the orientation of avoiding interference in the implementation of customs procedures of the enterprises. To do that, strengthening pre-customs and post-customs clearance inspection activities along with implementing formal procedures during customs clearance inspection can be a good preventive and deterrent approach. This also can be effective along the entire supply chain for businesses that are operating in the field with a plethora of new features such as contemporary e-commerce.

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