

J. Y. Interpretation No.281 (June 28, 1991) *

ISSUE: Do Article 35-1, Paragraph 2, and Article 51-1 of the Customs Act violate Article 19 of the Constitution?

RELEVANT LAWS:

Article 23 of the Constitution (憲法第二十三條) ; Articles 35-1, Paragraph 2, 51-1 of the Customs Act (關稅法第三十五條之一第二項、第五十一條之一) .

KEYWORDS:

customs duty (關稅) , bonded factory (保稅工廠) , smuggling goods (私運貨物) .**

HOLDING: Article 35-1, Paragraph 2, of the Customs Act states that “Products manufactured or processed by a bonded factory and the raw materials exempted from Customs duty under the provisions in the preceding paragraph shall not be released from the factory for domestic sale unless otherwise approved by Customs and import application and payment of Customs duty and taxes have been completed in respect of the condition

解釋文：關稅法第三十五條之一第二項規定：「保稅工廠所製造或加工之產品及依前項規定免徵關稅之原料，非經海關核准並按貨品出廠形態報關繳稅，不得出廠內銷。」同法第五十一條之一規定：「違反第三十五條之一第二項之規定，將保稅工廠之產品或免徵關稅之原料出廠內銷者，以私運貨物進口論，依海關緝私條例有關規定處罰。」旨在防止逃漏關稅，維持課稅公平，為增進公共利益所必要，與憲法並

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and form of the goods to be released from the factory.” Article 51-1 of the same Act states that “Where the products or duty-free raw materials of a bonded factory are released from the factory for domestic sale in violation of the provisions provided for in Article 35-1, Paragraph 2, such action shall be treated as the smuggling of goods into this country and be liable to punishment under the relevant provisions of the Customs Smuggling Control Act.” The aims of both provisions are to prevent Customs duty evasion and maintain fairness in assessing taxes, which are necessary to promote the public interest and not contrary to the Constitution.

REASONING: Raw materials are a kind of goods, which when imported from abroad shall have Customs duty levied upon them. However, in order to promote the economic development and enrich the people’s livelihood by encouraging the importation of raw materials, which are to be exported after being manufactured and processed, it is specially provided in Article 35-1, Paragraph

無牴觸。

解釋理由書：按原料為貨物之一種，自國外進口原料，本應依法徵收關稅。惟國家為鼓勵進口原料，在國內製造或加工為產品後外銷，以促進經濟發展，富裕民生，特在關稅法第三十五條之一第一項規定：「外銷品製造廠商，得經海關核准登記為海關管理保稅工廠，其進口原料存入保稅工廠製造或加工產品外銷者，得免徵關稅。」保稅工廠之廠商，如欲改變原意，將保稅工

1, of the Customs Act that “Export processing factories may be registered, with due approval of the Customs, as bonded factories under Customs supervision. All imported raw materials to be stored and used in such bonded factories for manufacturing or processing into finished products for export shall be exempt from customs duty.” Thereinafter, in the case where the firm of the bonded factory intends to change its original purpose and sell the products manufactured or processed in the bonded factory domestically or store all raw materials exempt from customs duty in the bonded factory, that is no difference from importing the products from abroad and selling the raw materials domestically, which may not be done unless it has been approved by Customs and the Customs duty and taxes have been paid. Article 35-1, Paragraph 2, of the Customs Act states that “Products manufactured or processed by a bonded factory and the raw materials exempted from Customs duty under the provisions in the preceding paragraph shall not be released from the factory for domestic sale unless otherwise approved by Customs and the

廠所製造或加工之產品及存入保稅工廠免徵關稅之原料出廠內銷，則已與自外國進口產品及原料內銷者相同，自應經海關核准並補徵關稅後方得為之。關稅法第三十五條之一第二項規定：「保稅工廠所製造或加工之產品及依前項規定免徵關稅之原料，非經海關核准並按貨品出廠形態報關繳稅，不得出廠內銷。」及第五十一條之一規定：「違反第三十五條之一第二項之規定，將保稅工廠之產品或免徵關稅之原料出廠內銷者，以私運貨物進口論，依海關緝私條例有關規定處罰。」旨在防止逃漏關稅，維持課稅公平，為增進公共利益所必要，與憲法並無牴觸。

import application and payment of Customs duty and taxes have been completed in respect of the condition and form of the goods to be released from the factory.” Article 51-1 of the same Act states that “Where the products or duty-free raw materials of a bonded factory are released from the factory for domestic sale in violation of the provisions provided for in Article 35-1, Paragraph 2, such action shall be treated as smuggling goods into this country and be liable to punishment under the relevant provisions of the Customs Smuggling Control Act.” The aims of both provisions are to prevent Customs duty evasion and maintain fairness in assessing taxes, which are necessary to promote the public interest and not contrary to the Constitution.