

J. Y. Interpretation No.324 (July 16, 1993) *

ISSUE: Does Article 26 of the Regulation Governing the Customs Supervision of Containers violate Article 23 of the Constitution?

RELEVANT LAWS:

Article 23 of the Constitution (憲法第二十三條) ; Article 26 of the Regulation Governing the Customs Supervision of Containers (海關管理貨櫃辦法第二十六條) ; Articles 51 and 63 of the Navigation Business Act (航業法第五十一條、第六十三條) .

KEYWORDS:

container yard (貨櫃集散站) , shortage (貨物) , customs import duty (海關進口稅) , suspense of application (停止受理) .**

HOLDING: The aim of the first sentence of Article 26 of the Regulation Governing the Customs Supervision of Containers amended and promulgated by the Ministry of Finance on June 18, 1985, which stipulates that “the Customs may suspend the application of a storage business for a period of time in case any

解釋文：財政部中華民國七十四年六月十八日修正發布之海關管理貨櫃辦法，其第二十六條前段，關於貨櫃集散站由於非人力所不能抗拒之原因，致貨物短少時，海關得於一定期間停止受理其申報進儲業務之規定，旨在確保海關對於存站貨物之監視效果，防止走私，為增進公共利益所必要。惟上述一

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shortages not beyond human control occurred in the container yard”, is to ensure the Customs’ effective supervision of the goods stored therein and to prevent smuggling, which is necessary to promote the public interest. However, as to the said “period of time,” since the above Article does not stipulate the longest period of limitation, it shall be made by law or rules authorized by law by referring to Article 63 of the Navigation Business Act and shall be so stipulated and come into force before December 31, 1994. The above provision shall be void in case the time limit has expired. Furthermore, as to the issues on public law contracts involved in the said Regulation, their basic norms shall be promptly legislated and properly regulated by the relevant authorities.

REASONING: It is stipulated in Article 51 of the Navigation Business Act that a container yard business, in addition to having a license approved and issued by the Ministry of Transportation and Communications, shall also be registered by Customs. Since a close relationship exists between the container yard and

定期間，未設最長期間之限制，究須如何規範，應參酌航業法第六十三條之規定，以法律或法律授權之命令定之，並應於中華民國八十三年十二月三十一日以前制定施行，逾期上開規定應停止適用。又該辦法尚涉及公法契約之問題，關於公法契約之基本規範，亦宜由有關機關儘速立法，妥為訂定。

解釋理由書：貨櫃集散站之營業，除須由交通部核發許可證外，並應經海關登記，航業法第五十一條設有規定。因其與海關通關查驗及緝私之職務執行有密切關連，故財政部訂有海關管理貨櫃辦法，定明以貨櫃裝運之進口貨物，卸存於貨櫃集散站者，集散站對之負保管責任，受關員之監視或抽核。放

Customs in executing the Customs clearance process, and the examination and prevention of smuggling, the Ministry of Finance enacted the Regulation Governing the Customs Supervision of Containers providing that the imported containerized cargos which are discharged and stored in the container yard shall be supervised and spot-checked by the Customs officer. The cargos shall not be released from the container yard without evidentiary documents approved by the Customs, and the business operator of the container yard shall pay to the Customs a guarantee deposit to guarantee that he will comply with the regulations provided in said Regulation. Article 26 of the Regulation Governing the Customs Supervision of Containers amended and promulgated by the Ministry of Finance on June 18, 1985, stipulates that “a container yard operator shall be responsible for the keeping of the cargos stored therein. In the case where it is found that the cargos have been moved or replaced fraudulently, changes of marks, number, or packaging have been made, documents have been forged or any other matters have occurred

行時，應憑海關核准之文件，始得提貨出站。並由業者向海關立具保結，表示遵守該辦法之有關規定。財政部於中華民國七十四年六月十八日修正發布該辦法，於其第二十六條前段規定：「貨櫃集散站對存站貨物負保管責任。如發現有冒領、頂替、變更標記、號碼、包裝或偽造證件矇混提運出站，或其他非人力所不能抗拒之原因，致貨物短少時，除應由貨櫃集散站負責繳納進口稅捐及依海關緝私條例或其他有關法令規定處理外，並得於一定期間停止受理其申報貨櫃及貨物之進儲業務。」就其「停止受理」部分言，此種存站貨物短少之情形一旦發生，即有發生走私等不法情事之可能。海關為確保其對於存站貨物之監視抽核，防止走私，自得為此「停止受理」之處分，以促使集散站改善其設施或管理，避免損害之繼續發生或擴大。既為增進公共利益所必要，亦為海關執行其通關查驗及緝私之法定職務所當為。惟該辦法就「停止受理」之一定期間，未設最長期間之限制，究須如何規範，應參酌航業法第六十三條之規定，以法律或法律授權之命令定之，以符合憲法第二十三條之意旨。此項法律應於八十三年十二月三十一日以前制定施行，逾期上開關於「停止受理」之規

not beyond human control which thus resulted in a shortage of cargos, then the container yard operator shall pay import tax and handling in such cases in accordance with the respective provisions of the Customs Smuggling Control Act and other laws or regulations, and the application for container and cargo storage business shall also be suspended for a period of time.” To the suspension of application, in case the shortage matters on the in-stored cargos occur, illegal matters such as smuggling may happen thereof. The Customs, to ensure the effective supervision of the goods stored therein and to prevent smuggling, may order such “suspension of application” in order to compel the container yard operator to improve his facilities or management and to prevent further or aggravating damage, which is necessary to promote the public interest and is to be done legally subject to the statutory duty of the Customs in executing the Custom clearance process, and the examination and prevention of smuggling. However, as to the said “period of time”, since the above Article does not stipulate the longest period of limitation, it shall be

定，即停止適用。又業者既須向海關立具保結，尚涉及公法契約問題，關於公法契約之基本規範，亦宜由有關機關儘速立法，妥為訂定，俾符依法行政原則。至上開規定內關於由集散站負責繳納進口稅捐部分，以該短少之貨物，集散站為「短少」事故發生當時之持有人，自應依本院釋字第二一九號解釋辦理，毋庸再作解釋，併予指明。

made by law or rules authorized by law by referring to Article 63 of the Navigation Business Act to comply with the aim of Article 23 of the Constitution. The said Act shall be so stipulated and come into force before December 31, 1994, and the provision of “suspension of application” shall be void in case the time limit has expired. Furthermore, the guarantee given by the business operator of the container yard to the Customs is a matter involving a public law contract. The basic norm of public law contracts shall be promptly legislated and properly regulated by the relevant authorities in order to comply with the principle of administrative justice. As to the section in the abovementioned provision stating that the container yard operator shall pay the import tax, it shall be dealt with subject to J. Y. Interpretation No. 219 since the container yard was the holder of the shorted cargos at the time the shortage occurred, for which no further interpretation is necessary.

Justice Geng Wu filed concurring opinion.
Justice Chien-Tsai Cheng filed concurring opinion.

本號解釋吳大法官庚、鄭大法官健才分別提出協同意見書；李大法官志鵬提出不同意見書。

Justice Chih-Peng Lee filed dissenting
opinion.