

LEGAL REGULATIONS ON THE CONTROL OF TOBACCO AND TOBACCO MATERIAL IMPORT-EXPORT ACTIVITIES IN VIETNAM – CURRENT SITUATION AND SUGGESTED SOLUTIONS

REGULAMENTOS LEGAIS SOBRE O CONTROLE DAS ATIVIDADES DE IMPORTAÇÃO-EXPORTAÇÃO DE TABACO E DE MATERIAIS DE TABACO NO VIETNÃ – SITUAÇÃO ATUAL E SOLUÇÕES SUGERIDAS

Nguyen Thi Tinh

Faculty of Law, Thuongmai University,
Vietnam

E-mail: nguyenthitinh@tmu.edu.vn

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Corresponding author:

nguyenthitinh@tmu.edu.vn



Abstract: The control of tobacco imports and export activities, including tobacco raw materials, is one of the measures directly affecting the quantity and volume of tobacco circulating in the market. In recent years, the Vietnamese Government has made numerous efforts to fulfill commitments under the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), such as enacting the Law on Tobacco Harm Prevention and other related legal documents to reduce the smoking rate in Vietnam. However, according to the assessment of the WHO, Vietnam still belongs to the group of countries with a high smoking rate globally. This article focuses on analyzing and evaluating the current legal situation in Vietnam in various aspects, such as import and export principles, import and export conditions, competent authorities for import and export, requirements for imported tobacco, import procedures, import licensing procedures, import quantities, import reporting requirements, labeling and warnings regulations, and so on thereby identifying the shortcomings and limitations that require improvement in the law system.

Keywords: Tobacco. Tobacco control. Tobacco import and export activities. Vietnam

Resumo: O controle das actividades de importação e exportação de tabaco, incluindo as matérias-primas do tabaco, é uma das medidas que afectam directamente a quantidade e o volume de tabaco que circula no mercado. Nos últimos anos, o governo vietnamita tem feito numerosos esforços para cumprir os compromissos assumidos no âmbito da Convenção-Quadro da Organização Mundial de Saúde para o Controlo do Tabaco (CQCT da OMS), tais como a promulgação da Lei sobre a Prevenção dos Danos do Tabaco e outros documentos legais relacionados para reduzir a taxa de tabagismo no Vietname. . No entanto, de acordo com a avaliação da OMS, o Vietname ainda pertence ao grupo de países com elevada taxa de tabagismo a nível mundial. Este artigo centra-se na análise e avaliação da actual situação jurídica no Vietname em vários aspectos, tais como princípios de importação e exportação, condições de importação e exportação, autoridades competentes para importação e exportação, requisitos para tabaco importado, procedimentos de importação, procedimentos de licenciamento de importação, quantidades de importação , requisitos de relatórios de importação, regulamentos de rotulagem e advertências, e assim por diante identificando as deficiências e limitações que requerem melhorias no sistema jurídico.

Palavras-chave: Tabaco. Controle do tabaco. Atividades de importação e exportação de tabaco. Vietnã

1. Introduction

According to the World Health Organization (WHO), Vietnam has approximately 40,000 deaths annually due to tobacco-related diseases (nearly four times higher than the number of deaths from traffic accidents each year). If Vietnam does not promptly implement effective measures for tobacco harm prevention and control, this figure may reach 70,000 cases per year by 2030. According to the Ministry of Health's 2021 survey, 44.4% of non-smokers in Vietnam (38.7% male and 47.6% female) are exposed to tobacco smoke at home. Although the passive smoking rates in bars, cafes, and restaurants have decreased since 2015, they still remain significantly high, reaching 86.2% and 78.1%, respectively (Hien Minh, 2021)¹

In the Vietnam National Assembly meeting on May 31, 2023, a parliamentary delegate presented figures indicating that the expenses on tobacco in Vietnam constitute 1% of the GDP. Approximately 15.6 million adults, accounting for 22.5% of the population, are tobacco users, ranking Vietnam 15th in the world for tobacco consumption (Trung Hung, 2023)². Meanwhile, the tobacco supply in Vietnam remains inadequately regulated, allowing people to easily purchase tobacco products anywhere, from urban to rural areas, with highly diverse prices. In 2019, the price of a pack of cigarettes in Vietnam ranged from 6,000 to below 20,000 VND, placing Vietnam among the 15 countries with the cheapest tobacco prices globally (Tran Lam, 2023)³. Until now, the WHO still assesses tobacco prices in Vietnam as unbelievably low, implying that cost is not a barrier to prevent young people from developing smoking habit (Nam Phuong, 2022)⁴. This is one of the reasons why the number of smokers remains high, and the smoking rate decreases slowly each year.

In addition, new products such as heated tobacco and electronic cigarettes containing nicotine are becoming increasingly popular, attracting many adolescents and creating dependence on these potentially harmful products. According to a survey, the use of electronic cigarettes in the age group of 13-15 in 2022 was 3.5%, compared to 2.6% in 2019. Vietnam's achievements in reducing the conventional cigarette smoking rate over the past decade are at risk of being undermined by the growing use of new-generation tobacco products among the youth now. Surveyed data indicate that the trend of using electronic cigarettes is increasing in the age group of 15-24 (7.3%), compared to the groups of 25-44 (3.2%) and 45-64 (1.4%) (Vietnam News Agency, 2023)⁵.

¹ Hien Minh (2021), Smoking Rate Among Women Increasing, <https://baochinhphu.vn/ty-le-hut-thuoc-la-o-nu-gioi-gia-tang-102305936.html> (accessed on 23/11/2023).

² Trung Hung (2023), National Assembly deputies mention alarming figures on tobacco use in Vietnam, <https://nhandan.vn/dai-bieu-quoc-hoi-neu-nhung-con-so-dang-bao-dong-ve-su-dung-thuoc-la-o-viet-nam-post755509.html> (accessed on 23/11/2023).

³ Tran Lam (2023), Tobacco in Vietnam is too cheap, <https://vnexpress.net/thuoc-la-o-viet-nam-qua-re-4632177.html> (accessed on 23/11/2023).

⁴ Nam Phuong (2022), WHO: "Tobacco prices in Vietnam are unbelievably cheap", <https://dantri.com.vn/suc-khoe/who-gia-thuoc-la-tai-viet-nam-re-den-muc-kho-tin-20221123133755201.htm> (accessed on 23/11/2023).

⁵ Vietnam News Agency (2023), The Rate of Electronic Cigarette Use in Young Adults and Adolescents Increasing, <https://vtv.vn/xa-hoi/gia-tang-ty-le-hut-thuoc-la-dien-tu-trong-lua-tuoi-thanh-thieu-nien-20230308133603686.html> (accessed on 23/11/2023).

In the context mentioned above, the control of tobacco and tobacco material import-export activities is one of the crucial aspects of the tobacco harm prevention and control program aiming at reducing the tobacco supply and orienting towards a smoke-free environment.

For these reasons, this article will focus on introducing the legal framework for controlling tobacco and tobacco material import-export activities in Vietnam. Additionally, it will propose some policies to help Vietnam achieve the objectives outlined in the 2007 United Nations Framework Convention on Tobacco Control (FCTC).

2. Results and Discussion

2.1. FCTC and the domestic legal implementation of regulations on tobacco and tobacco material import-export control in Vietnam currently

The World Health Organization Framework Convention on Tobacco Control (FCTC) was established with the objective of *"protecting present and future generations from the devastating health, social, environmental, and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional, and international levels, in order to significantly and continuously reduce tobacco use and exposure to tobacco smoke"* (Article 3, FCTC). In the interest of public health, the FCTC mandates and supports countries to develop strategies not only to reduce tobacco consumption (Part 3 of the FCTC, from Article 6 to Article 14) but also to aim at reducing the supply (Part 4 of the FCTC, from Article 15 to Article 17). Specifically, to protect public health, FCTC requires and encourages countries that ratify the WHO FCTC to implement measures outlined in the Convention to reduce demand and protect the population from exposure to tobacco smoke in indoor workplaces, public transportation, indoor public spaces, and other public places.

After ratifying the WHO FCTC, the Government of Vietnam has issued various legal documents to regulate tobacco business activities. Notable examples include the Law on Tobacco Harm Prevention 2012, the Law on Foreign Trade Management 2017, the Law on Import Duty and Export Duty 2016, and related guiding documents concerning the control of tobacco and tobacco material import-export activities. Some of these documents are: (1) Decree 67/2013/NĐ-CP: Detailed regulations and measures for implementing the Law on Tobacco Harm Prevention regarding tobacco business. (2) Decree 69/2018/NĐ-CP: Detailed regulations for some provisions of the Foreign Trade Management Law. (3) Circular 23/2015/TT-BYT: Issued by the Ministry of Health, setting national technical standards for cigarettes. (4) Circular 37/2013/TT-BCT: Issued by the Ministry of Industry and Trade, concerning the import of cigars and cigarettes. (5) Circular 57/2018/TT-BCT: Detailed regulations for some provisions of decrees related to tobacco business. (6) Circular 12/2018/TT-BCT: Detailed regulations for some provisions of the Foreign Trade Management Law and Decree 69/2018/NĐ-CP.

The legal documents mentioned above aim to control the activities related to the import and export of tobacco and tobacco materials through various regulations. These include principles of tobacco import and export, conditions for tobacco import and export, authorized entities for tobacco import, requirements for imported tobacco, import procedures, import license procedures, imported quantities, import reporting systems, and tobacco export and import taxes. All these measures are designed to control the origin, quantity, and quality of tobacco products in the market. According to the laws of Vietnam, the State centrally manages the import of tobacco and tobacco materials, ensuring the fulfillment of international commitments and programs for preventing and combating the harms of tobacco organized by the WHO. However, up to the current time, these regulations have not yet achieved the goals of reducing the smoking rate set by the Vietnamese government.

2.2. The legal regulations on the control of tobacco and tobacco material import-export activities

2.2.1. The control of tobacco import activities

(1) Principles of tobacco import activities

As stipulated in Article 30, Section 1 of Decree 67/2013/NĐ-CP detailing certain provisions and measures for implementing the Tobacco Harm Prevention Law concerning tobacco business operations (hereinafter referred to as Decree 67), the import of tobacco products for commercial purposes must adhere to the following principles:

Firstly, the implementation of state trading in the import of tobacco products. State trading in the field refers to a mechanism that the State designates a leading enterprise to handle the import of tobacco products. In Vietnam, the Ministry of Industry and Trade has the authority to designate the enterprise responsible for state trading in the import of tobacco products (as regulated in Section 2, Article 30, Decree 67). Through this regulation, the Vietnamese Government tightly controls the supply of tobacco products through the import activities, both in terms of quantity and quality.

Secondly, imported tobacco products must bear imported tobacco stamps issued by the Ministry of Finance. As stipulated in the regulations in Section 2, Article 3 of Circular 23/2015/TT-BYT issued by the Ministry of Health, establishing national technical standards for cigarettes (referred to as Circular 23), imported tobacco products must bear electronic stamps. An electronic stamp is identifiable by the naked eye and contains electronic information that can be queried on the Electronic Information Portal of the General Department of Taxation and the General Department of Customs to facilitate the management tasks of businesses, consumers, and state management agencies. Principles of affixing electronic stamps: (i) Imported tobacco products and domestic tobacco products for domestic consumption must bear electronic stamps. (ii) Tobacco products must be packed in a unit, hereinafter referred to as a tobacco pack (including packets or boxes). Each tobacco pack must bear one (01) electronic stamp. In cases where a tobacco pack uses an outer nylon, the electronic stamp

must be affixed to the tobacco pack before applying the outer wrap. The electronic stamp must be affixed in a position to ensure that when the tobacco pack is opened, the stamp will be torn.

The stipulations regarding the affixing of stamps, as mentioned above, serve the purpose of tightly controlling the origin of products, the quantity of imported tobacco products, the year of importation, and can be queried on the Electronic Information Portal of the General Department of Taxation. This ensures strict compliance with legal regulations on imports and tax laws.

Thirdly, imported tobacco products must adhere to management requirements regarding production volume, licenses, labels, and packaging, as well as the provisions of relevant laws similar to domestic tobacco products. This regulation aims to rigorously control both the quantity and quality, as well as the origin of imported tobacco products into Vietnam.

(2) The legal regulations on the control of cigarette and cigar import

Cigarettes and cigars are two traditional tobacco products widely used not only within the territory of Vietnam but also in many other countries. Therefore, the Ministry of Industry and Trade has issued a separate document, namely Circular 37/2013/TT-BCT on the import of cigarettes and cigars (hereinafter referred to as Circular 37), to ensure the tight control over these two types of tobacco products. The control point of view is outlined in Article 5 of Circular 37 as follows:

(i) Tobacco products, including cigarettes and cigars, are discouraged items for consumption according to the WHO FCTC, of which the Socialist Republic of Vietnam is a member. The state centrally manages the import of cigarettes and cigars in line with commitments for Vietnam's accession to the World Trade Organization (WTO). With this principle, Vietnamese law once again affirms that tobacco products are restricted items for consumption in Vietnam due to health hazards, imposing significant burdens on public health and societal costs, while also being a major contributor to environmental and socio-economic harm to the country.

The WHO FCTC also asserts that the global spread of the tobacco epidemic is a worldwide issue with severe consequences for public health. It emphasizes the need for international cooperation and the broadest participation of all countries in an effective, appropriate, and comprehensive international effort to deal with this epidemic. The international community is concerned about the devastating global consequences on health, society, economy, and the environment caused by tobacco consumption and exposure to tobacco smoke, about the increasing global consumption and production of tobacco and other tobacco products, especially in developing countries. Additionally, there is concern about the burden that places on families, the impoverished, and national healthcare systems. Vietnam, as a developing country, faces a particularly serious risk to its national healthcare system and the health damage to its people if the supply of tobacco is not controlled. Therefore, the principle of discouraging the consumption of tobacco products, including cigarettes and cigars, is one of the

consistent principles from the Law on Prevention and Control of Tobacco Harms to the guiding Decrees of the Government and specific Circulars from the Ministry of Industry and Trade, as mentioned earlier.

(ii) In accordance with Vietnam's commitments to the WTO regarding the state trading regime, only traders designated by the Ministry of Industry and Trade are allowed to import cigarettes and cigars. Currently, the Ministry of Industry and Trade designates the Vietnam National Tobacco Corporation (VINATABA) as the state trader for the importation of cigarettes and cigars. With this principle, Vietnam can control the quantity of cigarettes circulating in the market, ensuring strict control over the supply in the market.

However, for other types of tobacco products, including fiber tobacco for pipe smoking and other products for smoking, chewing, sniffing (including heated tobacco products), there are no specific regulations. Therefore, the control of these types of tobacco products adheres to the general principles of importing and exporting tobacco products and raw materials as stipulated in Decree 67, as discussed in section 2.2.1(1). In addition, electronic cigarettes, which are made from completely different components than conventional tobacco, utilize electronic energy, heating elements, and airflows to generate vapor from an e-liquid for users to inhale. Unlike conventional cigarettes, electronic cigarettes do not contain tobacco fibers, do not burn, and therefore do not produce carbon monoxide, tar, or smoke (Christopher J Brown, James M Cheng, 2014)⁶. According to the Ministry of Health of Vietnam, the use of electronic cigarettes poses risks of nicotine addiction and various health issues, including cancer, especially lung and throat cancer, respiratory diseases, increasing risk of blood clots. More serious than conventional cigarettes, electronic cigarettes also cause coronary artery constriction and are associated with acute lung injury syndrome... (Workshop on the harms of new tobacco - Practical and legal issues, Ministry of Health, 2022)⁷. With the current legal situation, the lack of regulations to control other types of tobacco products rather than the conventional cigarettes and cigars leaves a legal loophole that needs further research to establish an appropriate control mechanism. This is particularly crucial in the context of new tobacco products such as heated tobacco and electronic cigarettes becoming increasingly common in the Vietnamese market.

(3) The conditions for cigarette and cigar import

Article 7 of Circular 37 stipulates that imported cigarettes and cigars circulating in the Vietnamese market must meet the following conditions:

(i) They must be registered for the protection of the right to use the trademark for goods in Vietnam; they must have the imported cigarette stamp as regulated by the Ministry of Finance. The registration of the trademark protection and the application of the import stamp serve the purpose of controlling both the origin

⁶ Christopher J Brown, James M Cheng (2014), Electronic cigarettes: product characterization and design considerations, https://tobaccocontrol.bmj.com/content/23/suppl_2/ii4 (accessed on 27/11/2023).

⁷ Workshop on the harms of new tobacco - Practical and legal issues (2022), Ministry of Health, <https://vuphapche.moh.gov.vn/pages/news/17592/Hoi-thao-chuyen-de-tac-hai-cua-thuoc-la-moi---Cac-van-de-thuc-tien-va-phap-ly.html> (accessed on 25/10/2022).

and the quality of tobacco. This is to prevent the circulation of smuggled, counterfeit, or fake tobacco products in the market, ensuring the ability to control the quantity and quality of tobacco in the Vietnamese market.

(ii) They must comply with current legal regulations on the sale of tobacco products. Specifically, depending on the business activities, businesses involved in the sale of tobacco products must adhere to the conditions for obtaining licenses to distribute, wholesale, or retail tobacco products. In addition, entities engaged in the importation of tobacco must comply with regulations prohibiting activities promoting the trade of tobacco and business locations to the sale of tobacco. These regulations aim to limit individuals and organizations participating in the tobacco product trade, ensuring that business activities are tightly controlled and have a clear traceable origin.

(iii) They must comply with current legal regulations on the announcement of conformity, standards, or compliance with food safety regulations; inspect the safety and hygiene quality and the content of harmful substances in cigarettes, similar to domestically manufactured cigarettes and cigars. This regulation aims to ensure the quality of tobacco products and prevent serious harm to human health.

(iv) For cigarette and cigar brands imported into Vietnam for the first time, before completing the import procedures, traders must submit samples of imported cigarettes and cigars to the designated state agency responsible for analysis and testing, in accordance with the requirements of standards, specifications, or food safety regulations as stipulated by the current laws of Vietnam.

(v) They must comply with current legal regulations on product labeling, especially the labeling of tobacco products consumed in Vietnam, and include health warnings on the packaging.

(4) The import procedures for cigarettes and cigars

In order to import cigarettes and cigars, traders must go through the import registration process and follow specific import procedures as the followings:

(i) Regarding import registration: The import registration is carried out under an automatic licensing regime. According to the regulations in Article 9 of Circular 37, importers must complete the registration as follows: Before proceeding with the import procedures, traders must send, via postal services, one set of documents for the automatic import registration of cigarettes and cigars to the Import-Export Department, Ministry of Industry and Trade (54 Hai Ba Trung Street, Hoan Kiem District, Hanoi). The documents include: 2 copies of application form, following the form in the Appendix II issued with the Circular for automatic import registration of cigarettes and cigars; 1 copy (certified with a seal identical to the original copy of the trader) of Import contract; 1 copy (certified with a seal identical to the original copy of the trader) of Commercial invoice; 1 copy (certified with a seal identical to the original copy of the trader) of Bill of lading or transport documents for the shipment.

Within 5 working days from the date of receiving the complete and valid dossier from the trader, the Import-Export Department of the Ministry of Industry and Trade will confirm the application for automatic

import registration of cigarettes and cigars. In case the dossier is incomplete or invalid, or if the confirmation is not granted, the Import-Export Department will notify the trader in writing to supplement the dossier or provide clear reasons.

The validity period of the confirmed application for automatic import registration by the Import-Export Department is 30 days from the confirmation date.

(ii) Regarding the import procedures: Article 8 of Circular 37 specifies the followings:

When carrying out import procedures, in addition to the import dossier as required by the Customs authorities, traders must present to the Customs authorities one certified original copy of the confirmed application for automatic import registration of cigarettes and cigars issued by the Import-Export Department and one copy of the conformity announcement (certified with a seal identical to the original copy of the trader) or one copy of the food safety conformity announcement (certified with a seal identical to the original copy of the trader) according to the current legal regulations. For cases of cigarette and cigar brands first imported into Vietnam, traders must also present one copy of the Sample Analysis Certificate (certified with a seal identical to the original copy of the trader).

Cigarettes and cigars are only allowed to be imported into Vietnam through international border gates. Therefore, all routes of small-scale imports or imports through main border gates, auxiliary border gates, and open border paths without passing through international border gates are considered illegal imports.

(5) The reporting regime for import activities

According to the regulations in Article 10 of Circular 37, on a quarterly basis, within the first 15 days of the subsequent quarter, cigarette and cigar importers must directly submit or use postal services to send written reports to the Import-Export Department of the Ministry of Industry and Trade. The reports should detail the automatic import situation of cigarettes and cigars in the previous quarter, specifying the type, quantity, import value, selling price, and the expected import plan for the upcoming period. Before October 15th each year, cigarette and cigar importers are required to report to the Import-Export Department on the import results of the three previous quarters and provide expected import plan for the following year.

The periodic reporting regulations aim to ensure that the State can regularly monitor the import situation of tobacco products and anticipate importation trends in the coming period. These provisions serve as a supportive measure to control the quantity of imported tobacco products into Vietnam, enhancing the responsibility of importers and preventing loose management that could lead to an uncontrolled supply of tobacco products in the market.

2.2.2. The control of tobacco export activities

According to the provisions in Clause 3, Article 30 of Decree 67, the export of tobacco products must adhere to the following principles:

Firstly, traders holding a License for tobacco product manufacturing, distribution, or wholesale are permitted to export tobacco products with a legal origin.

In cases where a trader is authorized to export tobacco products on behalf of another trader holding a License for tobacco product manufacturing or tobacco distribution, or wholesale, the authorized trader must possess one of the three aforementioned types of licenses.

Secondly, for traders holding a License for tobacco product manufacturing, the quantity of exported tobacco products is not deducted from the production quota for tobacco products intended for domestic consumption.

These principles aim to ensure the fulfillment of Vietnam's commitments in tobacco production, comply with international regulations on tobacco control, and enhance the competitive capabilities of Vietnamese tobacco products in the international market. It can be observed that the regulations for controlling tobacco exports are not as strict as those for tobacco imports. This can be easily explained, as each country has its own legal system for controlling imported tobacco products for domestic consumption. Therefore, as an importing country, Vietnam will have regulations with a stricter control for tobacco products imported into Vietnam. Similarly, Vietnamese enterprises exporting tobacco to other countries will also have to adhere to the stringent regulations of the importing country regarding the quantity, quality, and origin of tobacco products.

2.2.3. The general conditions for labeling and health warning on imported and exported tobacco packaging

According to the regulations in Article 15 of the Tobacco Harm Prevention Law, to properly warn consumers about the hazards of tobacco and reduce tobacco use, when manufacturing or importing tobacco for consumption in Vietnam, tobacco products must be labeled with health warnings on the packaging.

Labeling for tobacco products produced or imported for consumption in Vietnam must be done in Vietnamese, following the legal regulations on trademarks, and must meet the following requirements: (i) Health warnings must be clear, visible, and understandable, using both text and images; (ii) Application of labels or printing of codes, barcodes; inclusion of manufacturing date, and expiration date; (iii) Clear indication of the quantity of cigarettes for cigarette packs or weight for other tobacco products; (iv) Avoidance of words or phrases that may mislead readers or users into believing that the tobacco product is less harmful or misunderstand the hazards of tobacco and tobacco smoke on human health.

Regarding the content: Health warning content on tobacco packaging must specifically describe the hazards of tobacco use on health and other appropriate messages, and it must be changed every two years. This regulation aims to continuously convey complete information on the hazards of tobacco, ensuring regular and updated approaches to prevent monotony and to deliver various information to consumers.

Regarding the label size: Health warnings must cover at least 50% of the main front and back surfaces on the packaging of each cigarette pack, carton, or box. This regulation aims to ensure that information on the hazards of tobacco is prominently accessible, and the information is conveyed substantially, not just as a formality.

For intended export tobacco products, labeling must comply with the regulations of the importing country. Since exported tobacco products are consumed in the importing country, when exporting tobacco products to another country, they must adhere to the packaging regulations of the importing country. Similarly, like tobacco products imported for consumption in Vietnam, exported products must comply with labeling and health warning regulations on packaging, as analyzed above.

2.2.4. The conditions for importing tobacco raw materials and cigarette paper:

As stipulated in Article 36 of Decree 67 and Article 3 of Circular 57, entities importing tobacco raw materials and cigarette paper for domestic consumption, production for export, or processing for export must meet the following conditions:

Firstly, regarding the entities: The entities must have a license to manufacture tobacco products or a license to process tobacco raw materials. Currently, the import of tobacco raw materials is only allowed for the purpose of manufacturing tobacco products and processing tobacco raw materials. The import of cigarette paper is only allowed for the purpose of manufacturing tobacco products. According to current legal regulations, enterprises producing tobacco products must have a license to manufacture tobacco products, and enterprises processing tobacco raw materials must have a license to process tobacco raw materials. Therefore, regulating this condition is necessary to ensure that the import of raw materials and cigarette paper is done for the intended purpose and to prevent unrestricted exchange and trading without adhering to the specified purposes.

Secondly, regarding the condition for quantity importation in the case of domestic consumption: Imported tobacco raw materials and cigarette paper must be consistent with the production capacity granted to the enterprise. This regulation aims to control the domestic tobacco supply. Accordingly, the total annual production and importation of tobacco for domestic consumption by the entire tobacco industry must not exceed the total industry production capacity announced by the Ministry of Industry and Trade before the promulgation of the Law on Prevention and Control of the Tobacco Harms. The annual production and importation of tobacco products by enterprises for domestic consumption must not exceed the quantity specified in the License to Manufacture Tobacco Products. Therefore, the State controls the quantity of imported tobacco raw materials and cigarette paper for the purpose of domestic consumption by enterprises to ensure that enterprises comply with regulations regarding the quantity of tobacco products consumed domestically.

According to Decree No. 69/2018/NĐ-CP, tobacco raw materials are goods subjected to the tariff quota regime, and is managed under the Import License. In accordance with Article 1 of Circular No. 12/2018/TT-BCT of the Ministry of Industry and Trade providing detailed regulations on some articles of the Law on Foreign Trade Management and Decree No. 69/2018/NĐ-CP of the Government providing detailed regulations on some articles of the Law on Foreign Trade Management (referred to as Circular 12), the entities considered for an Import License under the tariff quota for tobacco raw materials are traders holding a cigarette manufacturing license issued by the Ministry of Industry and Trade and having a demand for importing tobacco raw materials for cigarette production. Annually, before November 15th, the Ministry of Industry and Trade decides on the tariff quota for the following year, then issues a circular regulating the import of tobacco raw materials under the tariff quota for the next year.

Thirdly, for the case of production for export or processing for export, enterprises must have contracts for the production and export or processing and export of tobacco products or tobacco raw materials. Unlike the importation of tobacco raw materials, materials for production of domestically consumed tobacco products, the import of materials for processing exported products, and the production of exported goods are exempt from import duties (Article 6, 7 of the 2016 Law on Export Duty and Import Duty). Therefore, the tariff quota for the quantity, volume, and value of tobacco raw materials are not applied. The provision on contracts is to ensure that the quantity of tobacco raw materials and cigarette paper proposed for importation by enterprises is for export purposes, not for domestic consumption, and the quantity of imports must match the content of the production and export or processing and export contracts.

However, currently, there is a significant drawback, which is the lack of specific regulations regarding the transfer of imported tobacco materials and cigarette paper for the execution contracts for manufacturing for export or processing for export (according to specific contracts) into other contracts of those types. This results in waste in terms of costs and materials for businesses engaged in export production and processing, as these activities do not increase the consumption of tobacco products domestically. Therefore, in cases where businesses change materials and imported cigarette paper to execute other processing for export contracts, it may be considered and approved under the condition that it does not affect the consumption volume of tobacco products domestically.

Fourth, the condition for written agreement: obtaining the consent of the Ministry of Industry and Trade. The law does not stipulate that businesses must have a license to import tobacco materials, cigarette paper. However, according to Article 29, Clause 1 of the Law on Foreign Trade Management, the condition "obtaining the consent of the Ministry of Industry and Trade" is a legally valid form equivalent to an import license. Therefore, tobacco materials and cigarette paper are goods managed under the import license. This regulation helps the state management agencies tightly control the import of tobacco materials and cigarette paper. However, currently, in the legal system of Vietnam, there is no regulation that clearly expresses the

process, time limit for resolution, responsibilities for acceptance or rejection notification from the Ministry of Industry and Trade to ensure the legal and legitimate rights of businesses. This can lead to "exhausted" waiting of businesses for the "approval of the Ministry of Industry and Trade," causing waste of time and money for them.

Some discussion and suggested solutions to improve regulations on the control of tobacco and tobacco raw materials import and export activities

Firstly, controlling the import and export activities of tobacco and tobacco raw materials is one of the measures contributing to reducing the source of tobacco supply to the domestic and international markets. Simultaneously, it helps control the quality of tobacco products, reducing the harm caused by tobacco use due to the consumption of low-quality products, aiming to fulfill commitments under the FCTC. To reduce the tobacco supply, the Vietnamese Government cannot only rely on general guiding principles but must also establish specific control measures for all types of tobacco (not just including cigars and cigarettes). Only then can there be comprehensive control over the supply and demand for tobacco in accordance with FCTC requirements. In the current legal system of Vietnam, the focus has mainly been on the importation of cigars and cigarettes, leaving a significant gap in controlling export and import activities for types of tobacco other than cigars and cigarettes. This includes various forms of tobacco such as fiber tobacco for pipe smoking and other products for smoking, chewing, or sniffing. Therefore, in the near future, the Vietnamese Government needs to consider supplementing detailed regulations to control export and import activities for these types of tobacco.

Secondly, Vietnam has virtually no regulations regarding the control of new-generation tobacco products (including heated tobacco and electronic cigarettes), while these products are widely bought and used in the market⁸, causing significant health hazards to users, especially among the youth. This perspective has been emphasized by Nguyen Thi Tinh in the article "Experiences in controlling electronic cigarettes in some countries worldwide and suggestions for Vietnamese law" in the Law Journal of Hanoi University of Law, issue 03/2023. The author asserts that, despite differences from conventional cigarettes, electronic cigarettes still contain or extracted from nicotine and have addictive potential. Therefore, the Vietnamese government needs to establish a rigorous policy management mechanism to ensure the health of users while remaining in line with international norms on the product management (Nguyen Thi Tinh, 2023)⁹. Therefore, the Vietnamese government should promptly form a viewpoint on control, issuing regulations on standards, conditions, business procedures, and import-export for these types of tobacco products, which have become very common in the daily lives of the people in Vietnam today.

⁸ Information from the Ministry of Information and Communications (2023), E-cigarettes Flooding the Internet: Prohibited but easy to buy, <https://mic.gov.vn/pcthtl/Pages/TinTuc/160589/Thuoc-la-dien-tu-tran-lan-cho-mang-Hang-cam-nhung-mua-de.html> (accessed on 31/10/2023)

⁹ . Nguyen Thi Tinh (2023), Experiences in controlling electronic cigarettes in some countries worldwide and suggestions for Vietnamese law, Journal of Law, March 2023.

Thirdly, concerning regulations on controlling the import of tobacco raw materials and cigarette paper, the current conditions for import are not transparent, and the responsibilities of the Ministry of Industry and Trade in reviewing import registration files are not clearly outlined. Regulations regarding the transfer of imported tobacco materials and cigarette paper to execute specific contracts for manufacturing for export or processing for export to perform other contracts of those types are not specifically defined, causing difficulties and wastage for businesses. Specifically:

The conditions for enterprises to import tobacco raw materials and cigarette paper for domestic consumption, domestic production for export, and processing for export must meet the four conditions analyzed in section 2.2.4. Among them, the fourth condition is "obtaining the consent of the Ministry of Industry and Trade at point d, Clause 2, Article 36 of Decree 67/2013/ND-CP." According to our analysis, it is essential to make this regulation transparent by clearly defining the process through which the Ministry of Industry and Trade reviews the company's proposal. There should be clarification on the timeframe within which the Ministry of Industry and Trade is required to respond, either by accepting or rejecting the company's proposal. In cases where the application is deemed invalid, the Ministry of Industry and Trade must allow the company to complete it within a specific period. In cases where, after reviewing the application, the Ministry of Industry and Trade disagrees, they must be responsible for notifying the company in writing, clearly stating the reasons for non-acceptance.

For the conditions of importing tobacco raw materials and cigarette paper for the purpose of manufacturing for export or processing for export: The Vietnamese Government should supplement regulations to allow businesses that have imported tobacco raw materials and cigarette paper to carry out specific contracts for manufacturing for export or processing for export, provided that it does not increase the consumption of tobacco domestically and still ensures the legitimate rights of tobacco export businesses. If allowing a change of purpose as mentioned above, it is necessary to supplement regulations to tightly manage the contracts for manufacturing and exporting tobacco products of the enterprise, through regulations on the conditions and procedures for implementing this conversion.

3. Conclusion

In Vietnam, the control of tobacco and tobacco raw material import and export has been a matter of concern for the government, as evidenced by the issuance of various legal documents at both statutory and sub-statutory levels. However, the control has primarily focused on general principles and concentrated on regulating traditional tobacco products such as cigars and cigarettes. There is currently no comprehensive legal framework to control other tobacco products (such as fiber tobacco for pipe smoking and other products used for smoking, chewing, sniffing), and specifically, there is no document expressing a clear and specific viewpoint

on controlling new-generation tobacco products (electronic cigarettes, heated tobacco). This legal gap needs immediate supplementation to control the prevalent buying and using of electronic cigarettes and heated tobacco products in Vietnam.

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