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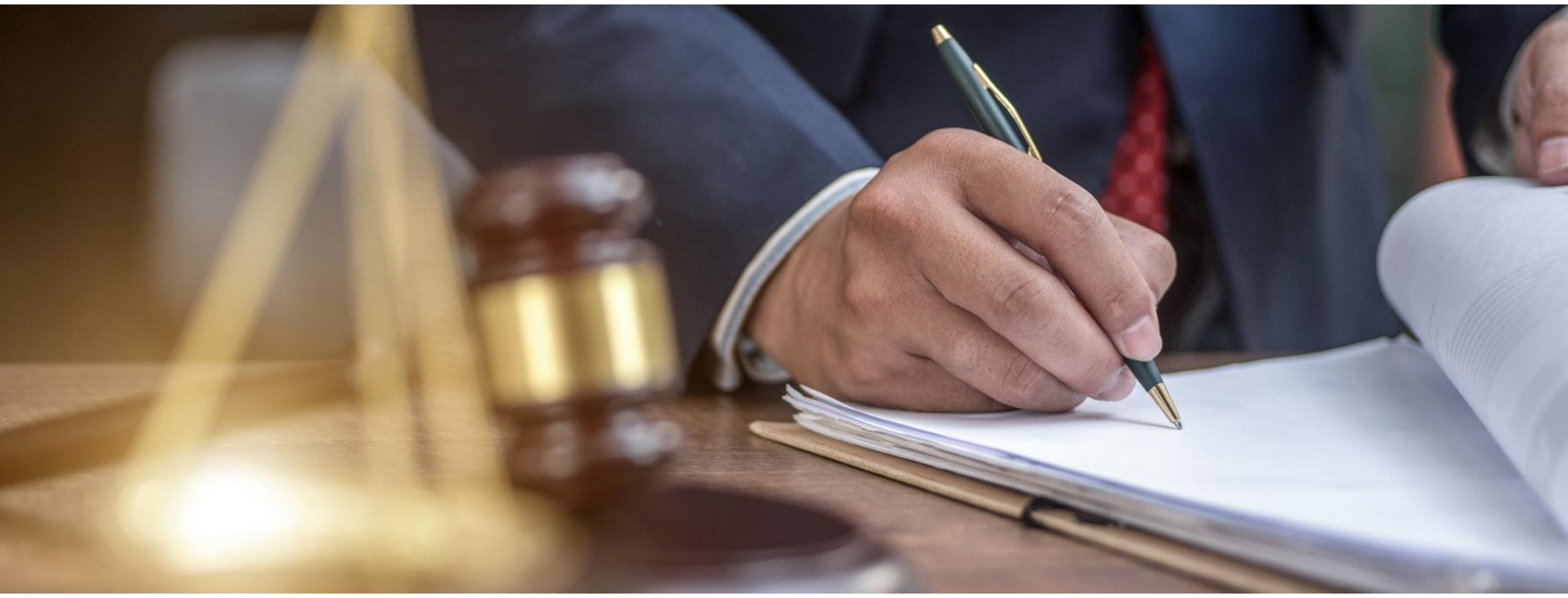

Newsletter

Key Changes Introduced by the New Customs Sanctioning Regime

The new customs sanctioning regime set forth in Bill 312 of 2025 introduces a structural shift from the framework established under Decree-Law 920 of 2023, moving from a traditional sanctioning model to one that is more protective of due process, preventive in nature, and focused on voluntary compliance. In this context, one of the most significant developments is the express incorporation of principles such as **good faith, proportionality, the prevalence of substance over form, harmfulness, and due diligence**, which now play a central role in the interpretation and application of sanctions.

This represents a departure from the more formalistic approach adopted under **Decree 920 of 2023**, which, although it included certain principles, did not develop them to the same practical extent. Under the proposed sanctioning framework, the treatment of errors in relation to legalization and correction mechanisms is more flexible than under **Decree 920 of 2023**.

Previously, the distinction was more rigid, and many errors could directly lead to sanctions or even measures such as legalization or forfeiture.

The new approach is based on the materiality of the conduct; formal errors that do not affect customs control may be corrected without sanctions or may qualify for benefits, whereas substantive errors that affect the lawful importation of goods or involve actual irregularities may still result in legalization procedures, sanctions, or forfeiture. In short, **not every error is sanctionable**, but only those that cause a real impact on customs control.

Additionally, the new regime significantly strengthens the concept of **voluntary compliance** through mechanisms such as settlement without payment in certain cases where the infringement is not classified as very serious, partial settlement, and the possibility of correcting errors without sanctions when they are identified by the customs authority. While **Decree 920 of 2023** already provided mechanisms such as persuasive compliance management to encourage users to correct inconsistencies, the new law expands the available benefits and reduces the sanctioning burden, clearly favoring early correction over punitive enforcement.

Another significant development is the **reduction and rationalization of sanctions**. The new regime introduces substantial reductions in sanction percentages, including the reduction of certain fines from 200% to 100% of the value of the goods, as well as the possibility of reductions of up to 40% depending on the circumstances of the offender. Likewise, **due diligence as a ground for exemption from liability** is expressly incorporated, allowing users to avoid sanctions if they can demonstrate that they acted with the appropriate level of care. This constitutes a notable improvement over the more objective liability model established under **Decree 920 of 2023**.

Regarding the classification of infringements, the proposal reflects a trend toward **simplification and consolidation**. The new regime consolidates common infringements applicable to different customs stakeholders and specifically addresses particularly sensitive conduct, such as the simulation of foreign trade transactions, the use of fictitious suppliers, or the omission of relevant information reporting obligations. Although **Decree 920 of 2023** already classified infringements as minor, serious, and very serious, the new framework seeks to provide greater clarity and consistency in the application of sanctions by reducing duplication and ambiguity.

With respect to enforcement activities, the bill maintains and strengthens the role of the DIAN by consolidating tools such as post-clearance audits and expanding supervisory powers. This is complemented by the extension of review periods in certain cases, enabling the administration to exercise more effective oversight of foreign trade operations, in line with the broad enforcement powers already provided under **Decree 920 of 2023**.

Likewise, the new regime introduces flexibility measures for customs users, particularly those with less operational experience. For example, in certain cases, a first infringement may not result in a sanction for users with less than three years of operation, and some specific sanctions, such as those related to the minimum equity requirements for customs agencies, are eliminated. These measures seek to encourage formalization and facilitate the entry of new participants into international trade.

Regarding documentary obligations, the proposal strengthens control mechanisms by establishing that the absence of supporting documents may constitute a direct ground for the seizure of goods, thereby increasing the importance of proper document management in customs operations. Furthermore, specific sanctions are introduced for failure to comply with reporting obligations, reflecting a stronger information-based control approach.

A cross-cutting feature of the new regime is its focus on the **materiality of transactions**. Authorities will be required to conduct comprehensive analyses that take into account the economic and documentary reality of each transaction, reducing the relevance of purely formal errors.

This approach is consistent with the principle of the prevalence of substance over form, which is expressly incorporated into the new legislation. Another important change introduced by the bill is contained in **Article 98**, which establishes a key modification regarding the **finality and enforceability of administrative acts**. Unlike the uniform framework under **Decree 920 of 2023**, the proposed regime adopts a differentiated approach depending on the type of user and the existence of guarantees. Under the new framework, although administrative acts remain enforceable once final, their execution is no longer automatic in all cases. For Authorized Economic Operators (AEOs), users holding global guarantees, public law entities, and persons or entities covered by international agreements, enforcement and collection actions are deferred until a final judicial decision has been issued.

The proposal also introduces significant adjustments to administrative procedures, particularly with respect to official assessments, which become the general rule without the strict distinction between correction assessments and review assessments that existed under **Decree 920 of 2023**. This change simplifies procedures and may contribute to greater administrative efficiency.

Finally, the new regime introduces advances in transparency and information systems by establishing that the **Offenders Registry (INFAD)** will become publicly accessible starting in 2028, thereby strengthening traceability and reputational oversight of foreign trade operators.

In conclusion, the transition from Decree-Law 920 of 2023 to the new customs sanctioning regime represents a significant evolution toward a more balanced model, combining stronger governmental oversight with greater safeguards for customs users. The system moves away from a predominantly punitive and formalistic approach toward one based on **prevention, proportionality, and risk management**, in which due diligence, information quality, and the ability to timely correct errors will be decisive factors in mitigating customs sanction risks in international trade.

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