



# **LAWS AND REGULATIONS**

## **PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES**

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.*

### **COLOMBIA**

Communicated by the Government of Colombia

#### **NOTE BY THE SECRETARIAT**

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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PRESIDENCY OF THE REPUBLIC

DECREE No. 1146 OF 31 MAY 1991,  
establishing measures to restore public order.

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,  
in exercise of the powers conferred on him by article 121 of the  
Political Constitution and pursuant to Decree 1038 of 1984, and

Considering:

That in Decree No. 1038 of 1984 1/ public order was declared to be disturbed and martial law was established throughout the national territory;

That one of the reasons why public order was declared to be disturbed and martial law was established throughout the national territory concerned the persistent drug-trafficking activities of anti-social groups which were seriously disrupting the normal functioning of institutions, in criminal contempt for Colombian society, with consequences for the safety of its citizens, public peace and health and the national economy;

That drug trafficking, by its nature, is a criminal activity operating internationally and with international effects, for which reason in order effectively to combat it, there is need to control the transportation and prevent the illicit use of the inputs, chemical products and other items which may be employed in the processing, manufacture or transformation of narcotic drugs or drugs producing psychological or physical dependence, including facilitating joint action by authorities in those countries which are afflicted by this terrible scourge;

That the crime of drug trafficking has resorted to new and increasingly dangerous methods which threaten the core of society and endanger the institutional stability of the country, requiring special, flexible and effective legislation to stop its harmful action and disastrous effects on public order;

That article 110 of the Criminal Code, as amended by article 37 of Law No. 2 of 1984, provides that "the offence carries with it the surrender to the State of the instruments used to commit the offence and the assets and securities derived therefrom";

That the Supreme Court of Justice declared the former law to be capable of execution in its decision of 3 July 1981, and also declared article 47 of Law No. 30 of 1986, 2/ which adopted the National Narcotic Drugs Statute and laid down other provisions, particularly with regard to the legality of the preventive seizure of assets apparently linked to the commission of offences described in that Law to be capable of execution, when it stated: "There is no doubt that the Law allows the ordering of seizure of such assets, for investigatory purposes, to prevent their continued illicit use or, even, to ensure the effective application of the penalty which may be imposed for the acts in question. Under no circumstances can it be accepted, in respect of those who do not show legitimate title to the assets to which the provision refers, or their innocence of the criminal acts described in article 47, that there has been an expropriation in contravention of the constitutional obligations of this Institution under article 30, since in the absence of a legitimate interest of the said owner, there are no grounds for setting it against the legitimate interest of the community, the necessary condition for the State to acquire possession in this way. It is a matter of a sanction for not using the property for the appropriate social purpose, unlike confiscation, and it is founded on article 30 of the Basic Constitution, which is the source of administrative procedures related specifically to the loss of ownership through the failure to use rural property and which the law may well extend to all aspects of property, both immovable and movable, urban and rural" (Supreme Court of Justice, Plenary session, decision of 21 January 1988);

That in order to suppress drug trafficking it has become necessary to adopt measures to allow the State to seize all classes of assets and effects, directly or indirectly connected with the commission of the offences of drug trafficking, related offences and other offences arising therefrom;

That such measures must also be designed to prevent the direct or indirect use in the commission of the offences of drug trafficking or related offences, of public property licensed by the Directorate-General for Shipping and Ports in coastal areas and other areas under its jurisdiction for maritime activities or which may endanger national security;

That it has become necessary to lay down additional provisions, including those by which to control the import and circulation of chemical substances used in the processing of narcotic drugs or substances producing physical or psychological dependence,

DECREES:

CHAPTER ONE

Article 1. While there is disturbance of public order and martial law in the national territory, the transport, transit, arrival, entry into the national territory or storage of the following goods or products shall be subject to the provisions of this Decree, without prejudice to other legislation in force in this matter: acetone (2-propanone; dimethyl-ketone), hydrochloric acid, ethyl ether (sulphuric ether, ethyl oxide, diethyl ether), chloroform (trichloromethane), sulphuric acid, ammonia (ammonium hydroxide), potassium permanganate, sodium carbonates, methyl-ethyl-ketone (2-butanone, MEK), aliphatic solvent No. 1, aliphatic solvent No. 2 thinner, ethyl acetate, methanol or methyl alcohol, butyl acetate, diacetone-alcohol (Pyranon), hexane, butyl alcohol (1-butanol; butyl alcohol, propyl carbinol), and butanol.

Paragraph. Also subject to this Decree shall be any other substances, as determined by resolution of the National Narcotic Drugs Council which may be used for the processing, manufacture or transformation of narcotic drugs or drugs producing physical or psychological dependence.

Article 2. With effect from the entry into force of this Decree, the entry into free trade zones of the goods and products described in article 1 of this Decree shall be prohibited.

The entry of the goods listed in article 1 may be effected only by the customs offices of Barranquilla, Bogotá, Buenaventura and Cartagena. Their bonded warehousing may take place only at the location established for the purpose by each of these customs offices, in agreement with the anti-drugs police.

Paragraph. Exempted are only those products which at the date of publication of this Decree have the relevant permit for entry into a free zone and provided that they have been loaded, with bill of lading, airwaybill or other similar international transport document, issued by a public carrier, at a date concurrent with or prior to the entry into force of this Decree, which may, consequently, enter the customs area of destination or the corresponding free zone.

Article 3. An importer who intends to bring merchandise such as described in article 1 into a free zone and who considers that the circumstances described in article 2 above apply, shall in any case and at the latest at the time of arrival of the ship, inform in writing the manager of the free zone concerned and the port police headquarters of the type and composition of the product, the name of the ship, the quantity, manufacturer and country of origin, the intended destination of the product and the time-limit within which he will remove such products from the free zone, which shall in no case exceed three (3) months, starting from the date of arrival of the ship. In the event of the above time-limit being exceeded, the goods will be declared abandoned in favour of the Nation by the customs administrator in the free zone concerned.

Article 4. Industrial users of the free zone shall have to declare to the Executive Secretariat of the National Narcotic Drugs Council that they require the products described in article 1 above for their industrial, manufacturing or production process in order that the Council may issue a permit to receive and store such products. Current users of industrial free zones shall have three (3) months, with effect from the entry into force of this Decree, to obtain the relevant permit.

The Executive Secretariat of the Council shall issue such permits on condition that it is provided to its satisfaction with the relevant information, which shall include at least:

1. Chemical and commercial name of product.
2. Name and address of suppliers.
3. Country or countries of origin.
4. Trade marks and means of identification.
5. Quantities required for use quarterly and annually.
6. Mathematical relationship between the quantity of the product used in the process and the approximate quantity of finished product obtained.
7. Current stock of such products.

In addition, and on a quarterly basis, the Executive Secretariat of the National Narcotic Drugs Council shall be notified, for each product, of the quantities received, the consumption, the finished products manufactured from these goods, the balance remaining and any other information necessary to carry out a check on stocks and consumption of products described in article 1 of this Decree.

Paragraph. The transfer of such goods from the free zone into the territory under customs control in the same state as they were brought into the free zone is prohibited.

Article 5. On the basis of information supplied by the interested party and his affirmation that he will permit free access and control by the anti-drug police authorities at the place of storage, the Secretariat may issue a permit allowing the interested party to import into industrial free zones those products described in article 1 of this Decree, without prejudice to the powers of inspection and control devolving upon the customs and provided that for each import the other relevant customs regulations in force are complied with. These permits shall be valid for one year.

Article 6. The administration of the free zone shall inform the Executive Secretariat of the National Narcotic Drugs Council of the stock they currently hold of the products described in article 1 of this Decree. The same obligation applies to any person who is the owner, consignee or depositary or any similar category in customs zones, free zones, maritime terminals, private or public docks, or the operator of private docks or any other warehouse or storage specified by the Directorate-General of Customs for the storage of foreign goods.

This information shall be submitted within forty-five (45) days following the entry into force of this Decree, stating as a minimum:

1. Name and domicile of interested party.
2. Name of product in his possession, with indication of the nature of his title to possession.
3. Manufacturer's trade mark.
4. Country of origin.
5. Quantity and form of storage.
6. Intended destination of the product.
7. Name of importer, if known.
8. Name of exporter, if known.
9. Copy of import licence, if any.
10. Address of the place where the goods are located.

Paragraph 1. The foregoing information shall be signed by the interested party or his legal representative, under oath, with full details of his name and identity document.

Paragraph 2. These goods shall be despatched for consumption, or shipped further when legally possible, within ninety (90) days following the entry into force of this Decree, on penalty of declaration of abandonment of the goods in favour of the Nation by the competent customs administrator.

Article 7. The Directorate-General for Customs and National Police, through its port, airport and anti-drug departments, may carry out visits and inspections at maritime terminals, airports, free zones, private or public docks, general warehouses or any other depository or store which is under the control of the Directorate-General for Customs, in order to take samples for laboratory tests on the stored goods, from any class of chemical products or substances similar to those described in article 1, so as to establish whether or not such goods are regulated by this Decree.

The national police, in order to carry out the visits and inspections at depositories and stores under the control of the Directorate-General for Customs shall coordinate such activities with the customs administrator concerned.

In the event that it is established that the goods concerned are those described in article 1, the mere fact of the false or misleading declaration at the time of entry or arrival, with or without the participation of the importer, shall result in seizure of the goods, which shall be placed at the disposal of the National Narcotic Drugs Council.

Paragraph. In all the proceedings set out in this article, the agency carrying out the visit or inspection shall issue a document permitting the participation of the customs officer responsible for the warehouse and persons who believe they have any rights over the goods if they are present, and indicating the relevant details of the visit or inspection. The person responsible for such a document shall send a copy to the Executive Secretariat of the National Narcotic Drugs Council for the purposes of the prescribed procedure, without prejudice to the copy which he shall deliver to the interested parties.

Article 8. The goods described in article 1 of the present Decree may only be unloaded, in the case of carriage by sea, in the COLPUERTOS terminal ports or exceptionally in those private docks which have a special permit for the purpose, located within the jurisdiction of the customs indicated in article 2, which must be requested from the Directorate-General for Shipping and Ports within sixty (60) days of the entry into force of the present Decree, which shall grant such a permit if the requirements and procedures set out in paragraphs 1 and 2 of the present article are fulfilled. The foregoing is without prejudice to the existing licence to handle foreign and export goods for the granting of which the Directorate-General of Customs is the competent authority.

Paragraph 1. To enable the Directorate-General for Shipping and Ports to issue the special permit to which this article refers to a person acting as an operator of a private dock or any other port installation, other than COLPUERTOS, in which the products described in article 1 of the present Decree are received or unloaded, the interested party must submit an application in person to the Director-General for Shipping and Ports containing:

1. Name, domicile and identification of the natural or legal person making the application.
2. In the case of a legal person, the name, domicile and nationality of all its shareholders, legal representatives and directors.
3. A certificate from the Executive Secretariat of the National Narcotic Drugs Council testifying that it has no information on the interested natural person or all the legal representatives, principals and agents, persons with capacity to represent the company, principal and alternate members of the board of directors and any shareholder who controls or owns more than twenty per cent (20%) of the share capital. The same requirement shall apply to legal persons which are shareholders of the legal applicant. Aliens shall submit a certificate from the police of the country of origin or residence testifying to their good conduct or lack of criminal record.
4. Description of the type of products expected to be received, frequency and quarterly quantities, showing suppliers, country of origin and names and addresses of persons or consignees at the final destination for the last six (6) months.
5. The exact location of storage sites where the goods will be kept, and in the event of direct discharge from ships to tanks, a certificate from a company qualified in the inspection and calibration of measuring equipment stating that it has recently inspected and checked the manometers or measuring equipment needed to establish the exact quantity of product received or delivered, and that they have seals or devices preventing them being altered.
6. The licence for the storage of foreign goods issued by the Directorate-General for Customs.

Paragraph 2. On receipt of the application and after the requirements set out in paragraph 1 above have been fulfilled, the Directorate-General for Shipping and Ports shall order an inspection to be carried out in person by the harbourmaster, accompanied by experts, to verify the information submitted and the conditions of security and control for the storage, loading, unloading and delivery of the products to be shipped through the private dock.

In addition, the dock operator shall be required to maintain a special stock control ledger with a complete record of the movement of these goods, showing: type and trade mark of the product received; quantity received; date of arrival; number and date of shipment advice; name of consignee; his tax identity number (NIT) and address; number and date of manifest; number of import declaration; quantity delivered to consignee; name of land carrier and identification of the vehicle used.

Article 9. The dock operator with a special permit to receive the goods described in article 1 must satisfy himself that the consignee or addressee of the products concerned has obtained a prior permit from and is registered with the National Narcotic Drugs Council.

In accordance with the provisions of paragraph 2 of article 7, the harbourmaster, national anti-drug or port police and the national customs are authorized to carry out visits and inspections at the installations of operators of such private terminals or port installations so as to take samples of products and soundings of tanks and for making physical inventories, as well as inspecting ledgers. In the event of discovery of any irregularity, a report shall be submitted to the Directorate-General for Shipping and Ports for continuation of the investigation into contravention of the merchant shipping regulations, which may result in the application of the sanctions contained in article 16 of this Decree. In the event of recurrence, the operating permit for such a dock shall be suspended for an effective period of not less than three (3) months. In the event of a