
Japan Updates: Revision of Japan Customs Penalty Rules

December 2016

In brief

Japan Customs has announced details on the revision of penalties imposed on additional customs duty and consumption tax, which will take effect for goods imported on and after January 1, 2017. Recent customs audit results show that the total value of inappropriate import declarations that was found during audits is increasing. The revision as well as the Customs audit results suggest that Customs is pushing importers to be more compliant and to voluntarily file amended declarations, by applying stricter rules and audits. In this newsletter, we address Customs' expectations of importers in Japan, major areas where we often find non-compliance, and what importers can do to be more compliant and to manage future risks.

In detail

1. Changes to the penalty incurred on and after the date of a customs audit notice

Details on the changes to the penalty rules due to the 2016 Customs Act revision were announced at the end of October. Under Japan Customs Law, a penalty of 10% of duty shortfall may be enforced on importers who have declared an inappropriate customs value of goods (e.g. undervalued declaration) and have not voluntarily disclosed amendments before a customs audit. Currently, the 10% penalty may be exempted if errors are disclosed prior to the commencement of a customs audit even if a notice of an audit has been received. However, after the revision to the penalty rule, importers may still be subject to a further 5% penalty from the time of receipt of notice of a customs audit, even if an amendment is disclosed voluntarily before the audit starts.

Details suggest that the new rule will be practiced strictly, and that importers are required to have amended declarations fully completed before a notice of a customs audit. Otherwise, a 5% penalty will be imposed almost without question, even if there had been a discussion with Customs regarding an intention to file and complete an amended declaration prior to the notice. The aforesaid 5% penalty will become 10% in the event that voluntary disclosures after the notice of audit are for goods imported without customs declaration procedures.

2. Results of recent customs audits

Between June 2015 and June 2016, the number of importers audited was 4,302; an increase by 21.4% from the previous year.

Any importer and/or exporter may be subject to a customs audit. During a customs audit, Japan Customs will visit the importer/exporter's site to review ledger and other relevant documents. A customs audit for exporters will focus mainly on export management procedures and structures, whereas an audit for importers will focus mainly on customs valuation, customs classification and duty payments for past imports.

An importer should receive a prior notification of an audit from Customs. (A customs investigation into expected malicious tax evasion is a criminal process and will typically not be announced prior to it happening) The date of the actual audit may be somewhat negotiable, and the site visit of the audit would usually take three to five days. If any undervalued declarations and/or imports without any declaration are found during the audit, importers will be required to pay the underpaid duty and consumption taxes, as well as any penalties applicable. If such underpayment is determined to be a result of any cover-up or falsification, a more severe penalty amount may be imposed.

Recent audit results shows that of the audited importers, 2,977 - or 70% - were found to have made incompliant declarations, such as shortfall of customs value or applying inappropriate duty rates. The total customs value which was declared inappropriate amounted to JPY 152 billion; an increase of 40.5% from the previous period; and the total amount of duty shortfall and penalties amounted to roughly JPY 14.6 billion.

3. Elements that often cause inappropriate customs declarations

The changes to the penalty rules as well as the results of the recent customs audit indicate that Customs will have a stronger expectation of importers being more compliant.

Based on the audit results, as well as our own experience, inappropriate customs declarations and significant shortfalls in declared values are often due to retrospective price adjustments (including transfer pricing adjustments), undeclared dutiable royalties, and other payments paid separate to the purchase of the imported goods that should be added to the invoice price for such goods to arrive at a customs value. For instance, the recent audit results list a case where a price adjustment for a total of JPY 20 billion was deemed dutiable, and the importer was required to pay an additional JPY 1.1 billion for the shortfall of customs duty and penalties.

Assists provided free of charge by the importer to the exporter, directly or indirectly, to manufacture products that are subsequently imported, also often fail to be declared. The audit results list a separate case where an importer did not include in its import declarations the value of assists provided free of charge, which resulted in a JPY 900 million increase to the originally declared value and an additional payment of JPY 75 million to Customs.

In addition, we also often find issues in relation to applied duty rates, in cases where the HS code applied upon import is inappropriate, and cases where a preferential duty rate is being applied without satisfying the necessary conditions.

4. What importers ideally should do

In any case where non-compliance results in a duty shortfall, the importer must file an amended declaration. We therefore suggest that importers first understand and recognize the customs risks in their current business; for instance:

- (a) understanding whether there are any TP adjustments;
- (b) understanding whether there are royalties that are not reflected in import declarations;
- (c) assessing whether such adjustments and royalties are dutiable or not;
- (d) understanding any assists provided free of charge or at a discounted price that are not included in declared import values; and
- (e) assessing the appropriateness of HS classification as well as applied duty rates.

If any element which should have been reflected in the import value is identified, we suggest to promptly file an amended declaration to Japan Customs.

In addition, if adjustments to previously declared customs values are expected to continue in the future, the importer may also consider filing a “season ticket” application for such values. Filing a “season ticket” will allow the importer to declare to Customs a provisional value for goods imported under a specific transaction type for a certain period, if the customs value cannot be determined at the time of import by merely the invoice and other documents usually attached. Such a “season ticket” will help to mitigate the risk of being penalized even after the change to penalty rule.

How we can help

Worldtrade Management Services (WMS) is the customs and international trade consulting practice of PwC. WMS Japan is part of the regional WMS network in Asia which consists of a specialized team of experienced trade and customs professionals who have a proven track-record in helping companies throughout the region with customs and trade compliance and strategic planning.

With our extensive experience in supporting many of our clients from reviewing their current business for any customs implications, to filing amended declarations and/or “season tickets”, as well as proactively managing customs valuation and classification, we offer valuable solution to companies that wish to ensure compliance while managing costs effectively.

Our assistance may range from providing general ad-hoc advice, to supporting companies with a comprehensive “health-check” to assess customs risks, as well as full support on the filing of amended declarations and/or “season tickets”, all of which can be tailored to match the needs of each client.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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