

Measures for Determining Value of Goods and Articles Contravening the PRC Customs Regulations

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The value of the contravening goods or articles has been adopted by the PRC Customs as the basis for assessing penalties. Nevertheless, there have been no unified and standardised measures for determining values of goods or articles, which contravene the supervision regulations of PRC Customs. As a result, different approaches may have been adopted amongst local Customs Authorities.

It is worth noting that the General Administration of Customs (GAC) has recently promulgated Customs Order No. 182 ("Circular 182"), the 'Measures on Determining the Values of Goods and Articles Contravening the Supervision Regulations of Customs of the People's Republic of China'. Circular 182 will become effective from 1 June 2009.

Basis for Determining the Value for Goods or Articles

Circular 182 sets out the approach for determining the value of goods or articles as follows:

- Ascertaining goods or articles contravening the supervision regulations of Customs;
- Determining and verifying the dutiable value of the goods or articles;
- Assessing the customs duty and import taxes payable (i.e. valued-added tax ("VAT"), consumption tax, where applicable);
- Assessing value of the goods or articles by summing up the dutiable value, customs duty and import taxes collected by the customs;
- Determining the amount of customs duty and import taxes evaded and related penalties.

The Customs will issue a notice of administrative penalties ('Penalty Notice') to the enterprises or individuals who breach the supervision regulations of Customs. The Penalty Notice sets out the value of the contravening goods/articles and the amount of the under-paid customs duty/taxes and related penalties.

Non-compliance Situations to the Supervision Regulations of Customs

There are different types of non-compliance situations to the supervision regulations:

- Not performing customs declarations;
- Performing untrue declarations for importation/exportation of goods or articles;
- Unpacking, taking away, exchanging, transferring, changing the label, not using for the agreed purpose, or disposal of the bonded goods or articles without the customs'

approval in advance;

- Storing the goods outside of the Customs supervision zones;
- Missing goods in the process of transportation, storage, process, processing or displaying the goods/articles;
- Not completing the proper procedures for factory transfer in relation to bonded goods as required by the customs;
- Not completing the verification and cancellation procedures, suspension, extension, amendment of processing trade production contracts with the customs as required;
- Not declaring truthful unit consumption rate under processing trade arrangements;
- Not delivering the transit cargo, transshipment cargo, international freight cargo or articles out of China within designated period;
- Not transporting the temporarily imported/exported goods or articles in/out of China within designated period;
- Other cases, which cause the Customs, to become unable to or to suspend the supervision of the imported/exported goods.

How to Ascertain Contravening Goods or Articles?

Circular 182 also sets out specific approaches for ascertaining contravening goods or articles as below:

- Under general trade arrangement, in case of solely inaccurate quantity declaration of imported/exported goods, the contravening goods/articles are the discrepancy between the actual importation/exportation quantity and the declared quantity;
- Under processing trade arrangement,
 - a) For non-declaration or inaccurate declaration of exported goods, the contravening goods/articles should not be the exported goods but the bonded raw materials used for the manufacture of the exported goods. b) In cases of solely inaccurate quantity declaration under processing trade arrangement, the contravening goods/articles are the bonded raw materials used for manufacturing the discrepancy of exported goods (i.e. declared exported goods less actual exported goods). c) In cases of inaccurate declaration of unit consumption rates of bonded raw materials, the contravening goods should be calculated as follows:
Contravening Goods = Quantity of finished goods x (Declared consumption unit rate - actual consumption unit rate);

Documents Required from the Customs

Before assessing the import duties payable on contravening goods, the Customs should collect the following requisite documents:

- Documents in relation to customs declarations such as customs declaration forms, contracts, invoices, bills of lading, insurance policies, processing trade production contract, certificates of origin etc.;
- Documents to prove the features of the contravening goods /articles such as the name, specification, components, functions etc.;
- Documents to substantiate the payment of import duties for the contravening goods/articles;
- Documents to prove the timing of conducting contravening situations or the timing of finding out the contravening situations;
- Other relevant documents.

Value of the goods or articles should be assessed by summing up the dutiable value, customs duty and import taxes collected by the customs.

How to Assess the Un-reported or Under-reported Duties / Taxes?

Dutiable value of the contravening goods or articles should be assessed in accordance with the prevailing customs regulations.

For equipments imported free from import duties or without consideration under processing trade, the dutiable value is the original imported price assessed by the customs less the accumulated depreciation in cases of breaching the customs supervising regulations.

In cases of inaccurate quantity declaration for exports under processing trade arrangement, the under-reported import duties and taxes payable should be calculated based on the value of bonded materials used for the manufacture of the differences between declared exports and actual exports.

LehmanBrown's Suggestions

After the promulgation of Circular 182 and relevant regulations, it is foreseen that the Customs will tighten its supervision measures and pay more attention to the enterprises' compliance status. Due to the impact of the global economic crisis, the Customs has to take action to cope with the decrease of import and export volume and try to achieve its revenue budget for Year 2009. It is envisaged that the customs would launch more and more custom investigations.

In order to improve compliance to processing trade regulations and to be well prepared for potential challenge and inspection by the Customs, it is highly suggested for processing

trade enterprises to engage professionals to help conduct a health check on their processing trade operations. A thorough and comprehensive Customs and VAT health check is helpful to identify an enterprises' existing non-compliance issues, quantify the exposures of any non-compliance, study related laws and regulations and analyze the possible solutions, where appropriate.