



China Customs streamlines penalty provisions

Summary:

- China Customs has issued a revised regulation on handling procedures for cases that are subject to administrative penalty (GAC Decree No. 250, or “revised regulation”), with effect from 15 July 2021. This will guide China Customs to deal with cases in a more transparent and fair manner.
- In recent years, China Customs has actively pushed forward various reforms, raising clearance efficiency but also creating challenges. With the roll out of self-declarations for importers and exporters, coupled with enhanced follow-up scrutiny by Customs, an ever-increasing number of declaration issues were identified. This led to significant demands on Customs resources, including with penalty determination. The revised regulation seeks to address this.
- The revised regulation sets out a new penalty system for minor tax offences. This builds on and formalizes existing procedures. Under the new rules enterprises can be exempted from punishment where their non-compliance behaviors (i) are minor or have occurred for the first time; (ii) can be rectified in a timely manner; and (iii) did not lead to significant harm. Exemption is also applicable to cases where the enterprises can prove that the offence was not intentional.

Background



On 22 January 2021, China’s National People’s Congress (parliament) passed a new Administrative Penalty Law. With the revised regulation China Customs has put this law into effect for customs matters.

China Customs has scrapped several measures introduced since 2006 and integrated them into the revised regulation. These include *Measures for Administrative Punishment Hearings* and *Provisions on Procedures for the Handling of Simple Administrative Penalty Cases*. The revised regulation also takes into account recent government organisational reforms. In 2018, the government agency responsible for inspection and quarantine for imports and exports (commonly known as CIQ) was integrated into China Customs. As such, CIQ-relevant matters were added in the revised regulation. Key modifications are set out below:

GAC Decree No. 250	Key additions and revisions
Chapter I Principle	Article 3: Customs shall handle administrative penalty cases under the principles of fairness, transparency, and combining penalization with education.
Chapter II General Rules	Article 7: Customs shall, in accordance with law, record the whole process of initiation of administrative penalty, investigation and evidence collection, examination, decision, service and implementation in such form as text, audio and video, etc., and keep such records on file.

GAC Decree No. 250	Key additions and revisions
Chapter III Case Investigation	<p>Article 30: The parties or the relevant personnel shall have the right to demand law enforcement officers to show their law enforcement certificates. If the law enforcement officers fail to show their law enforcement certificates, the parties or the relevant personnel shall have the right to refuse to accept the investigation or inspection.</p> <p>Article 44: The results of testing, inspection, quarantine or technical appraisal shall be notified to the parties concerned.</p>
Chapter IV Decision on Administrative Handling	<p>Article 56: Any person who commits a minor offence, promptly rectifies it and causes no significant harm, shall be exempt from administrative penalty. Any person who commits any offences for the first time with no significant harm and can rectify it in a timely manner may be exempt from administrative penalty.</p> <p>Article 57: Where any party involved has sufficient evidence to prove absence of intention to violate rules, no administrative penalty shall be imposed. Where it is otherwise prescribed by any law or administrative regulation, such law or regulation shall prevail.</p> <p>Article 60: Where an offence is not found within two years, no administrative penalty may be given; where the offence occurred in relation to life, health or financial security of any citizen and has harmful consequence, the aforesaid time limit shall be extended to five years unless it is otherwise prescribed by any law.</p>
Chapter VI Simplified Procedure and Speedy Handling (newly added)	<p>(Simplified Procedure) Article 101: Where the facts of an offence are well-attested and there is a legal basis, and an administrative penalty of a fine of up to RMB200 is imposed on a citizen or a fine of up to RMB3,000 is imposed on a legal person or other organization or warning is given, the customs may make and administrative penalty decision on the spot under the simplified procedure.</p> <p>(Speedy Handling) Article 103: For an administrative penalty case to which the simplified procedure is not applicable, but the facts are clear and the party concerned applies in writing and voluntarily admits his mistake and accepts punishment which is supported by other evidence, the customs may, under any of the following circumstances, rapidly handle the case by simplifying the stages such as evidence collection, examination and approval.</p>

KPMG Observations



The revised regulation is welcome news for importers and exporters. It clarified that enterprises may be exempt from administrative penalty if they can show that they had no intention to violate the rules. With China being the world's largest economy in international trade, its cross-border trade is increasing while new cross-border e-commerce models are emerging. This increases the variety of goods being shipped and the complexity of business transactions. In parallel, custom regulations are getting more complicated to follow, especially in classification, valuation, bonded processing trade supervision. As such, is relatively easy for enterprises to unintentionally make mistakes when dealing with customs declaration and thereby trigger administrative penalties. The revised regulation will mitigate enterprise risks in this regard.

The revised regulation is also likely to encourage enterprises to engage more positively in further customs reforms. It is noted that in recent years Customs has been seeking to make customs clearance easier by standardizing declarations and promoting Authorized Economic Operator (AEO) verifications. While this is positive, multinationals can often face challenges in achieving 100% effective coordination of their procurement, logistics, and customs declarations meaning that non-compliance cases can arise. Given that the revised regulation can mitigate the consequences of unintentional non-compliance this can foster a greater willingness to engage with future Customs compliance process innovations.

As the revised regulation provides a basis in national law for administrative penalty imposition this should lead to more standardized handling. It sets out clear requirements for each stage of case handling, and these provisions are reflective of Customs case handling experience, e.g. Customs must make records of the entire penalty levying process in written, audio and video forms. Furthermore, the simplified and speedy handling procedures for (non-contentious and minor) offences should increase case handling efficiency, and reduce the resource burden for customs and enterprises.

KPMG Suggestions



While the new regulations have clarified case handling procedures, some matters remain to be clarified:

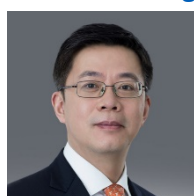
- How to define 'minor offence'? What is the timeframe applied to determine whether an 'offence can be rectified in a timely manner'? What are the criteria for a case that did not lead to significant harm?
- How to specify whether an 'offence has occurred for the first time'? If an enterprise has multiple offences concurrently and each has occurred for the first time, can this still be treated as a case where 'offence has occurred for the first time'?
- How does an enterprise prove that a violation 'is not intentional'? What are the evidential requirements?

With these considerations in mind, enterprises are recommended to familiarize themselves with the regulations and assess the impacts. If an enterprise is being investigated by customs for a serious offence, it is suggested that it look at whether the offence has occurred for the first time, and whether it can be proved of 'it is not intentional' – if so then there may be a possibility for lesser punishment or exemption.

Enterprises can take advantage of either proactive disclosure or the simplified/speedy case handling procedures to deal with their existing offences. The revised regulation adopts a 'penalty in combination with education' approach and provides that a punishment exemption is applicable to an offence where it can be rectified in a timely manner and did not lead to significant harm. As such, enterprises need to strengthen their internal audit functions to identify their non-compliance behaviours and tackle them responsively, so as to reduce the potential risks.

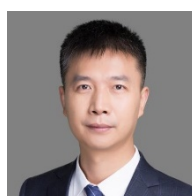
Contact us:

Northern Region



Eric Zhou

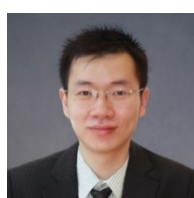
China Trade and Customs Services
Lead Partner
KPMG China
T: +86 (10) 8508 7610
E: ec.zhou@kpmg.com



Lucien Zhao

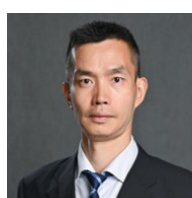
Director, International Trade
and Customs
KPMG China
T: +86 (22) 2320 8108
E: lucien.zhao@kpmg.com

Eastern and Western Region



Harry Zhang

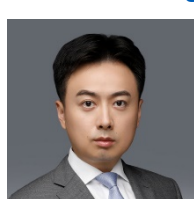
Partner, International Trade
and Customs
KPMG China
T: +86 (21) 2212 2789
E: harry.h.zhang@kpmg.com



Liang Yu (Author)

Senior Manager, International Trade
and Customs
KPMG China
T: +86 (21) 2212 3364
E: liang.yu@kpmg.com

Southern Region



Philip Xia

Director, International Trade
and Customs
KPMG China
T: +86 (20) 3813 8674
E: philip.xia@kpmg.com