IMT Webinar Series: Customs Audit and Disputes in Asia Pacific
21 January 2021 | 1:30-2:30 PM (VNT)
Webinar Housekeeping Reminders

The session is being recorded; all webinar materials will be shared post-event.

Please use the Q&A function at the bottom of your screen to submit your questions. Questions will be answered at the end of session or post-event.
Speakers

Yaeko Hodaka
Co-chair, Asia Pacific IMT Industry Group, Tokyo
yaeko.hodaka@bakermckenzie.com

Thanh Vinh Nguyen
Partner, Head of Tax and Trade, Ho Chi Minh City
thanhvinh.nguyen@bakermckenzie.com

Ngoc Trung Tran
Senior Regulatory Advisor, Tax and Trade, Hanoi
ngoctrung.tran@bmvn.com.vn
Agenda

1. OVERVIEW ON CUSTOMS AUDIT IN VIETNAM
2. CUSTOMS AUDIT FOCUSES
3. MANAGING A CUSTOMS AUDIT
4. Q&A
Overview on Customs Audit in Vietnam
Overview on custom audit

Customs Audit

- **Post-Clearance Inspection (PCI)**
  - Governed under Law on Customs.

- **Specialized Audit (SA)**
  - Governed under Law on Inspection.

More common form of customs audit
Overview on PCI

Statue of Limitation: 5 years

Conducted when:

- Sign of violation
- Risk management basis
- Compliance verification purpose
Overview on PCI

**PCI at Customs Authority’s office**

**Capacity:**
- Director of Provincial Customs Department: within 5 years
- Director of Divisions under a provincial customs department: within 60 days

**Duration:**
Up to 5 working days

**Timeline:**
PCI Decision to be sent to declarant within 3 working days of the issuance, and no later than 5 working days before the PCI

**PCI at Declarant’s office**

**Capacity:** Within 5 years including those which have undergone PCI at CA’s office
- General Director of GDC
- Director of GDC’s PCI Department
- Director of Provincial Customs Department

**Duration:**
Up to 10 working days, with 1 extension of up to 10 working days

**Timeline:**
PCI Decision to be sent to declarant within 3 working days of the issuance, and no later than 5 working days before the PCI (except for the case of violation)
Overview on PCI

PCI at the customs authority's office

- Issuance of PCI Decision
  - Customs authority issues a prescribed decision to conduct the PCI, and request declarant to provide customs declaration-related documents.

- Conduct the PCI
  - If declarant is not present at CA's office or send requested documents within 3 working days of the inspection date as stated in the PCI decision, customs authority may:
    - impose penalties
    - escalate the case to the provincial customs department/issue inspection conclusion/decision, and update non-compliance information on system for relevant measures on subsequent shipment.

- Result of the PCI
  - PCI result notification to be issued within 5 working days since the end of the PCI duration
  - Accept the declaration if declarant can prove that the declared information is correct
  - Reject the declaration and impose assessed tax and duty, penalty and interest
  - Suspect of violation but do not have sufficient ground for conclusion, report to Director of provincial customs department for further action.
Overview on PCI

PCI at the declarant's office

- Customs authority issues a prescribed decision to conduct the PCI. The declarant must be informed in advance, except in the case of violations.

- Inspect customs dossiers, accounting books, accounting vouchers and other documents, documents and data related to exported and imported goods; actual export and import goods within 05 years from the date of customs declaration to the date of the PCI.

- Within 5 days since the end of the PCI, the PCI decision issuer send draft PCI conclusion to declarant.

- Within 10 days since the end of the PCI, declarant shall complete the explanation, if any for issues raised in the draft PCI conclusion.

- Within 15 days since the end of the PCI, the PCI conclusion shall be issued. If comments from other governmental authorities are required, a 30 +15 day period is added to this process.

- Accept the declaration if declarant can prove that the declared information is correct.

- Reject the declaration and impose assessed tax and duty, penalty and interest.

- Suspect of violation but do not have sufficient ground for conclusion, transfer for SA.
Overview on SA

Decision makers:
- Chief Inspector of the MOF, General Director of GDC, Director of PCI Department
- Chief Inspector of the provincial customs departments

Duration:
- at Ministry level: 45 to 70 days
- at Provincial level: 30 to 45 days
Overview on SA

Overview on SA

Issuance of SA Decision
- Within 15 days since the issuance, the SA Decision shall be informed to the SA subjects

Conduct the SA
- Collect, research, analyze information, documents and evidences; assess the observance of policies, laws, tasks and powers of inspected subjects related to assigned inspection contents
- Head of the SA team is responsible for reporting to the inspection decision issuer on the progress of the inspection team's performance of tasks according to the inspection plan or at request by inspection decision issuer

Result of the SA
- Within 15 days since the end of the SA, SA result shall be issued with following information:
  - Overview of inspected subjects;
  - Results of inspection and verification of each inspection content;
  - Evaluate the implementation of policies, laws, tasks, and the observance of regulations on standards, expertise and techniques by inspected subjects;
  - Measures have been applied during the inspection; propose measures to handle violations of the law; propose amendments, supplements and promulgation of regulations to suit management requirements or annul illegal regulations discovered through inspection (if any);
  - Different opinions among members of the inspection team (if any)
Overview on custom audit

Voluntary disclosure

- Supplemental declaration within 60 days of import/export not subject to administrative penalty
- Penalty of 10% of tax shortfalls: supplemental declaration after 60 days of import/export but before any PCI
- Penalty of 20% of tax shortfalls: Voluntary payment of tax shortfalls after the PCI conclusion is available
- Penalty of 1 to 3 times of tax shortfalls: Not make payment of tax shortfalls before a violation minutes is prepared
Overview on custom audit

Advance rulings

Current regulations include advance rulings for HS code, customs value, and origin.

In practice, only HS classification advance rulings are available;

Overload and time consuming process

Tighten policy to limit advance ruling application
2

Customs Audit Focus
Customs audit focus

- Law on Customs has been in place since 2014 with no updates;
- The General Department of Customs develops list of high-risk goods in customs field for risk management purpose;
- The list of high-risk goods may be changed from time to time, which covers a wide spectrum of commodities;
- This list is one of the basis for customs authority to determine customs audit activities.
Customs audit focus

ISSUE

Customs valuation in related-party transactions

- Off-shore sellers and local importer are related parties and have special relationships
- Agreement on profit margin
- Buyer proposes buying price
- Unspecified discount scheme
- Certain control on imported goods or goods distribution
Customs audit focus

ISSUE

HS classification

- Importer normally conducts declaration on the basis of HS code as provided by exporter
- HS codes of the same heading/subheading with higher tariff rate are used to challenge the declared HS code in case description of certain terms are unclear
- Customs authority may use ingredients to challenge classification in different HS codes of higher tariff rates
Importers claim preferential duty on the basis of Certificate of Origin issued by exporting countries.

- Common errors on Certificate of Origin such as:
  - Erroneous origin criterion
  - Failure of ticking certain boxes in C/O such as Third Party Invoicing box
  - Do not indicate the RVC percentage
  - Inconsistency in presenting the goods description
Customs audit focus

ISSUE

Export production

- Material consumption is controlled by customs authority
- Risk of duty free material leakage
Managing a Customs Audit
Managing a customs audit

Before any customs audit

- Internal check should be in place
- Compliance training on routine basis
- Advance Ruling, where applicable
Managing a customs audit

During a customs audit

- Identify the scope of the PCI, authority in charge
- Identify potential issues and develop action plans
- Assign relevant staff to handle the PCI with proper care
- Properly manage draft and final audit conclusion in terms of content and timing
- Seek external advisor’s assistance
- Show cooperation but prepare for defending positions
Questions