



PricewaterhouseCoopers Worldtrade Management Services (WMS)

PricewaterhouseCoopers Worldtrade Management Services (WMS) is part of a global network of professionals specializing in international trade, customs and tax matters. Our global network spans over 60 countries, including the United States, the European Union, Japan and other Asia-Pacific territories such as in Singapore, Hong Kong, China, Thailand, Malaysia, Indonesia, and the Philippines.

WMS Japan

WMS Japan was established in March of 2002, as the PwC Management Co., Ltd.'s specialist group on tariffs and trade. Our professionals in Japan work closely with our WMS colleagues throughout the globe to offer our corporate clients unmatched professional service of the highest quality.

Customs and Trade Newsletter

This Newsletter is prepared by WMS Japan. The purpose of this newsletter, herein, is to inform and/or update the reader with regard to issues, developments and/or trends in the international trade and customs area, and, is intended to provide a summary treatment of such issues, developments and/or trends in a general manner. As such, the substance of the information provided herein should not be relied on or construed as formal professional advice, nor is it binding with any customs, trade or tax authority. Please consult a qualified specialist prior to applying any principles, solutions or methods discussed in this Newsletter to your business concerns or operations.

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Managing Customs Exposure on Retrospective Transfer Price Adjustments

Legislative Change Extends Statute of Limitations for Under-paid Customs Duty and Import Consumption Tax

- Legislative changes to the Customs Laws in 2005, extend the statutory time period upon which the Japan Customs may make an assessment and collect underpayments in customs duties
- Underpayments of duties may arise as a result of retrospective transfer price adjustments
- Financial and other exposure owing to underpayments may be proactively managed by undertaking voluntary disclosures

Revised Statutory Assessment Period

In 2005, pursuant to certain legislative revisions to the Customs Laws of Japan, the statutory period upon which Japan Customs may make an assessment and collect underpayments of customs duties and import consumption tax has been increased from two years to three years for import declarations having duties and taxes payable on or after April 1, 2005.

Facts & Figures: Japan Customs' Post-Entry Audits:

Japan's Ministry of Finance released the following information regarding post-entry audits and investigations undertaken by Japan Customs from June 2003 to July 2004:

- Number of field audits/investigations: 5,088
- Total under-declared value found: JPY96,300,000,000
- Additional duties and tax collected: JPY7,600,000,000
- Top 5 commodities upon which additional duties and taxes were assessed: (1) electrical appliances, (2) machinery, (3) textile and apparel, (4) knitwear and (5) footwear.
- Reasons for under-declaration: failure to



declare manufacturing assists, failure to declare value and/or payment not reflected in the invoice, improper application of preferential tariff programs, etc.

Retrospective TP Adjustments

Post-entry adjustments of the transfer price (e.g., annual TP adjustments) between related parties for imported merchandise may raise customs valuation issues. Generally, retrospective upward adjustments of the transfer price are subject to customs duty and import consumption tax because they are considered value and/or payment not reflected in the invoice. Please note, other examples of “value and/or payment not reflected in the invoice” that should be disclosed to Customs authorities, but often overlooked by the importers, include undeclared royalty and license fees, and the importers are advised to conduct a periodic review of these items as well.

In situations where companies effect a retrospective downward adjustment to the transfer price, a company may report such downward adjustment to Japan Customs, however, a refund for excess customs duties and import consumption tax paid is generally not available.

Additional Tax on Underpayment and Interest

Should a post-entry audit uncover an undisclosed retrospective upward adjustment of the transfer price, the importer will be required to tender unpaid customs duties and import consumption tax owed, plus an “additional tax on the underpayment” of duties and taxes, along with “interest.”

“Additional Tax on Underpayment”: Pursuant to Article 12-2 of the Japan Customs Law, (1) 10% of the short-fall in customs duties and import consumption tax owed, plus (2) 5% of the excess of the short-fall in customs duties and import consumption tax owed over the initial duties paid, or, JPY500,000, whichever is greater, will be assessed.

“Interest”: Currently, interest is charged on the short-fall in customs duties and import consumption tax at 4.1% per annum.

Although the financial impact arising from the additional payments of import consumption tax may be offset by the importer in its subsequent claim for a refund or in the form of input credit, and, the additional duties may be considered the proper tax

bills which the importer would have paid, the “additional tax on the underpayment” and the interest charges represent additional financial and economic costs that must be borne by the importer. It should be noted that, under the Japan Corporation Tax Laws, “additional tax on underpayment” and “interest” are not deductible and thus the aforementioned charges must be wholly absorbed by the delinquent importer.

Voluntary Disclosure

In situations where a retrospective transfer price adjustment affects the price of imported merchandise, importers that file proper disclosures with Japan Customs on a voluntary basis (through the amendment process for import declarations) are not assessed with “additional tax on the underpayment” of duties and taxes.

A full exemption for interest owed is not available to importers that undertake such disclosures, however, timely filing of amendments should result in a reduction of the amount of interest charges, and interest is waived for a period after the first anniversary of the due date of the duties and import consumption tax (i.e., interest is levied up to a maximum of one year) with respect to a voluntary disclosure. In addition to reducing an importer’s financial exposure owing to underpayments, undertaking a disclosure on a voluntary basis may have a positive impact on the importer’s relationship and/or position with Japan Customs.

Although disclosure provides a seemingly simple solution, the disclosure along with the filing of the amended declarations can pose significant administrative burdens and costs on the importers. Many importers experience significant difficulties in filing and negotiating the disclosure and amendment, due to lack of knowledge and experience. In some cases, such importers may ultimately decide not to proceed or may abandon its efforts although they recognize the latent risks associated with inaction.

In terms of addressing the affected import declarations, generally speaking, the following steps should be undertaken:

- Collecting and analyzing the nature of the transfer price adjustments
- Collecting the affected import data on an entry-by-entry basis
- Quantifying the additional import duties and import consumption taxes



- Disclosing and explaining the facts and circumstances surrounding the adjustment, along with the calculation (method and schedule) of duties and taxes owed, to Japan Customs, and agree on the amount and administrative procedure for the filing of the amended declarations
- Submitting the disclosure/amendment and tendering duties and taxes

PwC WMS helps clients seeking to proactively manage customs valuation issues arising from retrospective transfer pricing adjustments. Our assistance may range from simply providing general advice, to supporting companies' internal resources throughout the amendment process, including the data collection, reconciliation, discussion/presentation to Customs authorities, etc., all of which is tailored to match the needs of each client.

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