



Client Alert

昊理文法律动态

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[Customs & Tariffs/海关与关税咨询]

Customs Preservative and Compulsory Measures for Outstanding or Overdue Import or Export Duties

---- Comments on Customs Circular No. 184

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According to the current Customs Law in China, the importing or exporting company (the “Company”) is obligated to pay the import or export duties within 15 days after the Customs issues the official notice for payment of duties (“Payment Notice”). Under certain prescribed circumstances, for the outstanding duties not overdue, the Customs may adopt preservative measures if the collection of duties is endangered; while for overdue duties, the Customs may take compulsory measures. The prescribed

circumstances, preservative and compulsory measures are further elaborated in the newly issued Interim Measures for Preservative and Compulsory Measures for Collection of Customs Duties (the “**Measures**”) by General Administration of Customs of the PRC. The Measures have officially been enforced from September 1, 2009.

I. Tax Preservation

Where it is known to the Customs that the Company intentionally transfers or conceals its taxable goods or other property during the 15 days after issuance of the Payment Notice, the Customs may demand the Company to put up a bond with the Customs. Failing in providing such a bond, the Customs may take preservative measures if approved by the competent or authorized Commissioner of Customs, which include the following measures in sequence: (a) informing the Company's bank of deposit or other financial institution in writing to suspend the payment of deposit equivalent to the outstanding duties; (b) detaining the taxable goods or other property belonging to the Company where suspension of payment is not possible.

When the duties become overdue, the Customs may immediately take compulsory measures against the deposit frozen or the property detained and the deposit as detained or proceeds out of the compulsory measures will be utilized to pay the overdue duties by the Customs.

II. Compulsory Measures

The compulsory measures do not necessarily pre-conditioned upon the preservative measures.

Customs may upon the approval of Commissioner directly take compulsory measures if the Company fails to pay the duties that has been overdue for three months, Such measures may include the following steps in sequence: (a) informing financial institution in writing to withhold the duties overdue from the deposit of the Company; (b) getting the overdue duties paid by selling the taxable goods off; (c) detaining and selling off other properties with the value equivalent to the overdue duties and get the duties paid out of such sale.

III. Commentary

For the Company, please note that the Customs may detain goods or other properties with a value more than the duties payable or overdue if the detained goods or other properties cannot be divided and no substitute can be detained. The Measures may also leave some issues open for debate. For example, it is difficult to tell from Measures whether the Customs have the power to take any compulsory action when the duties has become overdue for less than three months and no preservative measures are in place. For the risks during such period, please contact us for further information.

Should you have any questions about this Client Alert, please contact the partner of HaoLiWen Customs & Tariffs Practice Group:

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