

# Decree on the Promulgation of the Measures of the Customs of the People's Republic of China on the Administration of Enterprise Credit, Order of the General Administration of Customs No. 237

Significant changes have been made in Decree 237, with amendments to most of the clauses in the previous Measures (i.e., Decree 225) and the inclusion of new provisions.

## Background

In order to promote the establishment of a national credit system and implement international mutual recognition of China's Authorized Economic Operator (AEO) program, the General Administration of Customs (GAC) released Decree [2018] No. 237 "Measures of the Customs of the People's Republic of China for the Administration of Enterprise Credit" ("Decree 237")<sup>1</sup>, which will come into effect on 1 May 2018. The Interim Measures of the Customs for the Administration of Enterprise Credit promulgated in 2014 ("Decree 225") will be repealed simultaneously.

## New clauses

<p><b>Annual Report of Enterprise Credit Information</b></p>	<p>Article 7 Customs will establish the Enterprise Credit Information Management System ("Management System") in order to administer Decree 237. Enterprises should submit their Enterprise Credit Information Annual Report ("Annual Report") to Customs through the Management System between 1 January and 30 June every year. Enterprises registered in the current year should submit their Annual Report to Customs in the following year.</p>
<p><b>Catalogue of Enterprises with Abnormal Operations</b></p>	<p>Article 8 An enterprise will be recorded in the Catalogue of Enterprises with Abnormal Operations List ("the List") under any of the following circumstances: 1. Failing to submit their Annual Report to Customs 2. As a result of an on-site investigation, the enterprise's registered premises cannot be located and/or the enterprise's registered contact information is incorrect The enterprise's credit rating cannot be upgraded while the enterprise remains on the List. Once the underlying issue(s) have been rectified, Customs will remove the relevant enterprises from the List.</p>
<p><b>Annual Report of Enterprise Credit Information</b></p>	<p>Article 7 Customs will establish the Enterprise Credit Information Management System ("Management System") in order to administer Decree 237. Enterprises should submit their Enterprise Credit Information Annual Report ("Annual Report") to Customs through the Management System between 1 January and 30 June every year. Enterprises registered in the current year should submit their Annual Report to Customs in the following year.</p>

1. Please note that for the purposes of this article, we have used an unofficial English translation of Decree 237 and Decree 225, so there may be some discrepancies with the official Chinese versions.

## Clauses with important changes

Decree 225	Decree 237
<b>New clauses on joint incentives and punishments; information collection and public announcement enhancements</b>	
<p><b>Article 5</b> Customs establishes cooperative mechanisms with relevant State Authorities and Customs in other countries or regions based on the requirements of the national credit system and international cooperation, in order to promote information exchange, mutual recognition of supervisions, and mutual assistance with law enforcement.</p>	<p><b>Article 4</b> <b>Together with the relevant State Authorities<sup>2</sup>, Customs implements joint incentives for acts of good faith, and joint punishments against acts of bad faith</b>, based on the national credit system requirements, in order to promote information exchange, mutual recognition of supervisions, and mutual assistance with law enforcement activities (referred to as “three mutual”).</p>
<p><b>Article 6</b> The Customs shall collect the following information which can reflect the credit standing of import and export enterprises’ and establish an information administration system for enterprise credit:</p> <ol style="list-style-type: none"> <li>1. Information registered by the enterprises with Customs</li> <li>2. Information on the import and export operations of the enterprises</li> <li>3. Information on the mutual recognition of the AEO program</li> <li>4. Information registered by the enterprises with other administrative authorities</li> <li>5. Other information related to the enterprises’ imports and exports</li> </ol>	<p><b>Article 6</b> Customs <b>can</b> collect the following information which can reflect the credit status of enterprises:</p> <ol style="list-style-type: none"> <li>1. The registration and <b>basic information of relevant personnel of the enterprise</b></li> <li>2. Information on the import and export operations of the enterprise</li> <li>3. <b>Information on the enterprise’s administrative licensing scope</b></li> <li>4. <b>Information on administrative penalties and criminal punishment imposed on the enterprises and relevant personnel</b></li> <li>5. <b>Information on the implementation of joint incentives and joint punishments imposed by Customs and other relevant State Authorities</b></li> <li>6. Information on the mutual recognition of the AEO program</li> <li>7. <b>Other information which can reflect the credit status of the enterprise</b></li> </ol>
<p><b>Article 7</b> Customs shall announce the following credit information of enterprises under the premise of protecting national secrets, business secrets and individual privacy:</p> <ol style="list-style-type: none"> <li>1. Information registered by the enterprises with Customs</li> <li>2. The validation results of the enterprise credit status determined by Customs</li> <li>3. Information on administrative penalties imposed on enterprises</li> <li>4. Other enterprise information that is announced</li> </ol>	<p><b>Article 9</b> Customs shall announce the following credit information of enterprises under the premise of protecting national secrets, business secrets and individual privacy:</p> <ol style="list-style-type: none"> <li>1. Information registered by the enterprises with Customs</li> <li>2. The validation results of the enterprise’s credit status determined by Customs</li> <li>3. <b>Information on the enterprise’s administrative licensing scope</b></li> <li>4. Information on administrative penalties imposed on the enterprise</li> <li>5. <b>Information on the joint incentives and joint punishments implemented by Customs and other relevant State Authorities</b></li> <li>6. <b>The Catalogue of Enterprises with Abnormal Operations List</b></li> <li>7. Other enterprise information that is announced pursuant to the law</li> </ol>
<b>Adjustments to management measures for General Authorized Enterprises</b>	
<p><b>Article 16</b> The General Authorized Enterprises are subject to the following administrative principles and measures</p> <ol style="list-style-type: none"> <li>1. A lower inspection rate for imported and exported goods</li> <li>2. Simplified examination procedures for documents of imported and exported goods</li> <li>3. Priority customs clearance formalities for imported and exported goods</li> <li>4. Other administrative principles and measures as specified by the GAC</li> </ol>	<p><b>Article 23</b> The General Authorized Enterprise is subject to the following administrative principles and measures:</p> <ol style="list-style-type: none"> <li>1. <b>The average inspection rate for imported and exported goods is less than 50% of the average inspection rate of General Credit Enterprises</b></li> <li>2. Priority customs clearance formalities for imported and exported goods</li> <li>3. <b>The amount of the guarantee collected by Customs may be set lower than the total amount of import tax payable or an amount specified by the GAC</b></li> <li>4. Other administrative principles and measures as specified by the GAC</li> </ol>

2. Note: the joint incentives/punishments will be carried out with other authorities, such as the Tax Bureau, State Administration of Foreign Exchange, Administration of Quality, Inspection, Supervision and Quarantine.

**Decree 225****Decree 237****Increased preferential measures for Advanced Authorized Enterprises****Article 17**

In addition to the administrative principles and measures for a General Authorized Enterprise, an Advanced Authorized Enterprise is also subject to the following administrative measures:

1. The verification and release formalities shall be handled before the confirmation of the classification, customs valuation and origin of the imported and exported goods or the completion of other customs formalities
2. The Customs may appoint a designated coordinator for the enterprise
3. Enterprises that engage in Processing Trade shall not be subject to the bank deposit account system
4. Ensure clearance facilitation measures will be provided by Customs in other countries or regions under mutual recognition of AEO

**Article 24**

In addition to the administrative principles and measures for a General Authorized Enterprise, an Advanced Authorized Enterprise is also subject to the following administrative measures:

1. **The average inspection rate for imported and exported goods is less than 20% of the average inspection rate of General Credit Enterprises**
2. **Can apply for an exemption from the guarantee requirement with Customs**
3. **Reduced frequency of Customs audits and inspections of the enterprise**
4. **Export goods can be declared to Customs before they are shipped to a Customs special supervision area**
5. Customs may appoint a designated coordinator for the enterprise
6. Ensure clearance facilitation measures will be provided by Customs in the countries or regions under the mutual recognition of AEO
7. **Joint incentives for acts of good faith are co-implemented by the relevant State Authorities**
8. **Priority customs clearance after the resumption of interrupted international trade due to force majeure**
9. Other management measures as specified by the GAC

**Increased scrutiny of Dishonest Enterprises and strengthening of applicable management measures****Article 18**

The Dishonest Enterprises are subject to the following administrative principles and measures of the Customs:

1. A higher inspection rate for imported and exported goods
2. Strict examination of documents on imported and exported goods
3. Key supervision on the Processing Trade and other processes
4. Other administrative principles and measures as specified by the GAC

**Article 25**

The Dishonest Enterprises are subject to the following administrative measures:

1. **The average inspection rate for imported and exported goods is greater than 80%**
2. **No exemption from the associated cost of inspection (e.g., hoisting, shifting and warehousing) of enterprises when no issues were identified**
3. **Cannot participate in the Collective Duty Collection program**
4. **Not applicable for Customs release upon providing a sample and/or photos as evidence, except under special circumstances**
5. **For businesses engaged in Processing Trade, the full guarantee amount must be deposited**
6. **Increased frequency of Customs audits and inspections of the enterprise**
7. **Subject to joint punishment for acts of bad faith co-implemented by the relevant State Authorities**
8. Other management measures as specified by the GAC

## Adjustments to the standards identifying Dishonest Enterprises

**Article 10**

Where any enterprise is involved in any of the following circumstances, Customs deems it as a dishonest enterprise:

1. Committing a smuggling crime or a smuggling act
2. For an enterprise other than a customs broker, violation of Customs' supervision provisions within one year exceed 1% of the total number of the relevant documents such as Customs Declaration Form and entry/exit filing lists for the previous year and being subject to Customs administrative penalty of over RMB100,000 twice or more, or being subject to administrative penalty of more than RMB1 million in accumulation imposed by Customs; for a customs broker, violation Customs supervision provisions within one year exceeds 0.5% of the total number of the relevant documents such as the customs declaration form and entry/exit filing lists for the previous year, or being subject to Customs administrative penalty of more than RMB100,000 in accumulation
3. Failing to pay import taxes, penalties or handle in confiscated money in due time
4. Having the declaration error rate for the last quarter higher than the national average declaration error rate for the same period
5. Through field investigation, confirming that the information registered by the enterprise is inaccurate so that it is impossible to contact the enterprises
6. Being suspended from engaging in customs declaration by Customs in accordance with the law
7. Refusing to assist Customs in investigation when the enterprise is suspected of smuggling or violating Customs regulatory provisions
8. Acquiring illegal benefits or earnings in the guise of Customs or in the name of another enterprises
9. Engaging in fraudulent behaviors and forge enterprise credit information
10. Other circumstances under which the enterprise is identified as dishonest by Customs

**Article 12**

Where any enterprise is involved in any of the following circumstances, Customs deems it as a dishonest enterprise:

1. Committing a smuggling crime or a smuggling act
  2. For an enterprise other than a customs broker, the violation of Customs' supervision provisions within a one year period exceeding 1% of the total number of the relevant transactions and associated documents such as Customs Declaration Form, entry/exit filing lists, **and inbound/outbound transportation manifest** for the previous year; **and being subject to accumulated Customs administrative penalties of more than RMB1 million**; for a customs broker, the violation of Customs supervision provisions within a one year period exceeds 0.5% of the total number of the transactions and associated documents such as Customs Declaration Form and entry/exit filing lists, **and inbound/outbound transportation manifest** for the previous year, **and being subject to accumulated Customs administrative penalties of more than RMB300,000**
  3. Failing to pay import taxes, penalties or illegal gains (e.g., payment in lieu of the goods) in due time
  4. **Having been recorded by Customs in the List, for not being located at the registered premises and/or where the enterprise's registered contact information is incorrect, for more than 90 days**
  5. Acquiring illegal benefits or earnings in the guise of Customs or in the name of another enterprises
  6. Concealing the truth from Customs or providing false information that affects the enterprise's credit management
  7. **Resisting or obstructing customs officers from performing their duties in accordance to the law, where the circumstances are serious**
  8. **Being listed in the National Joint Disciplinary List for Dishonesty due to criminal offending**
  9. Other circumstances as specified by the GAC
- For non-customs brokers enterprises or customs broker enterprises registered in the current year, if the accumulated amount of the administrative penalty imposed by Customs was over RMB1 million or RMB300,000 (respectively) due to a violation of Customs supervision regulations during the current year, Customs will deem the enterprise to be a Dishonest Enterprise.**

## Decree 225

## Decree 237

## Adjustments to the time line for re-validation applications

**Article 15**

Where an enterprise is subject to the administration measures applicable to Dishonest Enterprises for one year and there is no occurrence of any circumstance as listed in Article 10, Customs shall adjust the administration over the enterprise to that for General Credit Enterprises.

**Article 19**

Authorized Enterprises which have been downgraded to Dishonest Enterprises by Customs, cannot apply for General Credit Enterprises status for **two years**.

**Advanced Authorized Enterprises which have been downgraded to General Authorized Enterprises, cannot apply to be upgraded to the Advanced Authorized Enterprises for one year.**

## Perfecting social intermediaries' role in the certification

**Article 12**

Where an enterprise applies to Customs for an Authorized Enterprise, Customs shall validate the enterprise in accordance with the Criteria of Customs Authorized Enterprises. The Customs or the applicant enterprise may entrust an independent intermediary institution with the statutory qualifications to validate the enterprise; the validation results given by the intermediary institution approved by Customs may be used as reference for examination of the enterprise credit standing.

**Article 22**

Customs or the enterprise may engage an independent intermediary to provide a professional conclusions regarding the relevant certification issues.

## Suspension and termination of certification

**Article 14**

Where any enterprise is involved in any of the following circumstances, the Customs shall terminate the validation:

1. where the enterprise is suspected of smuggling or violating the regulatory provisions of the Customs and thus the Customs files the case for detection or investigation
2. where the enterprise take the initiative to withdraw the application
3. other circumstances under which the certification shall be terminated

**Article 17**

During the period of validation process:

- ▶ If the enterprise is suspected of smuggling and Customs submits the case for investigation<sup>3</sup>, Customs shall terminate the validation
- ▶ If the enterprise is suspected of violating Customs regulatory provisions and Customs submits the case for investigation<sup>4</sup>, Customs can terminate the validation
- ▶ If the enterprise is audited or inspected by Customs<sup>5</sup>, Customs may suspend the validation

Customs shall terminate the validation when the time of suspension is over three months.

3. Conducted by the Anti-Smuggling Bureau ("ASB")

4. Conducted by the ASB

5. Conducted by the Customs Audit Department or other Departments.

## EY observation

Decree 237 aims to improve Customs' national credit management system by enhancing the standards and procedures for enterprise credit ratings, applying different management measures to enterprises based on their credit ratings, and by facilitating compliant enterprises' cross border operations while punishing those acting in bad faith and/or in non-compliance with applicable laws. Thus, Decree 237 brings opportunities as well as challenges to businesses with import/export operations.

### **Impact on Businesses**

#### **1. Increase differentiation of management measures and enhanced benefits for Advanced Authorized Enterprise**

Decree 237 provides Advanced Authorized Enterprises with more preferential treatment, while imposing more restrictive measures on Dishonest Enterprises. Decree 237 specifies quantitative differences in the inspection rate of imported and exported goods for various category businesses. Additionally, Advanced Authorized Enterprises will also enjoy more benefits under AEO mutual recognition with higher levels of international trade facilitation.

#### **2. Risk prevention and controls are of increased importance due to Customs' robust monitoring on enterprise's credit status**

Customs will monitor an enterprise's credit information on a real-time basis. If a red flag appears, the enterprise may become subject to verification review and its credit rating may be adjusted by Customs. According to Decree 237, if an Advanced Authorized Enterprise is downgraded to a General Authorized Enterprise, it can't apply for Advanced Authorized Enterprise status for another year.

Similarly, an enterprise that is downgraded from General Authorized Enterprise to General Credit Enterprise status cannot apply for General Authorized Enterprise status for another year.

In particular, a Dishonest Enterprises can't apply for an upgrading to a General Credit Enterprise for a two-year period. That means once an enterprise is downgraded, that enterprise will have to wait for at least two years before it can apply to go back to its original status or indeed, a higher category.

Such measures have the potential to bring a significant and adverse impact on the enterprise's import and export operations, therefore it is extremely important for businesses to avoid any circumstances that may lead to a downgrade, through regular prevention (e.g., periodic health checks) and robust control over customs risk.

#### **3. Business credit information collection and sharing is escalated**

Customs attaches a great importance to information collection, especially relevant information that signifies the enterprise's credit status, and so Customs has implemented joint incentives and joint punishments with other State Authorities. Enterprise credit information sharing will further promote the establishment of a national credit system. As can be seen above, the credit status of an enterprise will have significant impact on the facilitation measures afforded to its daily cross border operations, import and export activities, and other trade aspects.

### **Policy discussion**

#### **1. Customs Criteria for Enterprises Certification**

Decree 237 has adjusted the preferential treatments that are applicable to Authorized Enterprises, however the new Customs Criteria for Enterprises Certification ("Certification Criteria") are not clearly defined. It is anticipated that the GAC will issue new Certification Criteria soon.

Customs will change the Certification Criteria to meet new situations, requirements and/or practical needs. Customs has changed its certification model from a "one size fits all" to "one certification model for each enterprise category". This means Customs would adopt different Certification Criteria for various types of enterprises in practice (e.g., manufacturers, traders, customs brokers, logistics, foreign trade comprehensive service firms and cross-border e-commerce enterprise).

#### **2. Joint incentives and joint punishments**

Decree 237 further promotes the national credit management system which offers enterprises joint incentives to act in good faith and imposes joint punishments against acts of bad faith, and builds a new market supervision system based on those credit ratings. Given such, some new articles were incorporated in Decree 237.

At present, the policy of joint incentives and punishments is still being actively promoted, however the effective implementation measures depend on cooperation from the various other authorities under State Council. Whether Customs can effectively communicate with the other authorities to build a multi-level, inter-linked, three-dimensional dynamic management network still needs to be observed.

## **Relevant suggestions**

First of all, enterprises are encouraged to become an Advanced Authorized Enterprise in order to enjoy the benefits of joint incentives and cross border facilitation measures, in terms of their customs clearance and other trade aspects. This can only be achieved by further enhancements the enterprise's compliance and integrity, through better operations management and robust internal controls.

Second, it is advisable for businesses to perform regular health checks, establish robust internal risk prevention and control systems, proactively evaluate internal management systems based on new Certification Criteria (to be issued soon) in order to ensure internal management/controls, financial solvency, compliance records, and appropriate security and safety standards are constantly consistent with new Certification Criteria (as and when these criteria evolve and are implemented). Enterprises need to submit their annual reports on a timely basis in order to maintain their credit record and mitigate the risk of being downgraded by Customs.

In addition, we suggest enterprises make good use of China Customs' self-disclosure program where necessary. Once any non-compliance with Customs provisions is identified, the enterprise should take quick action under the self-disclosure provisions and submit a self-assessment report to Customs in order to apply for a lighter penalty. More importantly, according to Decree 237, in cases where the enterprise receives a warning or a fine of less than RMB50,000 after a self-disclosure, Customs cannot take this matter into account when reviewing the credit status of the enterprise. Therefore, self-disclosure is helpful, not only to correct non-compliance issues but also to minimize the risk of a downgrade.

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