

# China Customs and Trade News

## Handling Simple Case of Administrative Penalty in China



On March 1, 2010, the General Administration of Customs (GAC) issued GAC Decree No. 188 on the procedures for handling simple case of administrative penalty, which will come into effect on April 1, 2010. The main points this new regulation are:

- Defines the concept of “simple cases of administrative penalty”.
- Provides a specific scope of cases which the provisions are applicable to.
- Regulates and specifies the administrative penalty procedures and administrative penalty amount or threshold on “simple cases”.
- Provides guidance and a regulatory basis for handling simple cases of administrative penalty.

### **I. Definition of “simple cases” of administrative penalty**

A “simple case” of administrative penalty refers to the case of an obvious minor illegal act against the customs supervision regulations discovered by Customs during the process of posting, express mailing, cargo control, bonded supervision, etc., as well as other customs supervision and statistical operations. A Notice of Administrative Punishment could be issued “on the scene” after completion of the on-site investigations.

As the regulation accentuates and focuses on the simple cases of administrative penalty, companies engaged in international trade or domestic bonded operation under customs supervision will be impacted by the new regulation. While the objective of the decree is to simplify the administrative penalty process for companies’ minor illegal acts, it should help enterprises shorten the time required to resolve the case.

## II. Scope of application

The procedures for simple case of administrative penalty are applicable to cases applied to certain provisions of the Regulation of the People's Republic of China on the Implementation of the Customs Administrative Punishment, including Article 15 (Section#1 and #2), and from Article 20 to Article 23. For these articles, they are mainly related to supervision of customs statistics and transportation vehicle movement. The maximum penalty amount applied to a simple case is less than 100,000 RMB.

Other violations applied to the simple cases is any violation with a total goods value of less than 200,000 RMB or a total article value of less than 50,000 RMB, or violations on carrying currency in and out of China, adding up to less than 200,000 RMB.

The penalty amount applied to simple case is primarily set at 100,000 RMB (except for violation of carrying currency across China), which implies the aforementioned number is the threshold to determine whether the company's action is a minor illegal act or not. It is prudent for the company to quickly determine on-site whether their violation or penalty is within the scope of simple case.

## III. Key procedures for handling simple cases of administrative penalty:

- Customs should inform the party while handling simple cases of administrative penalty. The party should submit related documents and materials as required by Customs
- Customs should file the case "on site" and immediately start the investigation.
- After the site investigation, Customs should issue the Notice of Administrative Punishment which should be given to the party or be signed by their agents on site.
- The Statement of Decision on Administrative Punishment should be issued "on site" or within 5 days after the case is launched, according to the different scenarios applied in the regulation.

Since the filing and investigation of the simple cases are conducted "on site" it requires faster reaction from the company for document submission, investigation cooperation, statement and explanation, etc., in order to save time and reach a minimum penalty and a quicker resolution of the case.

## IV. Comparison between old GAC Decree No. 159 and new GAC decree No. 188

Compared with the procedures for handling simple case of administrative penalty set forth by Chapter 6 of the GAC Decree No. 159 (Provisions Of The General Administration Of Customs Of The People's Republic Of China On The Procedure For Handling Administrative Penalty Cases) GAC Decree No. 188 has provided clarification to many factors that were not clear previously. With this procedure announced, the enterprises will enjoy both benefits and face new challenges in the future.

### Before/After Comparison

	Before	After
Definition of Simple Case	Not defined	Clearly defined
Scopes of Application	Not defined	Clearly stipulated
Timeline for handling	Not defined	The Statement of Decision on Administrative Punishment should be issued "on site" or within 5 days after the case is launched

### Benefits and Challenges

Benefits	Challenges
<ul style="list-style-type: none"> <li>• Easier to determine whether the simplified procedure is applicable to a case;</li> <li>• Easier to handle the formalities to handle the case;</li> <li>• Clearer defined timeline saves time to settle the case which facilitates the operations of the investigated enterprise.</li> </ul>	<ul style="list-style-type: none"> <li>• Faster reaction is required</li> <li>• Might be harder to collect enough information for justification</li> </ul>

In summary, the Decree simplifies the statements, protests, hearings and other responding procedures for enterprises related to certain minor illegal acts against Customs. A threshold of 100,000 RMB is primarily established to determine whether the illegal exposure is material or minor.

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Customs and international trade in China is complex, but with the right approach is manageable. A planned and structured approach results in cost savings, higher levels of compliance and fewer unwanted surprises during an audit. PricewaterhouseCoopers' specialists within our Greater China customs and international trade practice provide a wide range of advice and services related to creating value, ensuring compliance, and managing risk in relation to the movement of goods into and out of China.

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