



**Baker
McKenzie.**

Asia Pacific Industrials, Manufacturing & Transportation Webinar Series

24 February 2022 | 11:00 - 12:00 pm (BKK)



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.

1

Welcome and Introduction



Yaeko Hodaka
Co-chair, Asia Pacific IMT Industry Group,
Tokyo

Speakers



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



Panya Sittisakonsin
Partner, Tax, Bangkok
panya.sittisakonsin
@bakermckenzie.com



**Keerati Saneewong Na
Ayudthaya**
Associate, Tax, Bangkok
keerati.saneewongnaayudthaya
@bakermckenzie.com

Agenda

1 WELCOME AND INTRODUCTION Yaeko Hodaka

2 IMPORT & EXPORT REGULATORY
UPDATES AND RECENT CASE
DEVELOPMENTS IN THAILAND Panya Sittisakonsin and
Keerati Saneewong Na Ayudthaya

3 Q&A Panya Sittisakonsin and
Keerati Saneewong Na Ayudthaya

4 CLOSING & WRAP-UP Yaeko Hodaka

2

Import & Export Regulatory Updates and Recent Case Developments in Thailand



Panya Sittisakonsin
Partner, Tax
Bangkok



Keerati Saneewong Na Ayudthaya
Associate, Tax
Bangkok

Import/Export Trends in Thailand



To promote a shift to electric vehicles (EVs) in Southeast Asia's manufacturing hub for cleaner cars, which is in line with a zero emission vehicle policy and to ensure 30% of Thailand's total auto production of EVs by 2030, which also includes all levels of suppliers of, for instance, batteries, modules, semiconductor chips, spare parts, EV charging, energy storage systems and maintenance services



A number of categories are also promoted by the Board of Investment (BOI), including the agriculture, mining, ceramics, basic metals, light industry, metal products, machinery, transportation equipment, electronic industry, electrical appliances, chemicals, paper, plastics, technology development and innovation, etc., along with the high-technology industries for the Eastern Economic Corridor (EEC).



Proposal for reduction in import duty on cigars and alcohol currently in progress to attract wealthy foreign residents and skilled professionals to live and work in Thailand over the next 5 years



a

FTAs Updates

Existing FTAs Updates

Updates on national regulations in relation to FTAs in Thailand during 2021:



RCEP:

- Full enforcement of the regional trade pact from 1 January 2022 onwards.
- Thailand's tariff incentives are currently available for 10 Member States out of 14 RCEP's Member States.



ASEAN-Hong Kong FTA:

- Flexibility to use the **last** third-party sale invoice for claiming tariff incentives in Thailand under 'third party invoicing' Form AHK.



ASEAN-China FTA:

- Change from HS2012 to HS2017.
- Specific provision requires Form E from China may be accepted only when it is issued by the China Council for the Promotion of International Trade (CCPIT).

Existing FTAs Updates

Updates on national regulations in relation to FTAs in Thailand during 2021:



Thailand-Japan FTA:

- Change in Product Specific Rules from HS2002 to HS2017.
- Minor change in Form JTEPA format in response to the change from HS2002 to HS2017.
- Submission of PDF Form JTEPA through the designated IT platform as an interim measure.
- Additional requirement on the stipulation of origin criteria.
- Revised Operational Procedures to provide additional systems for government officials to examine the authenticity of Form JTEPA.



Thailand-Chile FTA:

- Replacement of new Form TC template to be used from 1 September 2021 onwards.

A large container ship is docked at a port at dusk. The ship is illuminated by warm lights, and its reflection is visible in the water. In the foreground, a metal walkway with railings leads towards the ship. In the background, another container ship is docked, and the sky is a mix of blue and orange. The overall scene is a busy port at twilight.

b

Export Control Updates

Export Control Regulations

Pursuant to the Trade Control on Weapons of Mass Destruction Related Items Act, B.E. 2562 (2019) ("**WMD Act**"), which came into force on 1 January 2020, the following regulations have been recently implemented:



Notification of the Ministry of Commerce on Measures to Control Products Related to Proliferation of WMDs and Measures on Goods with Suspicious Ground that the End-use or End-user is Related to Proliferation of WMDs, dated 11 October 2021



Notification of the Department of Foreign Trade on Certification Criteria of Internal Compliance Program, dated 6 September 2021



Notification of the Department of Foreign Trade Prescribing Forms for Notifying the Risk of Proliferation of WMDs, dated 1 November 2021

Control on Weapon of Mass Destruction

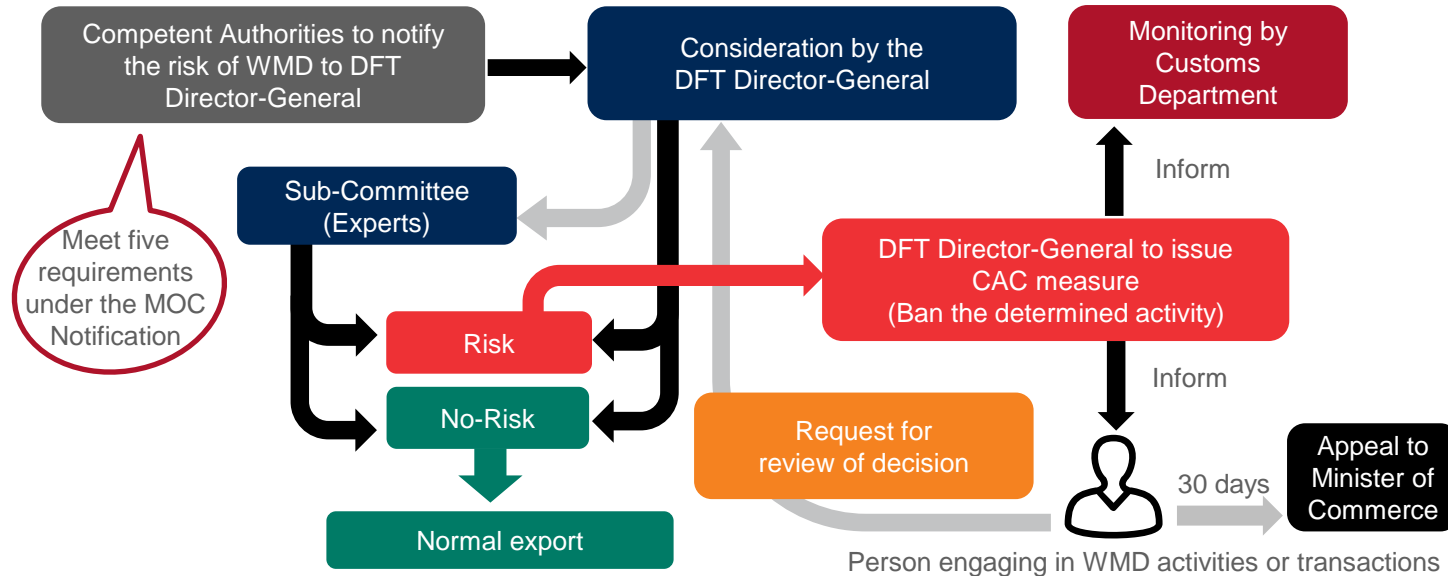
MOC Notification
on Measures to
Control Products
Related to
Proliferation of
WMDs and
Measures on
Goods with
Suspicious Ground
that the End-use or
End-user is
Related to
Proliferation of
WMDs

- Effective on 26 December 2021
- Catch-All Controls (CAC) and Suspected Goods Control Measure by prescribing two lists of goods that could be considered as relating to proliferation of WMDs ("**DUI Lists**") as follows:
 - 1) List 1: Goods that are considered DUI, based on the EU Dual-Use Item List of 2019; and
 - 2) List 2: Goods that can be regarded as DUI, based on the latest Harmonized System Codes ("**HS Codes**").
- Certain government entities who have information regarding goods to be **exported, re-exported, transshipped, transited**, or the **technology and software to be transferred**, which pose a risk of proliferation of WMDs or there is suspicious ground that the end-use or the end-user is related to proliferation of WMDs, are obliged to notify the Director-General of DFT to assess the risk and impose export measure.
- Measures include a prohibition from exporting, re-exporting, transshipping, transiting the said goods, effective from the time such notice is received.

Control on Weapon of Mass Destruction

MOC Notification on Measures to Control Products Related to Proliferation of WMDs and Measures on Goods with Suspicious Ground that the End-use or End-user is Related to Proliferation of WMDs

Catch-All Controls (CAC) and Suspected Goods Control Measure



Control on Weapon of Mass Destruction



DFT Notification on Certification Criteria of Internal Compliance Program

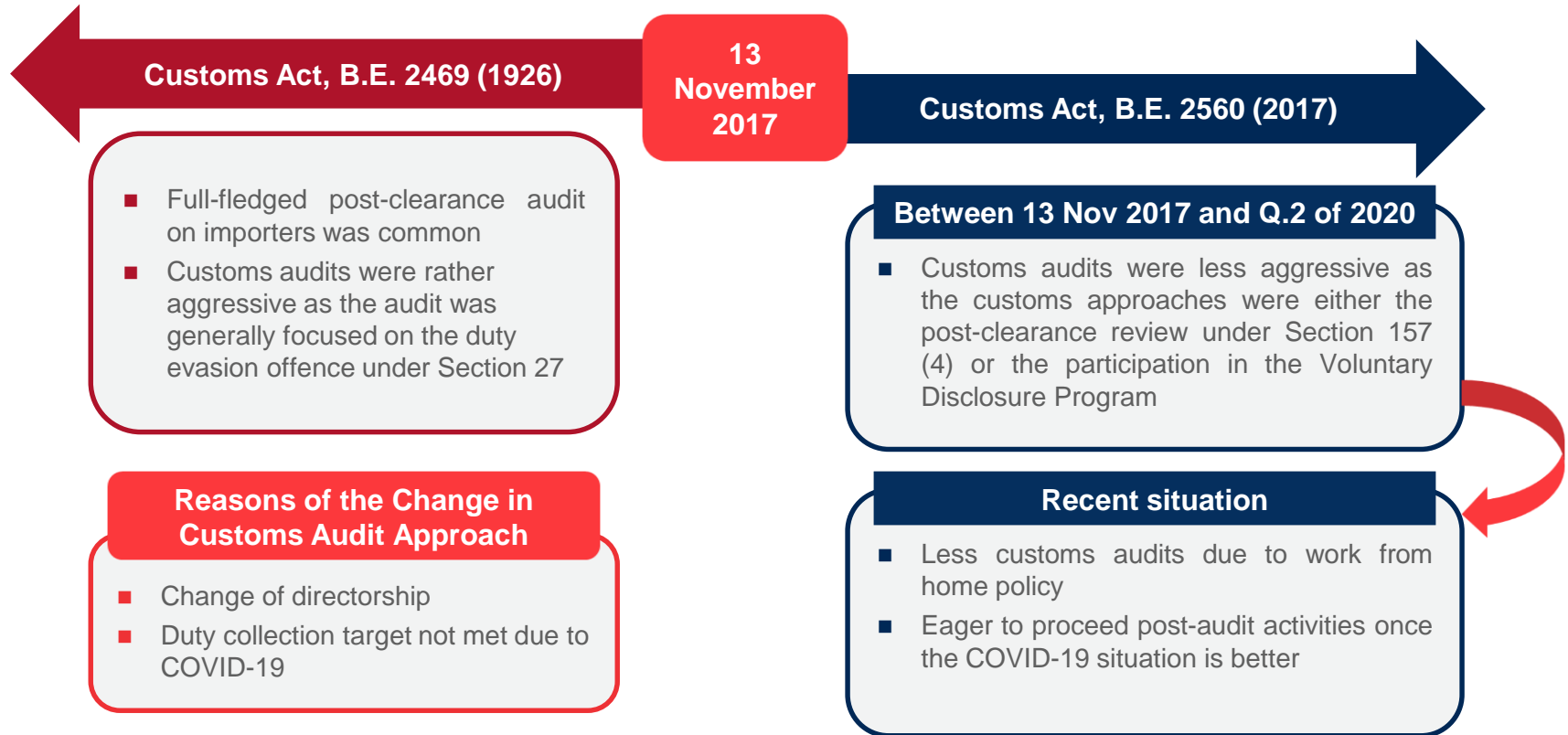
- DFT may certify business operator's ICP that meets certain prescribed criteria.
- ICP shall consist of the following systems:
 - 1) System regarding responsibility and delegation of management duty
 - 2) System regarding usage and end-user verification
 - 3) System regarding internal training
 - 4) System regarding information and document management
 - 5) System regarding system check and improvement
 - 6) System regarding reporting.
- There are three levels that the ICP can be certified:
 - Good** - Two or more systems of the ICP meet the criteria;
 - Very Good** - Four or more systems of the ICP meet the criteria; and
 - Complete** - All six systems of the ICP meet the criteria.
- Any business operator who wishes to have its ICP certified may register at the e-Thailand's Control on Weapons of Mass Destruction related Items (e-TCWMD) system provided by the DFT and apply for the certification.



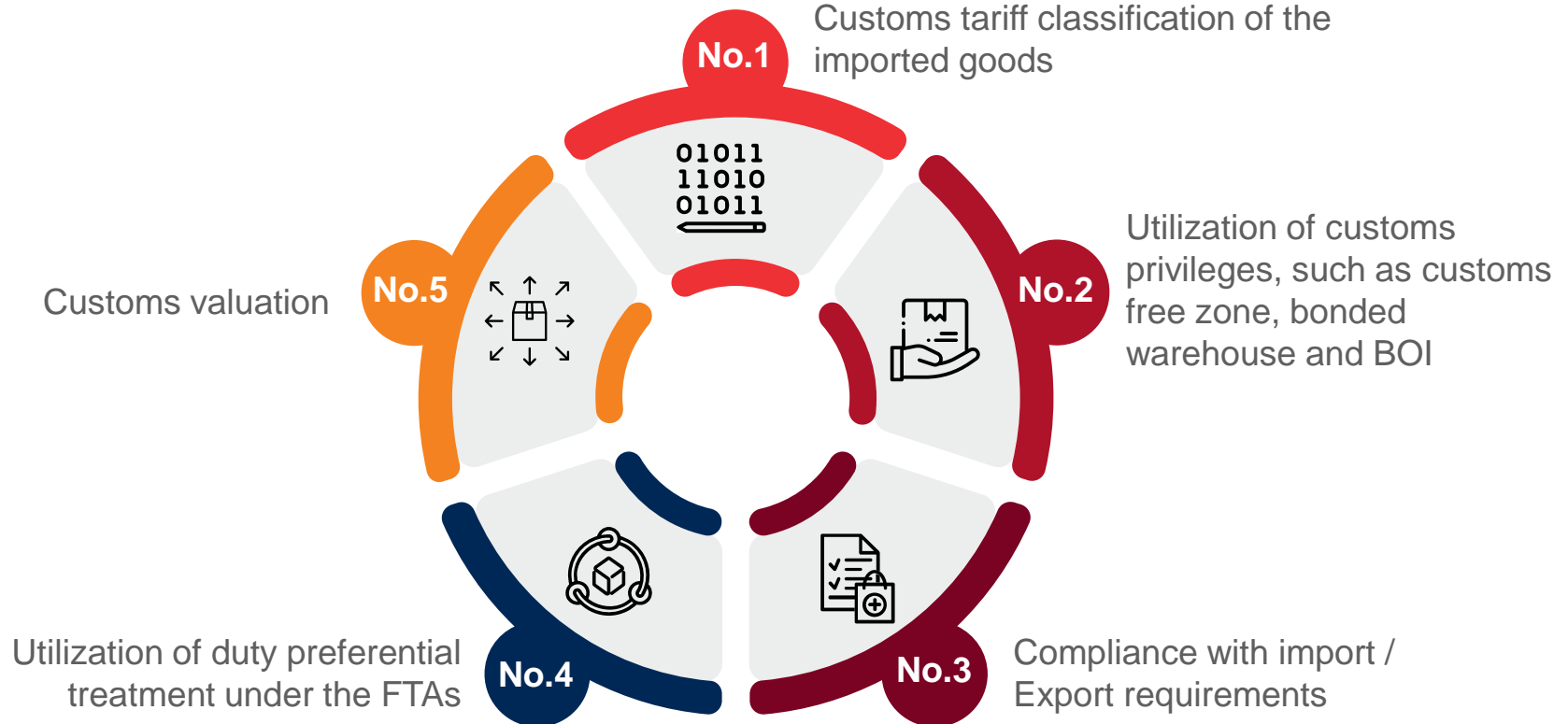
C

Customs Audit Trends in Thailand

Introduction to Customs Audit in Thailand



Top 5 Customs Audit Trends in Thailand

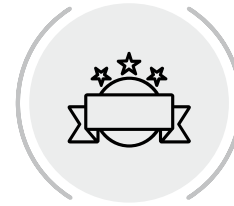


No.5 Customs Audit Trends in Thailand

Customs valuation (particularly the transaction value)



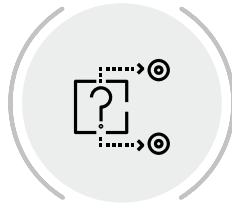
Transfer pricing documents
and policy



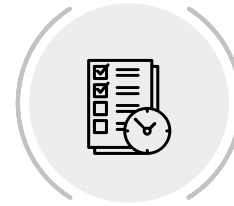
Production royalty/
trademark royalty

No.4 Customs Audit Trends in Thailand

Utilization of duty preferential treatment under the FTAs



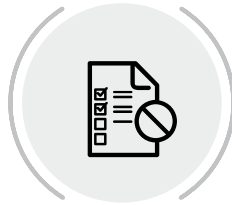
Unclear practice when two rules under FTAs are applied



Compliance during the transition of new rules

No.3 Customs Audit Trends in Thailand

Compliance with Import / Export requirements



Incorrect customs tariff declaration may lead to non-compliance of import/ export requirements



List of product controls available on the website of Thai Customs

No.2 Customs Audit Trends in Thailand

Utilization of customs privileges, such as customs free zone, bonded warehouse and BOI



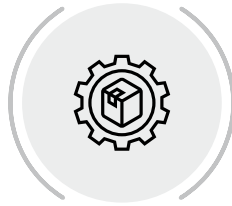
Incompliance with customs formalities



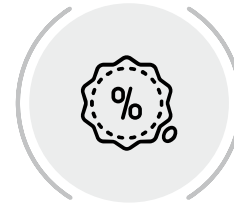
Exercising discretion on customs privilege claim

No.1 Customs Audit Trends in Thailand

Customs tariff classification of the imported goods



Interpretation of GRI 2(a)



Tendency of classifying in
higher-rate HS code



d

Recent Precedential Customs Cases and Practices

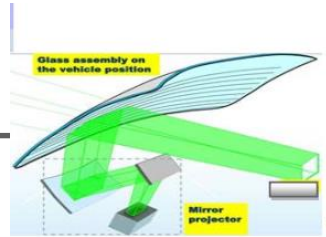


Case Study 1

Safety glass of size and shape suitable for incorporation in vehicles

HS Code 7007.21
10%

Licensable by TISI according to NSW



Parts and accessories of the motor vehicles

HS Code 8708.29
30%

Non-licensable according to NSW



Facts and assumptions

- Import of safety glass for assembling in motor vehicles under HS Code 7007.21
- WCO issued its classification decision in 2018 that the product similar to what we used to import with **frame** or **other fixture** should be classified under HS 8708.29.
- Based on NSW, safety glass under HS Code 7007.21 is subject to import requirements of TISI



Customs Issues

- Should the WCO decision be applied as classification precedent retroactively on past imports?
- What if the importer has a customs ruling regarding HS Code 7007.21 for the product in the past?
- Import requirements under TISI are still applied to the products?

Case Study 2

Essential oils other than those
of citrus fruit

HS Code 3301.2X
5%



Preparations for perfuming or deodorizing
rooms, including odoriferous preparations
used during religious rites

HS Code 3307.41
20%



Facts and assumptions

- Import of essential oils in retail packaging
- Essential oils have multiple applications, including skin application, consumption and room deodorizing



Customs Issues

- What if the product has multiple applications?
- What if some of the product applications are required for registration with the authority and some are not?
- Does the product application affect the tariff classification?

Case Study 3



Facts and assumptions

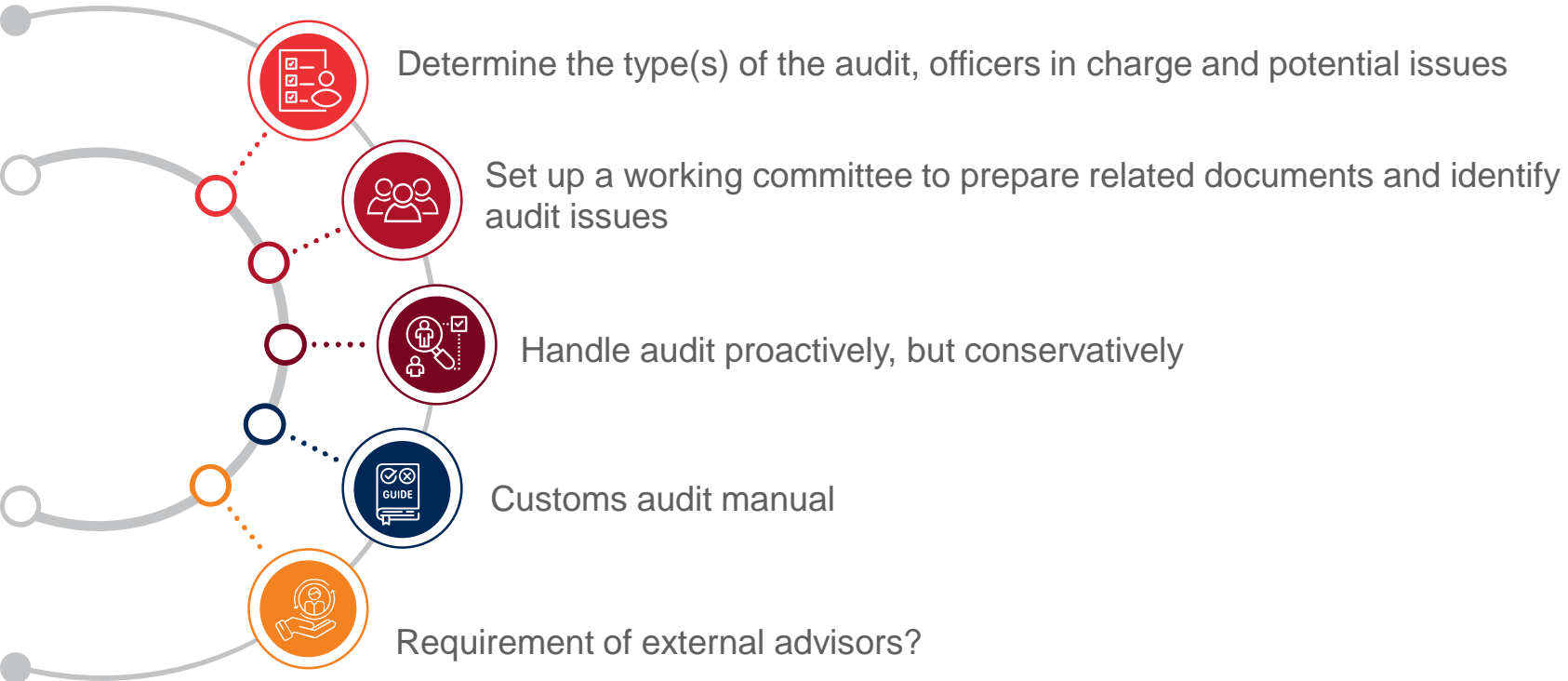
- Importer obtained all of the necessary documents for claiming the duty reduction privilege under the MOF Notification and submitted accordingly to the Customs at the time of import formalities.
- Goods meet the qualifying criteria for duty reduction privilege.
- Importer had not obtained an approval from the Customs Department before the import of the goods.
- The matter was under the consideration of the Customs Appeal Committee and the Revenue Board of Appeal more than 270 days from the complete appeal applications.



Customs Issues

- Is the privilege claimable if no approval from Customs Department?
- Does the failure to comply with the customs formalities invalidate the eligibility for the privilege?
- Can the importer file a lawsuit against the relevant authorities (i.e. Revenue Department and Customs Department) straightforward?

Tips for Managing Customs Audit



Questions




4

Closing & Wrap-up



Yaeko Hodaka
Co-chair, Asia Pacific IMT Industry Group,
Tokyo

Baker McKenzie.



Baker & McKenzie is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2022 Baker & McKenzie

[bakermckenzie.com](https://www.bakermckenzie.com)