

**SUBJECT:** Recent Developments in Calculation Method of Administrative Fines on Cargo Shortage/Overage Cases

In practical terms, having recently experienced the application of the serious changes in the cases where there is an allegation of shortage/deficiency or overage/excessiveness in the discharged quantities against the customs declaration/bill of lading figures, this circular herein is prepared in order to enable our principals to stay up to date.

The Law Regarding Amendments to the Customs Law and Other Laws and Statutory Decrees (hereinafter referred to as "Law No. 6455") entered into force on 11.04.2013 has amended some provisions under the Turkish Customs Code (hereinafter referred to as "TCC"), whose scope is to lay down the customs rules that shall apply to goods and means of transport entering into and exiting from the Customs Territory of the Republic of Turkey.

In addition to the above, the legislator has regulated some changes in the Customs Regulation (hereinafter referred to as "Regulation No. 27369") via the By-Law Related to Making Amendments on the Same promulgated on 21.11.2013 (hereinafter referred to as "By-Law No. 28828").

As detailed below, there have been some considerable changes on the factors which go into the calculation of administrative fines.

1- Article 237/1 of TCC used to read as follows:

In the default of demonstrating within the period prescribed by the customs administration, that the packages, proved to be deficient as a result of the amount registered in the summary declarations or the commercial or official papers used as summary declarations submitted to the customs administration, have not been loaded from their provenance or have been unloaded in another port or lost or stolen due to any accident or average; and provided that the tariff classification of the goods kept within these deficient packages can not be determined, a fine shall be charged on these goods, at an amount equaled to customs duty under their tariff classification or in case the tariff classification can not be determined, under the highest

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dutiabie classification of the chapter in accordance with the nature and the description of the goods.

Please note that the phrase “at an amount equaled to customs *duty*” has been changed to “at an amount equaled to customs *duties*” by the article 14 of “Law No 6455”. In view of this, value added tax (VAT) and/or private consumption tax (PCT) and/or other taxes/costs also take a role in adopting of the particular estimation of fines. As a result, extent of administrative penalties has increased depending on the nature and the description of the goods after the Customs Offices have recently begun to put the afore mentioned provision into practice.

In order to illustrate the above mentioned amendment, you may kindly refer to our below example:

Fact	Situation Before the Amendments	Situation After the Amendments
<p><b>i. Cargo:</b> Fuel oil</p> <p><b>ii. Alleged Shortage Quantity as per Customs Papers:</b> 15,600 m/tons</p> <p><b>iii. Price per ton:</b> TL 1,268.76.-</p> <p><b>iv. CIF value:</b> TL 19,792.65.- (15,600.- m/ton X TL1,268.76.)</p> <p><b>v. Customs Duty:</b> 3,5%</p> <p><b>vi. VAT:</b> 18%</p> <p><b>vii. PCT:</b> TL 0.476</p>	<p>Amount of administrative fine collected by the Customs Authorities = TL 692,74.- (TL19,792.65.- X 3,5%)</p>	<p>VAT = TL 3,687.37.- (CIF value plus Customs Duty x 18%)</p> <p>Amount of administrative fine collected by the Customs Authorities = TL 4,380.11 (Customs Duty plus VAT)</p> <hr/> <p>PCT = TL 7,425.60.- (15, 600 m/ton x TL 0.476)</p> <p>VAT upon PCT = TL 1,336.60.- (TL 7,425.60.- x 18%)</p> <p>Amount of fine collected by the Tax Offices = TL 8,762.20.-</p>



To sum up for your easy perusal:

As you may see from the above table incorporating an example, the amount of administrative fine collected by the Customs Authorities had been TL 692,74.- before the amendments.

The collected amount of administrative fine was = TL 13,142.31- (TL 4,380.11.- by the Customs Authorities and TL 8,762.20.- by the Tax Offices) as from the application of the afore-mentioned amendments up to our fruitful challenge which has reshaped the situation.

**Current Situation Upon Our Successful Challenge  
TL 4,380.11 to be collected only by the Customs Authorities**

Due to the fact, PCT Declarations are born on the delivery date of goods, not on the registry dates; we have raised the objection that PCT can not be considered within the same definition/description of customs duties or import duties. As a result, neither the Customs Administration nor the Tax Offices can collect any penalty resulting from PCT any longer, which is slowly but surely expected to be officialised via an administrative order to be internally circulated by the Head Department.

2- The amendment has been introduced to article 75/7 of "Regulation No. 27369" by article 2 of "By-Law No. 28828", which is as follows:

In the events of shortage/deficiency or overage/excessiveness in the summary declarations resulting in a proceeding, the proceedings or the customs fines, if any, are no longer applied for the whole shortage/deficiency or overage/excessiveness quantity but for the quantity exceeding the discrepancies that do not require a proceeding as determined by the decree of Administration. No penal transaction/proceeding is made for the quantity that is within the range of discrepancies that are determined not to be subject to a proceeding.

The subject amendment is designed to establish the balance in the conflicting interests by taking account of the former amendment resulting in an unfavourable increase.



With a view to have a better understanding, if we try to schematize, the fictitious scenario is as follows:

<b>Fact</b>	<b>Previous Situation</b>	<b>Current Situation</b>
<b>i. Summary Declaration</b> Quantity: 1,000 m/ton	The above mentioned calculation used to be made by taking 100 m/tons as basis.	The above mentioned calculation is being made by taking 70 m/tons as basis.
<b>ii. Customs Allowance Rate:</b> 3%		
<b>iii. Alleged Discharged</b> Quantity as per Customs Papers: 900 m/ton		
<b>iv. Alleged Shortage</b> Quantity: 100 m/tons		
<b>v. Customs Allowance</b> Quantity: 30 m/tons		

We hope that the above may be of your assistance in the future cases.

Yours faithfully,

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