

Location, Location, Location!

Trade Intelligence Asia Pacific
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*Worldtrade
Management Services*



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Trade Intelligence Asia Pacific seeks to capture the essence of selected issues that are of particular interest to clients of PwC. Our regional network of customs and international trade consultants routinely gather, analyse and disseminate information and knowledge to our clients. Based on studies as well as meetings and discussions that take place across the region with various trade and customs officials, we consolidate our findings into Trade Intelligence Asia Pacific.

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Feature story

Location, Location, Location!

Rethinking regional distribution centre strategy

Every restaurateur and retailer in the world is familiar with William Dillard's quote that in order to attract customers and create a sustainable business, nothing is more important than 'location, location, location'. What is true in retail and food is just as true for all industries when it comes to the selection of its regional distribution or supply hubs in Asia. The wise selection of a logistics hub in Asia can lead to real cost savings through both operational efficiencies and smart indirect tax planning.

Two years ago this publication featured an article focusing on the reasons why a business might consider locating its regional distribution centre (RDC) in mainland China as opposed to the more traditional locations such as Hong Kong or Singapore. At that time, it was clear that the emergence of stronger domestic markets in China and India and various governmental reforms and incentives meant that establishing an RDC in Mainland China could be a beneficial proposition.

The potent combination of rapidly expanding network of bonded zones, better international transport networks and infrastructure, and relatively low labour costs continue to make China an attractive RDC option. However, as businesses increase their operations and focus to Asian markets and production bases beyond China, it is time to take a look at the question of locating RDCs in a broader Asian context. Many companies are seeing a surge in demand

in South East Asia and are planning for large scale regional growth that must be served through an enhanced distribution network. It is timely therefore to examine the drivers for assessing RDC location and compare some of the possible advantages and disadvantages of locating an RDC in one of the member territories of the Association of Southeast Asia Nations (ASEAN).

What are the key RDC location assessment drivers?

A location assessment depends on understanding the key attributes needed for the facility set-up and how these attributes relate to the environment in the location.

Within the ASEAN region, it is our experience that the overall risk matrix, the costs, the market location and the flexibility of infrastructure are the four key drivers in determining the RDC location.

Risks

Typically a company will compile a risk matrix as part of its location study, carefully considering and weighing the political, economic, socio-cultural and technological risks of each potential RDC location. The specific weight that each of these risk factors is given within the overall matrix will largely depend on the nature and goals of the business. However, within ASEAN, with the exception of Singapore, typically the overall risk rating is found to be moderate with issues that can be identified and overcome with careful planning.

One of the risk factors that is often overlooked relates to the international trade regulatory environment existing at each location. Some countries have implemented excellent trade facilitation schemes which in combination with strong compliance enforcement, results in an orderly, transparent, consistent and predictable trading environment. Other countries have granted importers and exporters helpful facilitation schemes but do not strongly enforce compliance requirements. This results in both business uncertainty and an unfair competitive environment where some companies will take advantage of low enforcement to circumvent compliance rules while others who choose to comply suffer the consequences. Multinationals setting up an RDC in the latter type may find it difficult to maintain both compliance and competitiveness. Those who choose non-compliance are faced with an unquantifiable business risk should the authorities decide to begin enforcement at any given time.

Recent export controls (often called Strategic Goods or Strategic Trade) regulations in several Asian countries are good illustrations of this point. Governments are often very hesitant to introduce these types of rules for fear of losing trade business. As a result, some have finally implemented export controls but have chosen not to actively or strongly enforce. The result is an uncertain business environment more likely to scare off trading business than would be strong, clear, and fair enforcement.

Costs

The underlining cost elements of an RDC can be split into three broad in categories:

- transportation
- warehousing
- taxes and customs duties

Transportation costs depend mainly on the requisite transport mode, the ability for a business to be flexible regarding mode, timing and seasonal volume. Further, a location with adequate mass of freight forwarders driving competition will impact the ability of the business to negotiate logistics service fees. A freight forwarder that can offer a “one-stop-shop” of both logistics and customs clearance services is often the most price-competitive. Freight rates are also impacted by seasonality (depending on the frequency of shipments out of the RDC). Most businesses will prefer to avoid high frequency or volume replenishments to RDC depots in peak season, when only higher rate and surcharges are quoted in the market.

Today, many logistics service providers charge handling fees rather than an overall warehouse rental. However, the handling fee will reflect the land acquisition or rental cost, labour cost, and equipment and maintenance cost which all vary from territory to territory. Even within a territory, the fee is also depends on the existing level of infrastructure in a particular location.

From a tax and customs duties cost perspective, many factors will influence the cost according to the territory, such as the ability to negotiate a tax incentive for the RDC, availability of foreign trade zones, trade incentives such a bonded warehouse and manufacturing and, where a trade incentive cannot apply, the duty rates applicable to goods will be imported into the RDC.



A high level tax and customs duty comparison between the territories is drawn below:

Country	Range of customs duty rates	Example of trade incentives	Corporate tax headline rates	Corporate tax incentives	Availability of FTZ/bonded warehousing	Ease of use of FTZ/bonded warehouse
China	0 – 65%	<ul style="list-style-type: none"> Bonded zones Processing trade 	25%	limited	Yes	Straight forward
Indonesia	0 – 150%	<ul style="list-style-type: none"> Exemption or reduction of duties for new or expansion investment 	25%	limited	Yes	Straight forward
Malaysia	0 – 30%	<ul style="list-style-type: none"> Duty and tax exemption for goods moved or sold within Free Trade Zone 	25%	✓	Yes	Moderate to Complex
Philippines	0 – 65%	<ul style="list-style-type: none"> Duty exemption for goods and equipment imported into free zone 	30%	✓	Yes	Moderate to Complex
Singapore	0% (with exceptions)	<ul style="list-style-type: none"> GST suspension schemes 	17%	✓	Yes	Straight forward
Thailand	0 – 80%	<ul style="list-style-type: none"> Bonded warehousing Drawback on duties paid for exported goods in same state 	30%	✓	Yes	Complex
Vietnam	0 – 82%	<ul style="list-style-type: none"> Duty exemption on components, semi finished products and machinery 	25%	✓	Yes	Straight forward

Market location

When considering the RDC location, typical questions will include: What are the current size and segmentation of the market it is serving? What are the growth trends and drivers? What are the sales and distribution channels?

An ideal RDC location should meet at least one of the following conditions. Either it should be close to suppliers or to key customers, or, a ‘centre of gravity’, which optimises the time and distance to either suppliers or customers, or both.

In addition there are customs and trade considerations, in particular how might the RDC location maximise the opportunity for using Free Trade Agreements (FTAs). Without creating a detailed analysis of the various FTAs in the region, it is useful to consider as the following as to the application to a particular RDC location:

- Availability and reach of FTAs into sales and distribution markets
- Implementation and interpretation of FTA rules by the local customs authorities, mainly around:
 - Acceptability of indirect shipments

- Ease of obtaining movement documents such as certificates of non-manipulation or back-to-back certificates of origin
- Allowability of operations that can help confer origin in the RDC
- Acceptability of triangular (“indirect” or “third party” or “third country” invoicing arrangements.

Flexibility and infrastructure

Flexibility is a term that covers both logistics turnaround time and the adequacy of options available when there is an urgent need for change due to unforeseen supply chain events (e.g. natural disasters, strikes, major regulatory changes, etc.).

Apart from the distance an RDC is from its markets, the availability of multiple transport modes and 365-day shipping schedule may be equally important. For example, a lubricant provider supplements the sea freight with trucking from Singapore to Malaysia and Thailand. The road conditions in Malaysia and Thailand have been vastly improved in the recent years and therefore the time saved by trucking compensates the slightly higher cost including the toll fee.

In a second example a semiconductor manufacturer flies all its finished products into Singapore from mainland China, Taiwan, and the Philippines then redistributes to Asia, Europe, and US markets using airfreight and courier service. The schedules of airlines and integrators in Changi airport of Singapore are positioned so as to allow the RDC to receive shipment from China in the morning, complete the putaway, pick and pack, and packaging, with all commercial documents ready before consigning to the integrator again to catch up with the night flight to Europe or US. The RDC really benefits from this flexibility in Singapore of airfreight handling, customs procedures, warehouse processing, and again, road cargo shuttle from and to the airport. This kind of full spectrum facilitation is not yet easily achievable in other locations in the South East Asia region, or even in Hong Kong.

The case for ASEAN

There are a number of comparative economic and business advantages in ASEAN including:

- relatively low levels of inflation
- large and expanding FTA coverage
- very competitive logistics rates and services in some countries
- expanding network of Free Trade Zones and other bonded facilities allowing duty free transit.

In a report entitled “Doing Business” published by the World Bank in 2010, Singapore, Thailand, and Malaysia all scored quite highly.

	Ease of doing business	Getting credit	Protecting investors	Paying taxes	Trading across borders	Enforcing contracts
Singapore	1	6	2	4	1	13
Thailand	19	72	12	91	12	25
Malaysia	21	1	4	23	37	59
Vietnam	78	15	173	124	63	31
China	79	65	93	114	50	15
Indonesia	121	116	44	130	47	154
Philippines	148	128	132	124	61	118

Source: *Doing Business 2011 Report, World Bank*

Note: The rankings for all economies (183 economies) are benchmarked to June 2010. Rankings on the ease of doing business are the average of the economy’s rankings on the 10 topics covered in the *Doing Business 2011 Report*.

So, which of the 10 ASEAN member territories might a business wish to consider for its RDC? Singapore is often quoted as the most logical choice taking into account the Freeport status (in effect), low rates of corporate and excellent international transport connections. However the table above illustrates that the other big players in the region are not so far behind. Due

consideration of all factors that may affect RDC operational and cost effectiveness; including risk, cost, location, and flexibility, should be considered during the location study due diligence. The result may be a surprise. For some companies their best RDC option may lie in a country such as Malaysia, Thailand, or Philippines that is often off the radar screen.

ASEAN customs take stock of progress of development of ASEAN customs practices

The 20th meeting of ASEAN Directors-General of Customs was held in June 2011 to take stock of the progress made in the development and integration of customs practices in ASEAN under the five main working groups – the Coordinating Committee on Customs (CCC), the Customs Procedures and Trade Facilitation Working Group (CPTFWG), the Customs Enforcement and Compliance Working Group (CECWG), the Customs Capacity Building Working Group (CCBWG) and the ASEAN Single Window Steering Committee (ASWSC). After taking stock of what has been achieved, the Strategic Plan of Customs Development 2011-2015 was subsequently reviewed and the notable areas earmarked for continued focus include:

- customs Tariff Classification (based on the ASEAN Harmonised Tariff Nomenclature (AHTN) and the World Customs Organisation's harmonized tariff system)
- customs Valuation (WTO Agreement on Customs Valuation)
- implementation of ASEAN Free Trade Area Rules of Origin (ROO) and familiarisation of non-preferential rules of origin
- simplification and harmonisation of customs procedures, formalities, documents and practices in accordance with principles of the Revised Kyoto Convention

- design and implementation of the National Single Windows followed by the ASEAN Single Window to expedite customs clearance
- improvement of the ASEAN systems of customs post-clearance audit
- establishment of customs regime of temporary admission
- implementation of the ASEAN customs transit in accordance to the ASEAN Framework Agreement on the facilitation of goods in transit
- reform and modernisation of customs authorities (including customs governance and integrity); establishment of their performance indicators.

In order to ensure continued progress of the ASEAN Economic Community (AEC) Blueprint, the ASEAN Secretariat will establish an ASEAN Integration Monitoring Office (AIMO) as a dedicated task force. Mid-review of the overall progress to achieve various customs specific objectives within the AEC Blueprint is already underway and will be presented in a scorecard format.

The EU is active in pursuing bilateral FTA negotiations with ASEAN members

On the sidelines of the first EU-ASEAN Business Summit held in May, the EU Trade Commissioner gave further indication of the timeline as to how the EU intends to pursue FTAs with the various individual ASEAN member states. For a start, the EU is expected to finalise a bilateral FTA with Singapore this year, followed by a pact with Malaysia in 2012. There are also plans for the EU to finalise bilateral FTA negotiations with Indonesia, the Philippines, Thailand and Vietnam by 2013.

Going forward, the FTA negotiations with the various ASEAN member states are expected to have a significant focus on the non-tariff regulatory barriers that are hampering trading of products between the two trade blocs, since the customs tariffs in both the EU and ASEAN member states are already quite low across most types of products. One example of such non-tariff regulatory barriers is the difference of product and service standards between the EU and an ASEAN member state. In Indonesia's case, the environmental standard of palm oil, a key Indonesian export into the EU, is not accepted by the EU. Palm oil exports are therefore unable to be imported / consumed in the EU.

To resolve this particular issue, Indonesia has requested the EU to support the certification processes for products and services within the ASEAN region as part of capacity-building efforts and to build on mutual recognition arrangements of each party's product and service standards.

Exporting companies from ASEAN member states who are earmarking the EU as an upcoming key market should watch this space for any developments for their respective industries and get involved in the consultative process of trying to reconcile the differences in the product or service standards.

In instances where the import tariff is still quite high for certain protected industries in either the EU or a particular ASEAN member state, it may also be worthwhile for companies to be involved in the lobbying process and for their respective trade negotiation teams to push for greater preferential tariff benefits.

An example will be the case of EU automotive suppliers. They had already organized a delegation to accompany the EU trade negotiation team to the EU–Indonesia FTA negotiation talks. Consequently, they managed to have some time to present to both parties their trade flows and requirements to source for spare parts from multiple countries within their bill-of materials. The EU automotive suppliers are trying to secure some favourable rules of origin for the import of their spare parts from non-signatory parties. While there are no clear indications yet as to whether their efforts would eventually result in tangible benefits for the automotive supplier industry, such efforts have been proven in past FTA negotiations to be effective.



Export controls

Full enforcement of Strategic Trade Act 2010 (STA) in Malaysia

First mentioned in our May/June 2010 report and subsequently in our last few editions of *Trade Intelligence*, exporters should take note that Malaysian Authorities were set to fully enforce the STA with effect from 1 July 2011.

The Royal Malaysian Customs Department had announced that it will require exporter to 'self declare' whether an item requires an export permit via the online customs export declaration system (Dagang Net) starting 1 July 2011, and they will begin to "validate" declarations made by exporters by 1 August 2011.

Aside from the risk of exports being denied and significant delays resulting in disruption to their supply chain, exporters should be mindful of the penalties for non-compliance under STA, considered as amongst the most severe in the region, which include:

- seizures of goods
- minimum fine of RM5,000,000 or no less than five years imprisonment when done without intent or knowledge, minimum fine of RM20,000,000 or no less than 10 years imprisonment with intent or knowledge
- officers and directors of companies may be held personally liable
- risk of sanctions in Malaysia or under foreign national legislation.

Exporters who have not yet undertaken a comprehensive review of whether their exports are subject to STA requirements should take immediate steps to do so. There is no mechanism allowing individuals or corporations to voluntarily disclose retrospective non-compliance and volunteer to right past wrongs.

Applications for single use permit must be made 30 days in advance, and will require an End Use Statement upon submission as well as an undertaking from the applicant to produce a Delivery Verification Statement subsequently. Bulk permit and Multi-use permit applications require two-months lead time, with a prerequisite that applicants must commit to implementing an Internal Compliance Programme (ICP) that meets the minimum requirements outlined in the Checklist released by Strategic Trade Secretariat under the Ministry of International Trade and Industry. Audit or review will be conducted subsequently and will determine eligibility for continued export privileges of the permit holder.

Australia sanctions update

Libya

The Australian Government has fully implemented United Nations Security Council (UNSC) resolutions 1970 and 1973 which impose sanctions on the Gaddafi regime. This was imposed in response to the regime's actions against political protesters and the civilian population of Libya. Accordingly, Australia now prohibits:



- unauthorised direct or indirect supply, sale or transfer of arms and related material to Libya
- unauthorised provision of technical assistance, training, financial or other assistance related to military activities, mercenary personnel and the provision, manufacture, maintenance or use of arms or related materials
- procurement of arms or related materials from Libya
- unauthorised use or dealing with the assets of, or making assets available to, or for the benefit of, a person or entity listed by the Security Council
- entry or transit through Australia of persons listed by the Security Council.

In addition to the UNSC sanctions, Australia has imposed autonomous sanctions against Libya which include:

- restrictions on financial transactions involving key members of the Gaddafi regime
- restrictions on visas to travel to Australia by key members of the Gaddafi regime.

Syria

On 13 May 2011, the Australian Minister for Foreign Affairs announced autonomous sanctions measures against Syria “in response to the disturbing and unacceptable use of violence by the Syrian regime against its people”. Australia’s autonomous sanctions against Syria currently include:

- restrictions on financial transactions involving key members of, and entities in connection with, the Syrian regime
- restrictions on visas to travel to Australia by key members of the Syrian regime; and
- an arms embargo prohibiting the following for being exported to Syria
 - any goods listed in the Defence and Strategic Goods List (DSGL)
 - arms and related material not included in the DSGL, including equipment used for internal repression.

FTA focus

ASEAN–Australia–New Zealand FTA (AANZ FTA) implemented by Indonesia

The Ministry of Trade has ratified the AANZ-FTA with an effective starting date of 6 May 2011. However the FTA must still wait for a regulation to be published by the Ministry of Finance regarding the schedule of import duty reductions for it to become effective.

Under AANZ-FTA, almost 90% of traded products will have an 0% import duty rate. However, for some products such as meat, the lower duty rates will only be applied until 2020.

Indonesian exporters are urged to wait for the notification regulation from the Ministry of Finance and study carefully the procedure and products covered by the FTA.

Australia–India Comprehensive Economic Cooperation Agreement (CECA)

Formal negotiations have been commenced between India and Australia for a proposed CECA covering investments and trade in goods and services.

The start of trade negotiations was announced during the 13th Australia-India Joint Ministerial Commissioner meeting which was held in Canberra on 12 May 2011. The first round of negotiations is expected to be held at New Delhi in July 2011.

Chile–Thailand FTA negotiations progress

Chile and Thailand concluded the second round of FTA negotiation on 26 May 2011 in Santiago, Chile. The first round of negotiations was launched in April this year. During this second round, both countries discussed topics related to trade in goods and cooperation, rules of origin, customs procedures, services and investments.

Agreements signed

Japan–Peru EPA	31 May 2011
Hong Kong–EFTA FTA	21 June 2011

Agreements entered into force

EU–South Korea FTA	1 July 2011
India–Malaysia CECA	1 July 2011
Colombia–EFTA FTA (implemented by Colombia, Liechtenstein and Switzerland)	1 July 2011
Peru–EFTA FTA (implemented by Peru, Liechtenstein and Switzerland)	1 July 2011
India–Japan CEPA	1 August 2011

ASEAN–India Free Trade Area

India has notified the applicability of preferential rates of duty under the India-ASEAN Trade in Goods (TIG) Agreement to goods imported from the Philippines with effect from 1 June 2011. With the addition of Philippines, the TIG Agreement is operational with nine of the ten ASEAN member states. Official ratification for implementation purposes is yet to be received from Cambodia.

The negotiations on the services sector and investment are currently underway. In this regard, senior economic officials from the then member trade blocs and India met on 24 and 25 June 2011 to discuss various issues surrounding the inclusion of services and investments under the trade pact.

The next ASEAN- India ministerial meeting is scheduled to be held in August in Indonesia.

Significant progress was made in the trade in goods chapter. For other chapters, there were no major issues between the two negotiating countries.

Bilateral trade between the two countries amounted to more than US\$800 million last year. After this successful round, the next round is set to be held in July this year. Both countries have expressed their intentions to conclude negotiations by the first half of 2012.

European Free Trade Association (EFTA) – Hong Kong FTA signed

Hong Kong and the member states of the EFTA signed a FTA on the 21 June 2011. The EFTA states are Iceland, Liechtenstein, Norway and Switzerland. The negotiations for the FTA began in January last year and were concluded successfully in March this year. The FTA has 11 Chapters, covering trade in goods, trade in services, investment, intellectual property, and government procurement, among others.

In the trade in goods chapter, the EFTA states will eliminate all duties on industrial goods upon the entry into force of the FTA. Similar to other FTAs that the EFTA states have signed, trade of agricultural products are governed by individual bilateral agriculture agreements between the individual EFTA states and Hong Kong. On the other hand, all products originating in the EFTA states will enjoy duty free status when imported into Hong Kong.

Last year the total trade between Hong Kong and the EFTA states amounted to more than US\$9 billion. Major items imported from the EFTA countries include jewellery, watches, silver and platinum. The agreement will have to be ratified by the member countries before it formally enters into force. This is expected to happen in mid-2012.

EU–Japan launch negotiations on FTA

The EU and Japan have agreed to launch negotiations on an FTA. The announcement was made at the EU–Japan summit in Brussels in May this year.

It has been agreed that the FTA negotiations will be a comprehensive one, covering issues such as market access, non-tariff measures, services, investment, intellectual property rights and government procurement.

Bilateral trade between the EU and Japan reached about 110 billion Euros a year and an FTA will further promote the bilateral trade. It will also improve other sectors such as government procurement and the trade in services.

Negotiations are expected to be formally launched at the end of 2011, after both sides agree upon the scope and goals of the agreement.

EU–Singapore FTA negotiations progress

The EU and Singapore have entered into the sixth round of FTA negotiations. The negotiations have made significant progress since the launch in December 2009. This FTA will be the most comprehensive and ambitious trade agreement for both parties.

One key feature of the FTA is the promotion of the green technology sector. Both parties are negotiating to improve trade rules for goods and services of the future including green technology, energy creation and sustainable production. If this is successful, Singapore will be the first country in the world to have an FTA that promotes the green technology sector.

The FTA negotiations are expected to be concluded by the end of the year.

EU–South Korea FTA enters into force

Following the ratification of the EU–South Korea FTA by the EU, South Korea has also completed its internal procedures and ratified the FTA. The ratification of the agreement was previously stalled due to some translation issues on the Korean part but has now entered into force as scheduled on 1 July 2011.

Upon the entry into force, a significant number of tariff lines enter both parties duty free; amounting to approximately 680 million Euros of tax are removed. Subsequently, machinery and appliances and other industrial sectors will also receive increased market access.



India–Japan Comprehensive Economic Partnership Agreement (CEPA)

Following the successful conclusion of negotiations in September 2010 and the signing of the pact on 12 February 2011 at Tokyo, the bilateral CEPA between India and Japan will take effect on 1 August 2011.

With regard to trade in goods, the CEPA, which seeks to eliminate import duties on 94% of their trade items in ten years, comprises eight categories of classification – ranging from category X, which covers items excluded from any trade concessions on account of their sensitivity, to category A which allows for immediate elimination of customs duties. Some of the goods covered under this category are textiles, textile and leather products, pharmaceuticals and various manufactured and engineering goods.

The agreement also enlists provisions for mutual recognition of educational and practical qualifications, as well as of licensing procedures.

India–Malaysia Comprehensive Economic Cooperation Agreement (CECA)

The bilateral CECA between India and Malaysia covering trade in goods, services and investments came in effect from 1 July 2011. The salient features and benefits of the FTA are as given below:

- progressive reduction or elimination of tariffs on over 90% of the traded products which are covered by the Schedule of Commitments of each country

- product specific rules of origin for identified chemical and plastic, wood, glass and metal products
- on the services front, increased market access in Malaysia in accounting and auditing, architecture, urban planning, medicine, dentistry and IT sectors
- facilitation of cross-border investments through commitments on national treatment, most favoured nation (MFN) treatment, along with protection of investors and investments
- promotion of capacity building activities in areas of mutual such as human resource development, IT, health, tourism, finance and infrastructure.

The benefits under the CECA are in addition to the advantages which have already been exchanged between India and Malaysia on account of the India-ASEAN Trade in Goods Agreement which came into effect from January 2010.

The negotiations for the CECA were formally concluded in October 2010 during the visit of the Indian Prime Minister to Kuala Lumpur, as reported in our issue of Sep / Oct 2010. The pact was subsequently signed in February 2011.



Japan–Peru Economic Partnership Agreement (EPA) signed

The Japan–Peru EPA was signed on 31 May 2011 after six rounds of negotiations that concluded in November last year. This agreement covers trade in goods, trade in services, customs procedures and government procurement, amongst other chapters.

Under the trade in goods chapter, Japan will eliminate or reduce tariffs on 99.8% of goods exported from Peru. Peru on the other hand, will also be offering substantial market access to Japanese goods. Some of the major exports from Peru are coffee, copper, lead and zinc while some major exports from Japan are computers, televisions and other electronic devices.

The Japan–Peru EPA has to be ratified by both countries after each party completes their internal procedures, before formally entering into force.

Country reports

Australia

Reform to Australia's anti-dumping regime

The Australian Government has recently announced significant reforms to Australia's anti-dumping and countervailing regime. In a media statement released on 22 June 2011, the Australian Government announced that it would:

"...make the most important improvements to Australia's anti-dumping regime in more than a decade to improve its effectiveness, while reaffirming Australia's commitment to world trading rules."

The proposed improvements to the Regime are the result of anti-dumping Bills introduced to the Australian parliament, numerous submissions by key stakeholders and recommendations made by the Australian Productivity Commission. The Australian Productivity Commission is an independent research body who advises on a range of economic, social and environmental issues affecting Australians.

Whilst the number of anti-dumping actions in Australia is relatively small, the Productivity Commission found that the number of investigations is increasing significantly, particularly involving Chinese imports, as manufacturers encounter increasing competition from overseas.

As a result, the Australian Government announced that it has accepted, either in full or in part, 15 of 20 recommendations made in the Productivity Commission's anti-dumping report and is set to introduce legislation shortly which will give effect to the changes. Some of the proposed improvements are as follows.

Improved timeliness through:

- 45% increase in Australian Customs and Border Protection (Australian Customs) staff working on anti-dumping issues over the next 12 months to ensure cases are dealt with more efficiently
- introducing provisional measures at an earlier opportunity to remedy the negative effects of dumping sooner
- introducing a 30-day time limit for Ministerial decisions on anti-dumping cases.

Stronger compliance through:

- dedicated resource within Australian Customs to boost monitoring of measures to ensure compliance
- Combating attempts to circumvent anti-dumping duties.

Improved decision making through:

- greater use of trade and industry experts in investigating complaints
- introduction of a more rigorous appeals process supported by more resources
- clarifying the list of injury factors that can be claimed by domestic industry, and clarifying Australian Customs approach to injury determinations
- providing flexibility in allowing extensions of time to complete complex cases.

Better access to the anti-dumping system through:

- new support officers to support small and medium businesses and downstream manufacturers and producers to actively participate in anti-dumping investigations;
- improving access to imports and subsidies data, and clarifying the data requirements for making an application
- clarifying the parties who can participate in investigations to include relevant industry associations, unions and downstream industry
- providing a more flexible basis for parties wishing to seek a review of existing measures.

Greater consistency with other countries through:

- regular consideration of the practices and decisions of other countries
- allowing Australian companies to combat a wider range of subsidies.

New customs laws

Australia's Federal Parliament has recently passed three new Bills:

Customs Amendment (Export controls and other measures) Bill 2011

This Bill's primary focus is to strengthen Australian Customs and Border Protection's control over export cargo and is part of the Australian Government's ongoing plan to increase security in ports, airports and cargo storage facilities. The Bill implements the outcome of a review of licensed depots, warehouses and regulated air cargo agents.

Customs Tariff Amendment (2012 Harmonized System changes) Bill 2011

This Bill implements a significant number of amendments to the Customs Tariff resulting from the World Customs Organisations fourth review of the Harmonised System. The fourth review concentrated primarily on environmental and social issues. The Bill preserves existing levels of industry protection and margins of tariff preference that apply to imported goods including those under FTAs.

Customs Tariff Amendment (Taxation of alternative fuels) Bill 2011

This Bill is part of the Government's long standing plan for the taxation of alternative fuels in Australia and complements similar legislation enacted for fuel manufactured locally. The Bill will change the taxation treatment of liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG). The new taxation arrangements will commence operation on 1 December 2011.

Customs compliance focus for 2011

The Australian Customs and Border Protection Service (Customs) has recently used a series of seminars across the country to highlight its "2011/12 compliance focus". The significant issues to be addressed largely mirrored those outlined in February's Customs Compliance Update publication and included:

- undervaluation of imported goods
- incorrect application of the low value threshold (self-assessed clearances)
- cargo control issues focussing on major projects
- the export of strategic goods
- accuracy in cargo reporting.

Customs has indicated that their approach to these issues will be accompanied by an increased focus on voluntary disclosure and Infringement Notices.

Making a false or misleading statement constitutes an offence under Australian Customs legislation; this includes statements related to any number of issues including incorrect classification, valuation or treatment of goods on import. However, subject to certain administrative requirements, voluntarily disclosing such a misstatement absolves the party of having committed an offence and is generally looked upon favourably by Customs in resolving any outstanding issues.

Customs has also indicated its intention to be more aggressive in the issuance of Infringement Notices. While Customs has historically issued Infringement Notices only in instances of deliberate and intentional misconduct, it would seem that this will no longer be the case. These Notices generally result in the imposition of financial penalties at 20% of the maximum penalty.



China

Operational certification procedures for Myanmar-originated goods under revised ASEAN–China FTA (ACFTA)

Further to various General Administration of Customs (GAC) circulars in association with the publication of new ACFTA operational compliance procedures (OCP), the GAC issued Announcement [2011] No.28 on 3 May 2011, which stipulates the import requirements for goods originating from Myanmar.

The Announcement clarified import procedures for Myanmar originating goods under the revised ACFTA. It also gave notice that with effect from 1 July 2011, only a Certificate of Origin (CoO) in the format set forth by the GAC Order No.199 will be accepted by China Customs for importer's claim of ACFTA preferential duty rate for Myanmar originating goods.

Regulation promoting integrated circuit and software industry

The GAC released Announcement [2011] No. 30 providing information regarding the customs procedures and criteria required for qualified software and integrated circuit enterprises to enjoy duty exemption upon import of equipment/material for own use.

According to the Announcement, the value of any software will be excluded from the duty-free quota, provided that the software is imported with capital equipment and the importer of record is a qualified software company.

The Announcement also stipulated that the preferential treatment on particular materials will continue for those qualified integrated circuit manufacturers if their total investment exceeds RMB 8 billion with line width less than 0.25 μm .

Expiry of certain classification rulings

On 20 May 2011, a circular was issued by the GAC terminating public classification rulings on certain products, including:

- Holy Bible for kids
- "Dodge" van
- Signal Spectrum Analyser
- CNC circle tool magazine
- Glottis Control System.

China issues rare earths industry plans to expand export restraints

China recently issued two announcements that have important implications for manufacturers using rare earths in their products. The PRC State Council released "Opinions on Promoting the Continuous Healthy Development of the Rare Earths Industry" on 10 May 2011 that purportedly aims to improve environmental protection, advance government oversight, and aid development in strategic industries. Meanwhile, the PRC Ministry of Commerce (MOFCOM) simultaneously announced the "Notice on Adding Rare Earth Alloys into Rare Earth Export Quota Licensing" on 16 May 2011, according to which the scope of export restraints on rare earths beyond raw materials are expanded to include alloys that contain 10% or more rare earths metals. This development implies that more restrictions are bound to exist on rare earth elements exported from China. This will likely trigger more global concerns.

In a high profile dispute over access to Chinese natural resources a WTO panel on 5 July 2011 found that China violated international trade rules by restricting the exportation of nine raw materials including coke, zinc, and bauxite, refuting Beijing's claim that these restrictions were based on environmental grounds. The panel sided in all key points with the EU, Mexico, and the US, which jointly initiated the case in 2009. The dispute settlement imposes pressure on China's future restrict on rare earth and other resource materials.

Adjustment of interim duty rates

The Ministry of Finance released Customs Tariff Commission [2011] No. 12 to adjust the import Interim Duty Rate of 33 commodities, including:

- petrol and other product oil
- some cotton fabrics
- tent
- zinc and related products
- photochromic lenses.

The updated interim duty rates came into effect from 1 July 2011.

Updates to the mainland and Hong Kong CEPA

Extending zero tariff preference

With effect from 1 July 2011, selected Mainland 2011 tariff codes will be added to the list of goods eligible for tariff preference under CEPA as follows:

Serial no.	Mainland 2011 tariff code	Product description
1	0406 2000	Grated or powdered cheese of all kinds
2	2309 1010	Dog or cat food, put up for retail sale, in airtight containers
3	2309 1090	Other dog or cat food, put up for retail sale
4	2813 1000	Carbon disulphide
5	2924 1910	N, N-dimethylformamide
6	2930 9090	Other organo-sulphur compounds
7	2932 1100	Tetrahydrofuran
8	3821 0000	Prepared culture media for the development or maintenance of micro-organisms (including viruses and the like) or of plant, human or animal cells
9	4911 9990	Other printed matters
10	7901 2000	Unwrought zinc alloys

By 30 June 2011, it should be possible for traders to file an application for a Certificate of Origin – CEPA (CO-CEPA) with the Hong Kong Trade and Industry Department (HKTID) or one of the five Government Approved Certification Organisations in order to claim preference for the tariff codes listed above. For the specific Rule of Origin criteria, we recommend that you refer to the HKTID website: www.tid.gov.hk/english/cepa/tradegoods/trade_goods.html

CEPA rules of origin reviewed

On 26 May 2011, the Mainland General GAC promulgated the Circular No. 35 announcing the revised CEPA Rules of Origin criteria for the products below:

Serial no.	Mainland 2011 tariff code	Product description
1	2009 1100	Frozen orange juice
2	2009 1200	Orange juice (not frozen) of a brix value not exceeding 20
3	2009 2100	Grapefruit (including pomelo) juice of a brix value not exceeding 20
4	2009 9010	Mixtures of fruit juices
5	2924 1910	N, N-dimethylformamide

Current rule of origin:

“Processed from fruits, the principal processes are squeezing, mixing, preserving, flavouring and dissolving”

New rule of origin with effect from 1 July 2011:

“Processed from fruits, the principal processes are squeezing, mixing and preserving. If flavouring and/ or dissolving is/ are required, such process/ processes must also be done in Hong Kong”.

Indonesia



Changes to import duty calculation on film imports

The Indonesian Minister of Finance has issued a new regulation regarding the calculation of import duty on imported film (master film or cinematographic film under HS Code 3706). Duty was previously calculated based on a specified percentage of the royalty amount. However the new regulation states that import duty will be calculated based on the length of the film. The minister has explained that the rate will range from Rp21,000 to Rp22,000/minute for one copy of a film.

The new regulation is not retroactively effective. The regulation was signed on 16 June 2011 but is now still waiting for legalisation by the Ministry of Law and Human Rights. Importers of films should study this new regulation carefully to ensure compliance regarding the calculation of import duty.

Mining export duty will be implemented in 2012

The Ministry of Industry is currently discussing the implementation of export duty on raw material resources starting from 2012 as realisation of the mining industrial programme and Law no. 4/2009 regarding minerals and coal mining. This programme will be implemented for all raw mineral resources such as bauxite, copper, nickel, iron ore and iron sand.

The objectives of this programme are to reduce the export of raw materials and ensure that mining companies who wish to export their commodities increase the “value-added” processes in Indonesia. Mining companies are recommended to monitor the development of this programme and the related regulation that will be issued.

New regulations:

- PER-21/BC/2011: Director General of Customs and Excise regulation on technical guidelines on Customs registration implementation. The regulation letter was issued on 13 June 2011 and became effective from 1 July 2011.
- PER-22/BC/2011: Director General of Customs and Excise regulation on technical guidelines on Customs registration implementation in Free Trade Zones and Free Ports. The regulation letter was issued on 13 June 2011 and became effective from 1 July 2011.
- 87/PMK.011/2011: Ministry of Finance regulation on imposition of safeguard duty for imported cotton yarn other than sewing thread. The regulation letter was issued and became effective on 6 June 2011.

Malaysia



New Trade Descriptions Act introduced

The Malaysian Parliament has introduced the Trade Descriptions Act 2011 which will come into force in January 2012, repealing the Trade Descriptions Act 1972. The Act is introduced to reform Trade Description laws in Malaysia with the purpose of promoting good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct and practices in relation to supply of goods and services, and protecting the interests of consumers.

Key elements of the Act include the following.

- Trade Description Orders (TDO) can only be applied for registered trademarks under Trade Marks Act 1976 under the Act (previously based on common law).
- TDO issued will now expire after one year unless renewed by High Court upon application by the owner (previously five years).
- It is now an offence under the Act to hold a sham contest or game, i.e. false or misleading information given on the pretext of contests or games leading others to believe they stand a chance of winning or have won prizes when in fact they do not (previously not provided for).
- “Tipping off” of a prospective investigation is now an offence (previously not provided for).
- Informers can be rewarded for their role in providing information leading to a conviction (previously not provided for).

The Act also empowers the Minister to assign expressions used in relation to goods or services as having definite meanings and assign such meanings either to an expression when it is used in the course of trade or business or when it is used in such circumstances as may be specified in the order. While this may relate to regulation of Halal certification and logos in the country, it will be interesting to see if application of this provision will eventually expand to specific labelling on a wider range of products in the future (such as care labels or origin country information, etc).

Malaysia signs economic pact with China

On 28 April 2011, Malaysia signed an agreement with the People’s Republic of China to expand and deepen the existing economic and trade cooperation.

In addition to the ASEAN–China Free Trade Agreement (ACFTA), the new agreement was signed with the objective of allowing for better coordination of cooperation projects that involve various ministries and government agencies. It will help to reinforce and complement the existing engagements established by the respective ministries of both countries.

An Economic Cooperation Working Group (ECWG) will be established. This will consist of government officials of both countries. The Working Group will be tasked to identify specific sectoral investment and cooperation projects in areas such as agriculture, services, tourism, information and communications technology (ICT) and projects that are of mutual interest to Malaysia and China, which will be beneficial to the business communities in both countries.

Singapore



Singapore customs and Japan customs sign mutual recognition arrangement on supply chain security

Singapore Customs and Japan Customs have signed a mutual recognition arrangement (MRA) on supply chain security at the World Customs Organisation (WCO) Council Sessions in Brussels, Belgium. This is Singapore's third MRA signed. The first two MRAs, with South Korea and Canada, were inked a year ago.

The purpose of MRAs is to facilitate and secure Singapore's trade flows with its trading partners, by mutually recognising companies which have been accorded Authorised Economic Operator (AEO) status by their respective Customs Administrations. Singapore Customs' AEO scheme, the Secure Trade Partnership (STP), is based on the WCO SAFE Framework of Standards to secure and facilitate global trade.

For Singapore businesses, the MRAs mean that STP-Plus certified companies would be recognised by Japan Customs to be of lower risk, leading to expedited release of their goods at the point of importation.

Similarly, exports from companies certified under Japan Custom's AEO Programme will be less liable for inspection when they arrive in Singapore. MRAs could also help to facilitate continuous secure trade flows in situations of high alert or when international trade is disrupted.

Taiwan

Economic Cooperation Framework Agreement to allow third-party invoicing?

The Economic Cooperation Framework Agreement (ECFA) is a pre-FTA bilateral agreement between Taiwan and mainland China. The ECFA provides preferential duty rates for Taiwanese or Chinese origin goods that are covered under the Early Harvest List. However, whether goods included the Early Harvest List can enjoy preferential duty rates under a “third party re-invoicing” business model is yet to be agreed.

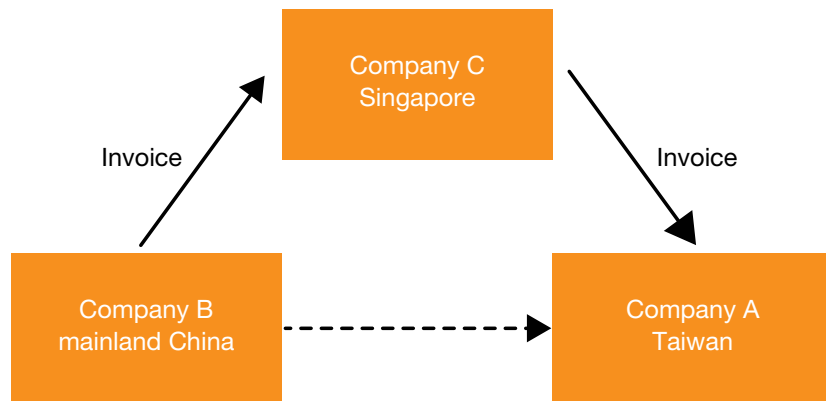
The authorities have recently agreed that due to the common occurrence of this type of trading activity, goods sold and imported under a third party re-invoicing arrangement should be eligible for preferential duty rates under the ECFA’s preferential duty rates but within a limited scope.

This means that imported goods should be entitled to ECFA preferential duty policies as long as:

- they meet the preferential rules of origin (i.e. goods have been produced, undergone substantial transformation, or wholly obtained in Taiwan or China)
- they are included in the Early Harvest List
- the buyer on the Certificate of ECFA Origin matches the importer on the import declaration
- the importer/buyer and exporter/seller are registered companies in Taiwan or mainland China.

An example

Company A is a registered importer in Taiwan.
Company B is a registered manufacturer/exporter in mainland China.
Company C is a trader registered in Singapore.



If Company A wishes to apply preferential duty rates to the imported goods, Company B must ensure that the buyer on the Certificate of ECFA Origin is stated as Company A, and not Company C.

Company A should declare import to Taiwan Customs with the commercial invoice issued by Company C, stating that Company A is the buyer along with the Certificate of ECFA Origin which also states that Company A is the buyer. In this case, so long as the other conditions are met, the imported goods should qualify for preference under ECFA despite the third party invoicing arrangement.

Thailand

New regulation for customs case settlement

Committing a customs offence in Thailand may lead to severe penalties. Under current rules, the statutory penalty is four times the duty paid value of imported goods, or imprisonment for a term of not exceeding 10 years, or both. Given the level of the statutory penalties, companies typically would try to settle a case at Customs level. In this respect, Customs released Customs Rule No. 18/2550 which outlines the case settlement criteria to settle a case at Customs level.

Customs General Rule No. 10/2554 dated 2 May 2011 replaced the previous Customs Rule No. 18/2550. Changes include:

- increase of certain thresholds for maximum fines (e.g. increase from 50,000 to 100,000 baht for an offence related to false declaration due to the offender's carelessness)
- inclusions of a minimum fine amounts to certain specified offences (e.g. inclusion of minimum fine of 10,000 baht in case of an offence related to retain documents at approved places)

- newly introduced case settlement guidelines with respect to offences related to the import of restricted goods (e.g. elephant and ivory, rhino and rhino horn, tiger or tiger bodies, armadillo or armadillo bodies) under the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES)
- reduced fines in case of non-compliance with respect to the import of restricted goods.

Previously, the fine with respect to importation without a proper import license was "surrendering the goods" as well as an additional penalty of "one-time duty fine and one-time VAT penalty" based on a Customs Memo dated 13 March 2009. Under the new case settlement rule, we understand that the Customs Memo has been repealed and therefore the exposure under the new rule would be surrendering the goods, which is equivalent to the value of the goods inclusive of all applicable duty and taxes. (i.e. the CIF value, one-time duty plus one-time VAT)

The new case settlement rules became effective since 2 May 2011 and will be applied to all cases regardless of the time of importation, provided that such cases have not been approved by Thai Customs' internal "Settlement Committee". Therefore, companies in Thailand (especially companies that are currently being audited by Thai Customs) should be aware of these changes, especially as the new rules may have an impact on the final settlement amount negotiated with Thai Customs as well as on the decision as to whether or not to settle a case at Customs level or to take it to Court.



Authorised Economic Operator (AEO) for exporters

With a view to increasing international trade competitiveness and ensuring global supply chain security, Thai Customs has implemented the Authorised Economic Operator (AEOs) programme in conformity with international standards by issuing the Customs Notification No. 40/2554 dated 30 May 2011. An exporter who is eligible for privilege under AEOs programme will obtain specific benefits such as priority treatment of export clearance and document controls from Thai Customs.

According to this Notification, exporters who wish to apply for the AEO programme are required to meet certain customs criteria, e.g. to establish a security management system, conduct risk and compliance assessments, implement safety measurements. They also have to submit an application form together with supporting documents, which include among others company registration certification, financial statement and tax registration certificate to Registration and Customs Privileges Division of Customs department.

The approval process usually takes 90 days upon receiving appropriate documents from the exporter. The certification of AEO programme participants will be valid for three years from the approval date.

ASEAN Self-certification (SC) of Origin

To facilitate intra-ASEAN international trade, the Secretary-General of ASEAN proposed implementing SC of origin by allowing exporters to certify the country of origin of goods by themselves. Currently, the ASEAN countries that have introduced the SC scheme are Singapore, Malaysia and Brunei.

On 19 April 2011 the Thai cabinet passed the resolution for implementing this scheme and Thailand is expected to start its pilot programme in October 2011. Currently, the Department of Foreign Trade is the only official organisation in Thailand that issues preferential certificates of origin (CO). Exporters and companies in Thailand who wish to use the SC scheme need to register with the Department of Foreign Trade to be recognised as a Certified Exporter (CE) and will be given an authorisation code to process the SC. To be certified as a CE, importers and companies must have good knowledge of the Rules of Origin and correctly implement the Rules of Origin in practice (e.g. exporters who have attended Rules of Origin training from Thai Customs or the Department of Trade, or exporters who have a good track record with respect to applying for COs).

Under the SC scheme, SC-certified exporters can self-declare the country of origin for their goods on the commercial invoice. In case an invoice is not available at the time of exportation, the certified exporter can self-declare the origin of the goods on the billing statement, delivery statement or packing list. The invoice that is processed by the certified exporter in relation to the origin declaration is called an "invoice declaration" and is valid for 12 months.

With the new SC scheme, it is expected that importers and exporters in Thailand could increasingly benefit from the ASEAN Trade in Goods Agreement as the scheme minimises the involvement of the authorities. Therefore companies in Thailand that have significant intra-ASEAN trade should consider whether it is worthwhile for them to sign up for this scheme.

Amendment of excise regulations

The Excise Department has recently proposed to amend the regulation for excise tax refund of exported alcoholic products. When approved, those amendments will replace and repeal the current regulation which is the Ministerial Regulation No. 31 (B.E. 2552), regarding the conditions and procedures for excise tax refund of exported alcoholic products.

Under the draft amendment, excise tax on alcohol, irrespective of whether imported or locally produced alcoholic products, will be entitled to the excise tax refund after exportation. Currently, only locally produced alcoholic products are entitled to excise tax refund from the Excise Department. Therefore, the new regulation would bring potential benefits to liquor importers. Moreover, to align with the Customs paperless system, the Excise Department will use the export entry number to verify if such alcoholic products are actually exported.

The Excise Department also proposed to implement a new Ministerial Regulation for conditions and procedures of exported alcoholic products. Under the draft Ministerial Regulation, the excise Department will explicitly indicate conditions and procedures of exported alcoholic products via customs procedure system so as to facilitate the exporters.

At this stage, these two proposed Ministerial Regulations are in public-hearing process with all stakeholders (e.g. the Excise Department, liquor local producers and importers).

Vietnam

Vietnam customs to implement Priority Enterprise (PE) programme

On 13 May 2011, the Ministry of Finance (MoF) issued Circular 63/2011/TT/BTC providing procedures for applying for the pilot Priority Enterprise (PE) programme for qualified companies. According to the Circular, the following companies can apply for PE status:

- PE in all customs procedures
- PE in exportation of Vietnam-origin agriculture and aquatic products and crude oil
- PE in importation of raw materials and exportation of finished goods belonging to the hi-tech sector.

In addition, only low risk companies with a good record of compliance are eligible to apply. Only companies which have been operating for at least three years will be assessed for compliance and considered for the PE status. However, hi-tech companies can apply for the PE status after only one year of operation.

Eligible companies should send an application dossier to the General Department of Customs (GDC), according to forms provided in this Circular. GDC will assess the application dossier and collect opinions from relevant authorities, such as tax, investment planning as to the company's compliance records. The timeline for GDC to assess the application dossier is 45 days. The PE certificate will be issued within 15 days after the GDC has approved the application.

The privileges for PE include:

- carrying out customs procedures 24/7
- exemption from customs dossier and goods checks
- exemption from customs audit at company's site
- customs will only complete a customs compliance audit once every five years
- companies can pay duties, customs fees on a monthly basis upon agreement with customs
- simplified customs procedures applied, i.e. declaring once and clearing several times.

The Circular became effective on 27 June 2011 and will be valid for two years from the effective date onwards.

Liquors, cosmetics and mobile phones to be imported through seaports

The Ministry of Industry and Trade (MoIT) issued Notice 197/TB-BCT on 6 May 2011 to provide new requirements for liquors, mobile phones and cosmetics imported into Vietnam.

According to the Notice, importers are required to submit documents designating or authorising them as the authorised distributors or importers of the authentic manufacturers, traders of the imported goods, or agent contracts signed with the authentic manufacturers, traders of the imported goods. These documents must be legalised by diplomatic representative agencies of Vietnam in the relevant foreign countries.

It is important to note that the above products are only allowed to be imported through the sea ports of Ho Chi Minh city, Hai Phong and Da Nang.

The Notice became effective on 1 June 2011.

Preferential import duty rates for goods originating in Cambodia

On 18 May 2011, the Ministry of Finance issued Circular 68/2011/TT-BTC (Circular 68) providing preferential treatments for goods imported to Vietnam which originate from Cambodia.

According to Circular 68, agriculture and aquatic products, rubber, shoes and garments imported into Vietnam from Cambodia accompanied with a valid certificate of origin (C/O) form S will be able to enjoy a 0% import duty rate.

For rice and dried tobacco imported into Vietnam under quota, a 0% import duty rate is applied, provided that a valid C/O form S is submitted to Customs. For imported rice and dried tobacco that are not included in the quota, the MFN rate or ATIGA rate would be applied on the condition that the importer submits a certificate of origin form D to customs.

The Circular was retroactively effective from 01 January 2010 and replaced Decision 08/2008/QĐ-BTC dated 30 January 2008.

New documentation required for imported cars

On 12 May 2011, the Ministry of Industry and Trade (MoIT) issued Circular 20/2011/TT-BCT providing additional requirements for car importers.

According to the Circular, companies importing cars that have up to nine seats will be required to submit the following documents to the relevant authorities:

- Authorised letter or contract for importing cars issued by the manufacturers or authorised agent. Those documents must be legalised by Vietnam diplomatic agencies in the respective countries.
- Certificate of car maintenance issued by the Ministry of Transportation.

The Circular became effective on 26 June 2011.

New products added to price database

On 23 May 2011, the General Department of Customs (GDC) issued Official Letter (OL) 2334/TCHQ-TXNK amending the price database for customs valuation assessment purposes. Seven groups of products are added in the price database:

- frozen meat
- frozen fish, fresh fish
- fresh fruits
- tiles
- sanitary ware
- electric appliances
- electric bicycle

In addition, GDC also added new prices for cars and motorbikes to the database.

Companies importing the above products into Vietnam should compare the transaction value with the price of respective goods in the database. If the transaction value is lower, it could trigger a customs valuation assessment.

The amended database became effective on 1 June 2011.



Around the world

WTO disputes

China appeals Panel Report on “US – measures affecting imports of Chinese-origin tyres”

On 24 May 2011, China launched an appeal over the WTO Panel Report DS399, “US – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China.”

On 14 September 2009, China had requested for a consultation with the US, (the EU, Japan, Turkey, Vietnam and Taiwan reserving third-party rights). China was concerned about the US imposing special safeguard measurements on certain passenger vehicle and light truck tyres originated from China. The US indicated that the Chinese-origin tyres jeopardised domestic industries, and therefore, starting from September 2009, imposed a three-year ad valorem duty to the tyres. The ad valorem duty rate was 35%, 30%, and 25% in the first, second, and third year.

China fired back at the accusation, contending that the measures were not objectively brought out, and the US was inconsistent with the Protocol of Accession, Agreement on Safeguards, and GATT 1994. The panel report was released on 13 December 2010, favouring US’s grounds with the conclusion that the US did not fail to comply with its obligations.

According to the WTO, parties involved in a dispute may appeal the panel’s decision. If conditions are met, the Appellate Body will re-open the case, and have it re-observed by three members unrelated to either party. The panel should publish its report within three months.

DS371: WTO Appellate Body upholds Dispute Panel Report on Thai customs and fiscal measures on cigarettes from the Philippines

On 7 February 2008, the Philippines requested for consultations with Thailand regarding several fiscal and customs measures imposed on cigarettes imported from the Philippines. The Philippines indicated that Thai Customs had been inconsistent with WTO’s Customs Valuation Agreement and GATT 1994. The Panel Report was circulated on 15 November 2010. The Appellate Body Report, issued on 17 June 2011 in response to Thailand’s appeal, focused on the Panel’s findings on GATT 1994 (particularly Article III:2, III:4, and X:3b) and supported the Panel’s findings.

- (a) Thailand acted inconsistently with Article III:2, sentence 1.

The Article regulates that products imported into a territory shall not directly or indirectly be subject to internal taxes or charges in excess of those applied to like domestic products. The Thai measures in question, however, offer duty exemption for resellers of domestic cigarettes, but not for resellers of imported cigarettes unless they input tax credits in advance. The Appellate Body concluded that Thailand violated Article III:2, despite Thailand’s claim that those were merely “administrative requirements.”

- (b) Thailand acted inconsistently with Article III:4

The Article states that products imported into a territory shall enjoy treatment no less favourable than accorded to like national origin products. Thailand sets higher administrative thresholds for imported cigarette resellers than for domestic cigarettes resellers to enjoy duty exemption (i.e. registrants of imported cigarettes should report their sales, while those of domestic cigarettes do not). The Appellate Body approved the Panel’s analysis based on market survey, and verified that Thailand was inconsistent with Article III:4.

- (c) Thailand acted inconsistently with Article X:3(b)

The Article stipulates that contracting parties should establish independent tribunals as soon as practicable for prompt review and correction of customs-related matters. However, Thai Customs requires importers to submit an amount of guarantee prior to the release of goods, and will not institute prompt review of the Customs guarantee decisions before it has made a final determination on the Customs value. Therefore, Thailand is not accordant with Article X:3(b).

WCO updates

WCO invites HS Nomenclature users to provide feedback ahead of 2017 revisions

In its newsletter published in June 2011 the WCO has provided an update on the progress of the 2012 version of the HS Nomenclature and further set out its plans for the 5th HS Review Cycle that will lead to HS 2017.

The WCO is inviting parties involved in international trade, from both the private and public sector, to share their proposals for changes and improvements via their national Customs administrations or equivalent. These administrative bodies will then be asked to collate the feedback and place a request with the WCO Secretariat that an issue is placed on the agenda of the Harmonized System Committee (HCS).

The WCO has stated that there will be a particular focus on updating the high technology sector (which has certainly not been tackled in the upcoming 2012 revision) to take into account rapid developments in technologies particularly for multi functional devices such as smart phones. Other sectors that will be also examined for change potential are chemicals, pharmaceuticals and textiles.



Contact details

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