

The new ACFTA: New opportunity or new threat?

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Feature story

The new ACFTA: New opportunity or new threat?

Background

Asia is perhaps one of the most dynamic territories in the world with regard to FTA developments. Every so often, the signing of an FTA or its subsequent revision becomes headline news in the main pages of the national newspapers. Governments laud these developments as harbingers of improved trade relations, via increased two-way trade flows for which the ultimate beneficiaries are the business community.

The business community similarly gets excited with the potential increase in market access opportunities, as they seek to assess and perhaps reconfigure existing business operations to meet the requirements of the FTA.

In this context, it is perhaps timely to look at the recent developments of the ASEAN–China FTA (ACFTA) and its impact on the business community. The ACFTA is considered to be the third largest free trade area in the world, after the European Economic Area (EEA) and the North America Free Trade Area (NAFTA).

The ACFTA was 10 years in the making. Negotiations began in earnest in 2001, with an Early Harvest Package consisting of largely agricultural products for tariff liberalisation concluded in 2002 (Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China).

The main agreement (Framework Agreement for Trade in Goods) was signed in 2004. Under the main agreement, the 6 original members of ASEAN (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand) and China were expected to eliminate tariffs on 90% of their products by 1 January 2010. The four less developed ASEAN countries (Cambodia, Laos, Myanmar and Vietnam) were given until 2015 to implement the FTA.

While this landmark agreement was welcomed by many, there were certain segments of the business community that were unable to reap the benefits of the reduced tariffs for trade between ASEAN and China.

The design of the original ACFTA was based on the simplistic trade model of direct buy-sell between two parties based in two territories. This could not account for the regional footprint of many multi-nationals that operate sophisticated business models such as buy-sell principal models, regional distribution and sorting centres, central procurement hubs, toll or contract manufacturing models etc.

One very common scenario is this: goods originating from China accompanied by a Form E are first sent to Singapore or Hong Kong for consolidation. The Singapore or Hong Kong exporter/consolidator buys the goods from the China manufacturer and re-sells the goods to Malaysia distributors. The Singapore or Hong Kong exporter is not granted preferential tariff under the ACFTA.

The new ACFTA rule tries to address some of the above issues. This article will focus specifically on the impact of the November 2010 updates to the ACFTA Operational Certification Procedures (OCP) and how companies can manage the transition in the rules governing preferential trade between ASEAN and China.

Key features of the new ASEAN–China FTA rules

The New ACFTA OCP rules signed in November 2010 and expected to be implemented by countries on 1 January 2011 were designed to ensure that multi-nationals operating beyond the direct buy-sell business model are able to partake in the benefits of the ACFTA. The two key features of the new rules are:

(i) Recognition of third-party invoicing practices

Many multi-nationals have a “regional footprint” in ASEAN and China, with production facilities scattered in various locations. For commercial reasons, the multi-nationals may choose to consolidate their invoicing location in their headquarters of in a shared service centre, either being in a third country. Invoicing from one country while goods are being shipped from another country to the destined market is by now a conventional commercial practice for companies.

However, with the advent of FTAs, where the enjoyment of tariff concessions comes into play, clarifications are required on the treatment of such invoicing practices, especially when the originating goods (and the corresponding Certificate of Origin) come from one location and the commercial invoice from another.

The old ACFTA rules were not sufficiently clear and appropriate. The new rules provide that shipments of goods direct from an ASEAN country to China or vice versa under a Certificate of Origin (Form E) that are invoiced through another country can still benefit from preferential duty rates. The other country can be an ASEAN country, China or indeed any other country in the world. The new rules are not ground-breaking, as such third-party invoicing has already been provided for under the intra-ASEAN FTA (ATIGA), ASEAN–Japan FTA, ASEAN–Korea FTA, ASEAN–India FTA and ASEAN–Australia–New Zealand FTA.

(ii) Movement certificate

In the age of connectivity, large bulks of products are no longer shipped directly to the consumers. Instead, “just-in-time” delivery is being practiced as goods are shipped on demand by the consumers. In this regard, global consolidation and distribution hubs have been set up across the globe to cater for this demand.

The issuance of the movement certificate is a useful update to the ACFTA to cater for distribution realities. This movement certificate (or the back-to-back Certificate of Origin) has in fact also been recognised under the intra-ASEAN FTA (ATIGA), ASEAN–Japan FTA, ASEAN–Korea FTA, ASEAN–India FTA and ASEAN–Australia–New Zealand FTA.

The movement certificate procedures takes into account that, depending on the supply chain management of the companies, goods, when exported from one country may not be shipped directly to the end markets, but to another intermediate member country for consolidation, partial shipment and subsequent redistribution.



(iii) Other updates

Other procedural updates to the ACFTA rules include:

- New format of the Certificate of Origin (Form E);
- Allowance for multiple items (up to 20) per Form E, provided that each item qualifies for preferences in its own right;
- There will be no need for the importer to forward both the original and a carbon copy of Form E to the importer for submission to the customs authority in the importing country. Only the original Form E needs to be sent to the importer for submission. Hence overall, only two (rather than the previous three) carbon copies are required. The duplicate copy and the triplicate copy will continue to be retained by the exporting Customs Authority and the exporter respectively;
- The time limit for submission of the Form E to importing authorities has been extended to 1 year, rather than four months from the date of issuance;
- Exporting authorities are required to respond to importing authorities' requests to verify authenticity of any documentation or of originating status of goods within 90 days; and
- Record – keeping requirement under the ACFTA is increased to 3 years, up from two years.

Issues to manage during transition to updated ACFTA rules

Companies will need to put in place procedures and processes to ensure that they meet the requirements of the new rules. There are however issues that the companies must be aware of in the design of these processes and procedures, as there may be certain inconsistencies in terms of interpretation and implementation of rules, and corresponding guidelines issued, by various authorities. It is important to note is that while flexibility should be built into the design process to account for such differences, the resulting processes and procedures continue to safeguard compliance with spirit and the letter of the agreement.

We have outlined some typical issues faced by companies in managing this transition.

(i) Different implementation dates for the revised ACFTA rules

Subsequent to the signing of any international agreement, countries must undergo their own domestic legal process for ratification. Such process often results in circulars or notifications being issued by the relevant authorities for implementation. Without such circulars or notifications, authorities will not be able to implement the agreement. This applies to the implementation of the revised ACFTA rules.

Even though the revised ACFTA rules were targeted to be implemented on 1 January 2011, the different procedures required by countries to fulfill their domestic legal process has given rise to a situation of different implementation dates for the new ACFTA procedures.

Combined with a new format of Certificate of Origin (Form E) being introduced as part of the revised rules, this has resulted in a scenario of an importing country that already implements the revised rules on 1 January 2011 not granting FTA preference to exports from another country that has yet to implement the revised rules and is therefore still issuing the old format of the Form E.

A status update of the implementation details is attached below:

Country	Domestic notification issued?	Date of issuance of new format of ACFTA Form E	Date of acceptance of new format of ACFTA Form E	Note
Brunei	No	TBC	TBC	N/A
China	Yes (GAC Circular 199, dated 1 Dec 2010)	1 Jan 2011	1 Jan 2011	N/A
Cambodia	No	TBC	TBC	N/A
Indonesia	No	TBC	TBC	N/A
Laos	No	TBC	TBC	N/A
Malaysia	No	1 Jan 2011	1 Jan 2011	<p>Customs Authority in Malaysia has yet to revise its domestic customs law. However, based on the latest (dated 16 Dec 2010) press release from the Trade Ministry (MITI), Malaysia will be issuing new Form E for outbound shipment effective 1 January 2011. We understand that this process is in place.</p> <p>For import into Malaysia, both new and existing Form E will be acceptable until 28 February 2011.</p> <p>This transition period, however, will not be applicable for Parties that implement the revised ACFTA rules after 1 March 2011.</p> <p>Import into Malaysia with the old Form E will not be entitled to the benefits of the revised ACFTA rules.</p>
Myanmar	No	TBC	TBC	N/A
Philippines	No	TBC	TBC	N/A
Singapore	Yes (Circular No 21/2010 dated 23 Dec 2010)	1 Jan 2011	1 Jan 2011	<p>Singapore Customs will be issuing the new Form E for China, Brunei, Malaysia, Thailand, Vietnam and the old Form E for Cambodia, Indonesia, Laos, Myanmar and Philippines.</p> <p>Exporters exporting with the new ACFTA Form E will be required to tick the relevant tick boxes of the new Form E (e.g. Third-Party Invoicing, Movement Certificate).</p> <p>For movement certificates to be issued in Singapore, goods must be kept either in a Free Trade Zone or in a customs bonded premise</p>
Thailand	Yes (Customs Notification No. 106/2553 dated 29 Dec 2010)	1 Jan 2011	1 Jan 2011	<p>Thailand will continue to accept the old Form E until 28 February 2011. However, during this transition period any importer who uses the old Form E will not be entitled to the benefits of the revised ACFTA rules (e.g. 3rd party invoicing and the back-to-back movement certificate).</p>
Vietnam	Yes (Circular 36/2010/TT-BCT)	1 Jan 2011	1 Jan 2011	<p>Vietnam will continue to accept the old Form E for imports until 30 June 2011.</p> <p>However, it is unclear if the usage of old Form Es allow the benefits of the revised ACFTA rules (e.g. 3rd party invoicing and the back-to-back movement certificate).</p>

Note: All details accurate at point of writing.

As can be learned from the above table, there are a number of countries that have not published the guidelines for the implementation of the revised rules. It is therefore not clear how they intend to manage the transition to the revised rules. In such situations, it is recommended that companies are proactive in seeking upfront discussions and solutions with both the importing and exporting authorities as to what processes and procedures need to be put in place to ensure compliance with the new rules.

(ii) Possibility of duty refunds?

Another issue arising from the different implementation dates for each country relates to whether duty refunds are available to companies by countries that implement the revised rule on a later date. These duty refunds could potentially be back-dated to 1 January 2011 (the targeted date for implementation for the revised rules). There are currently no clear guidelines on this and countries are free to determine if they allow for such refunds.

If refunds are possible, companies should take note of the timelines and procedures for the refund process as that could vary from country to country.

(iii) What about fourth-party invoicing?

It is not unusual for there to be four or more parties involved in the invoicing of a transaction. For instance, a company's Headquarters in Switzerland may sign a contract with the Headquarters of a manufacturer based in Singapore. Products are manufactured by the manufacturer's subsidiary in Vietnam and exported directly to the Swiss company's distributors in China. Commercial invoices will be raised by the manufacturer's subsidiary to its Headquarters, by the manufacturer's Headquarters to

its customer's Headquarters in Switzerland, and by the Swiss company to its distributors in China. Hence the invoice underlying the import declaration in China can be deemed a "fourth-party" invoice.

In such a scenario, we are aware that certain countries have taken a literal interpretation of the term "third party" to confine FTA benefits to business models operating within the strict definition of "three parties" being involved in the transaction. We understand that there is yet to be a consensus being developed amongst the ACFTA Signatories on this.

However, our view is that the term "third party" is intended to indicate that the entity issuing the invoice underlying the import is an entity different to the exporting and importing entity. As FTAs are meant for trade facilitation, if the above goods manufactured in Vietnam qualify as originating products under the ACFTA, benefits should apply in China regardless of how they are shipped or invoiced, so long as all parties involved the transaction have maintained proper records for compliance purposes.

Nevertheless, it is important to recognise that from an authority's perspective, the more complex a transaction is and the more it involves countries outside the jurisdiction of the ACFTA signatories, the more nervous they will feel that something untoward may be happening that they have no visibility of or control over. It is therefore important to have an open discussion with the authorities about the characteristics and commercial rationale for such transactions to make them feel comfortable that FTA benefits should and can apply.

Conclusion

The new rules of the ACFTA go a long way in allowing FTA benefits to be available for common commercial structures that were previously excluded from such benefits. Indirect invoicing or shipping are two of such structures. Nevertheless, any FTA can never be expected to be descriptive to a detailed procedural level, hence companies need to design procedures for customs compliance purposes with sufficient flexibility to allow for differences in implementation of such agreements by different government authorities.

In addition, it pays for companies to put themselves in the shoes of the authorities to understand their concerns. They can and should then proactively reach out to discuss and resolve any uncertainties or difficulties that the implementation of the new ACFTA rules is causing. Having a clear understanding of both the letter and spirit of the agreement will help reach such resolution as quickly and painlessly as possible.

Procedures for self-certification under the ASEAN Trade in Goods Agreement (ATIGA) in place

An origin self-certification scheme will be piloted in Singapore, Malaysia and Brunei for a period of one year before full implementation in all ASEAN countries by 2012.

Procedures for export from Malaysia

The Ministry of International Trade and Industry (MITI) has authorised 30 Malaysian manufacturers/exporters to participate in a one-year pilot project that began on 1 November 2010 for exports to Brunei and Singapore. Under this self-certification system, exporters will declare in their invoice that the products exported comply with the ATIGA Rules of Origin without having to apply for ATIGA Form D with a statement as follows:

“The exporter of the product(s) covered by this document (Certified Exporter No.....) declares that, except where otherwise clearly indicated, the products satisfy the Rules of Origin to be considered as ASEAN Originating Products under ATIGA (ASEAN country of origin:) with origin criteria:”

The declaration may be rubber-stamped or typed but must be signed with the name of the person making the declaration.

Procedures for export from Singapore

Singapore has implemented a new pilot ASEAN self-certification scheme to enable certified Singapore exporters to self-certify the origin of their exports to enjoy preferential tariffs under the ASEAN Free Trade Area (AFTA). Under

the scheme, certified exporters are allowed to declare that their goods have satisfied the origin criteria with a declaration of origin on a commercial invoice instead of obtaining an ATIGA Form D, as previously required. Should the commercial invoice not be available at the time of export, any other commercial document such as billing statements, delivery order, or packing list will suffice for qualification purposes.

As a result of the pilot scheme, more responsibility of origin certification falls on traders such as manufacturers and exporters. However, there are numerous benefits that a certified exporter can enjoy:

- Reduced administrative burden as there is no need to obtain a Form D;
- Increased competitiveness by reducing business costs through the simplification of the certification process;
- Improved timeliness as the self-certification can be conducted 24/7 to ensure that shipments of goods are not hindered by documentary application procedures;
- Smoother clearance of goods at the port of importation as procedures relating to Form D verification is no longer necessary under the self-certification scheme; and
- No need to submit a manufacturing statement to Singapore Customs for verification as the exporter makes a self-assessment whether the goods meets the requisite Rules of Origin.

Currently, Singapore exporters are also able to benefit from self-certification for exports under the EFTA–Singapore Free Trade Agreement (FTA), Panama–Singapore FTA, United States–Singapore FTA, Trans-Pacific Strategic Economic Partnership Agreement (with Brunei, Chile and New Zealand) and the Closer Economic Partnership Agreement with New Zealand.

Export controls

Australia – Licence-free transfer of defence goods to the United States

On 29 September 2010, the United States (US) Congress passed the Resolution of Ratification for the Australia–US Treaty on Defence Trade Cooperation (“Treaty”). This Treaty will provide greater access and sharing of equipment, technology, information and services between the two countries, setting a framework for two-way trade in defence articles required for specified end-use, operations, projects and research programmes by members of an “Approved Community”.

More importantly, the Treaty will permit the licence-free transfer of defence goods and services controlled pursuant to the International Traffic in Arms Regulations (ITAR) between certain persons in Australia and the US if the exports are in support of:

- certain combined military and counter-terrorism operations;
- certain co-operative security and defence research, development, production and support programmes; and
- projects where the end-user is the Australian or the US government.

The Australian and US governments must jointly agree on which projects, programmes and operations will qualify for processing under the terms of the Treaty. However, where the Treaty is in place, it will significantly reduce barriers for Australian companies to do business in the US and compete for work in the US global supply chains.

To become a member of the “Approved Community”, Australian businesses will be required to meet specific eligibility requirements which are still being negotiated between the parties.

Prior to the Treaty being ratified in Australia and the US, both countries are required to amend existing export controls legislation to meet the terms of the Treaty. Australia’s export controls legislation has not had any significant amendment since 1994. However, the prevention of proliferation is a high priority for the Australian government, as is the creation of an international best practice export controls system.

In accordance with its Treaty obligations, the Australian government will introduce new legislation which will not amend the current Defence and Strategic Goods List (DSGL) but will instead strengthen and expand Australia’s current controls.

The new Australian export controls legislation will be expanded to control the following activities:

- the brokering of controlled goods (regardless of whether the Australian broker is based in or based outside of Australia);
- the provision of services related to DSGL controlled goods (including repair, maintenance, training or service updates);
- the transfer of intangible technology related to DSGL controlled goods (including marketing materials of a technical nature); and
- commercial or non-controlled items that have a military end-use.

The *Defence Trade Control Bill* is expected to be tabled before the Australia Parliament in the second quarter of 2011.

China – Updated 2011 category of dual-use items and technologies

The Ministry of Commerce (MOFCOM) and the General Administration of Customs (GAC) jointly issued the 2011 category of dual-use items and technologies subject to import and export license on 30 December 2010. This is effective from 1 January 2011 and the 2010 Category of Dual-use Items and Technologies Administrated under Import and Export License [2009] No.120 has been abrogated simultaneously.

Since the issuance of “Administration Measures on Import and Export License for dual-use items and technologies” in 2006, MOFCOM and GAC had made regular adjustments to the category of products covered under this measure. The updated list for 2011 was intended to harmonise the covered items along with the revised version of the China Customs Tariff for 2011.

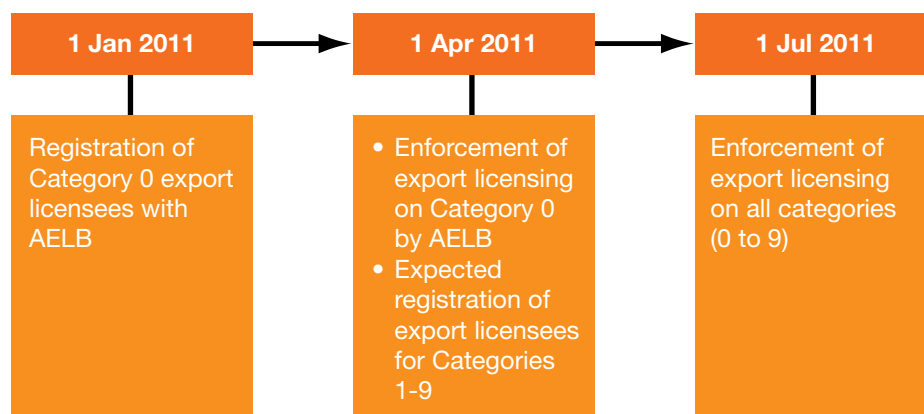
According to this announcement, importers of radioactive isotope should apply for the import license of dual-use item and technology subsequent to obtaining the approval from the Ministry of Environmental Protection (MEP). Importers should submit the import license of dual-use item and technology for customs clearance.

It is confirmed by MOFCOM that no change was made on the controlled dual-use items and technology itself. However, due to the adjustment of HS code, the HS codes of 4 items are impacted as below:

Category	Item no.	Description	2010 HS code	2011 HS code
Nuclear	30	Automatic pellets examining table (全自動芯塊檢查台)	9022.2900.10	9022.2990.10
Nuclear Dual-use	41	Chlorine trifluoride (三氟化氯)	2812.9000.10	2812.9019.10
Missile	17	Combustion adjusting device for combined jet engine (組合噴氣發動機的燃燒調節裝置)	9032.8900.20	9032.8990.20
Missile	87	Cerium and its alloys with granularity <500µm and Cerium content ≥ 97% (顆粒<500µm的鈰及其合金含量≥97%)	2805.3019.21	2805.3015.10

Malaysia – Updates to the implementation timeline of Strategic Trade Act 2010

Subsequent to earlier reports in the Sep/Oct 2010 issue of *Trade Intelligence*, the Ministry of International Trade and Industry (MITI) has introduced the implementation timeline of Strategic Trade Act 2010 during a seminar held on 10 November 2010.



Licensing authorities:

Category	Licensing Authority
Category 0 (nuclear material, facility and equipment)	Atomic Energy Licensing Board (AELB)
Category 1-9 (military and dual-use items)	Ministry of International Trade and Industry (MITI)

On 3 January 2011, MITI and the AELB released the “Category 0” list and registration forms. It was announced that companies exporting goods under Category 0 (nuclear material, facility and equipment) will be regulated by the AELB. They may apply to be registered exporters of products under this category starting 1 January 2011.

By 1 April 2011, relevant exports of Category 0 will require an export permit. Details released are available on the AELB website at www.aelb.gov.my/aelb/malay/teks/index.asp

As regards export permits for all other strategic items under the Strategic Trade Act (i.e. Category 1-9) regulated by MITI, the export permit application will commence from 1 April 2011 and will be fully enforced from 1 July 2011. These categories are:

- Materials, chemicals, microorganisms and toxins
- Materials processing
- Electronics
- Computers
- Telecommunications and information security
- Sensors and lasers
- Navigation and avionics
- Marine
- Aerospace and propulsion

Meanwhile, MITI has announced that Regulations and Orders were gazetted on 31 December 2010 and should be available from 15 January 2011 via the National Printer (Percetakan Nasional) and MITI’s website (www.miti.gov.my).

US – Importance of strong trade control for US subsidiaries

A recent Commerce Department action in the US highlights the need for multinational companies to have strong trade controls over their subsidiaries throughout the world as well as reconsider their interpretation of materiality.

According to a December 2010 Commerce Department press release, PPG Paints Trading (Shanghai), a subsidiary of PPG Industries, was fined a total of US\$3.75 million for violations of the Export Administration Regulations and the International Emergency Economic Powers Act. The company pled guilty to conspiring to sell and ship high-performance coatings to be used in a nuclear reactor in Pakistan without the necessary license. The value of the shipment was just over US\$30,000.

In this case, a China subsidiary purchased goods that are controlled under the Export Administration Regulations (EAR) from its parent in the US and subsequently sold the goods to a third-party Chinese distributor with the knowledge that that distributor would in turn sell and ship the goods for use in a nuclear reactor in Pakistan. While a US export license is not required for this type of good to be sold to China, it is required on sales to Pakistan.

US multinationals, as well as non-US companies that use US controlled goods or technology, are strongly encouraged to ensure that their overseas sales entities understand US re-export control requirements (as well as the national export control requirements in their own jurisdiction) and that their operational procedures include controls to prevent violations.

FTA focus

On the other hand, Malaysia will eliminate duties on 89.5% of all tariff lines from the date of entry into force of the Agreement. For the remaining tariff lines, 405 lines will have import duties eliminated by the third year of the implementation of the Agreement.

Sensitive products (5% of total tariff lines) will be reduced and capped at duty rate of 5% by the fifth year from the date of entry into force. Products excluded from the FTA by Malaysia totalled 138 tariff lines and consist of fireworks and explosives, ammunition, rice, tobacco and alcoholic beverages.

The FTA is awaiting ratification after both countries complete their internal procedures and is expected to be implemented in the first half of 2011.

Chile–Vietnam FTA progress

Vietnam and Chile have concluded the seventh round of negotiations for their FTA. Negotiations began in October 2008. Progress on tariff liberalisation, rules of origin and customs procedures were made in this round of negotiations.

Chile had proposed a reduction in Vietnam's proposed exclusion list. These products are those which Chile considers to be priority goods, gathered through rounds of industry consultations.

Vietnam's key exports to Chile include footwear, shirts and printers while Chile's key exports to Vietnam are bronze, fir, wine, machines and mechanical accessories. Chile's exports to Vietnam has increased over the years by 7.6% in 2009 compared to 2008 and 50% compared to 2005. Vietnam's exports to Chile have also increased and are 56% higher in 2009 compared to the previous year.

The eighth round of negotiations is to be held in the first half of 2011 in Hanoi.

Negotiations concluded

Japan-Peru FTA	14 November 2010
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Agreements signed

Chile-Malaysia FTA	13 November 2010
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Peru-South Korea FTA	15 November 2010
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South Korea-US FTA (2010 Supplemental Agreement)	3 December 2010
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Agreements entered into force

Hong Kong-New Zealand CEP	1 January 2011
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Laos: ASEAN-Australia-New Zealand FTA	1 January 2011
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Cambodia: ASEAN-Australia-New Zealand FTA	4 January 2011
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Canada and India launch free trade talks

India and Canada launched free trade negotiations on 16 November 2010 when the Minister of International Trade of Canada visited New Delhi. The announcement on the start of the free trade talks was made earlier during the G-20 Summit in Seoul.

The Canadian Minister had highlighted the importance of cooperation and creativity in reaching a broad and ambitious free trade agreement with India.

A joint study done on a free trade agreement between the two countries suggests that an FTA could boost Canada's economy and increase bilateral trade between the two countries by 50%.

Latin America deepens economic ties with Asia

Chile–Malaysia FTA signed

The Malaysia–Chile Free Trade Agreement (FTA) was signed on 13 November 2010. Negotiations began in June 2007 and this is Malaysia's first FTA with a Latin American country.

The Malaysia–Chile FTA covers, amongst others, Trade-in-Goods, Trade-in-Services, investment, trade remedies and economic cooperation. Under the Trade-in-Goods chapter, both countries will progressively reduce or eliminate tariffs on their industrial and agricultural products.

Upon entry into force, Chile will eliminate duties on 90.2% of all tariff lines. Other tariff lines will be eliminated by the fifth year from the date the Agreement entered into force.

Chile has excluded 96 tariff lines from the FTA, which comprise of wines and alcohol, tobacco, rice, wheat, sugar, honey and used pneumatic tyres.



Colombia and Singapore begin negotiations

Singapore and Colombia have begun negotiations on an FTA. Minister Sergio Diaz-Granados of the Colombian Commerce, Industry and Tourism Ministry commented that the agreement may be signed in 2012 “if the talks go well”.

This FTA will enhance Colombia’s interest to be closer to the Asia Pacific Economic Cooperation (APEC) member economies. Out of the 21 APEC economies, Colombia currently has economic ties with 15 of them. The negotiations were launched not long after Colombia announced the establishment of a commercial office in Singapore.

The Colombian Minister had offered to visit Singapore this year to establish a cooperation agreement as the first step to an FTA.

Peru and South Korea sign preliminary FTA

South Korea and Peru signed a provisional Free Trade Agreement (FTA) on 15 November 2010 during summit talks in Seoul. The negotiations for the FTA were concluded in August last year and the agreement is now awaiting ratification from both countries’ parliaments.

Under the FTA, all tariffs will be eliminated within 10 years of its implementation, with the exception of 107 agricultural and marine products such as rice, beef, onion and garlic. With the FTA, Peru is looking to increase its exports of natural resources while Korea is looking to increase its exports of electronic devices and automobiles.

The preliminary agreement was signed in English. Both countries plan to sign a more formal accord in 2011 with the legal texts translated into their own official languages with no changes to the contents of the Agreement.

European Union (EU)–India Free Trade Area

The 11th EU–India Summit was held on 10 December 2010 in Brussels, Belgium. Represented by the Indian Prime Minister and the President of the European Commission, the two sides discussed various issues of bilateral, regional and global concern including the contentious India–EU Free Trade Agreement.

In connection with the proposed FTA, the two sides took stock of the progress made by the trade negotiation committee to date and reaffirmed their intention to conclude discussions by March 2011. In this regard, negotiating teams from either side will now engage to iron out areas of divergence in terms of a finalised and agreed action roadmap.

Since the commencement of the trade talks, India and EU have held a series of discussion rounds including several meetings at the Ministerial level. While a broad understanding on many issues such as rules of origin, trade defense, trade facilitation and sanitary and phytosanitary measures (SPS)-related concerns has been reached, the two sides are yet to address specific complex issues in the areas of government procurement, investments, intellectual, property rights and sustainable development.

Hong Kong – China CEPA consultation on rules of origin (ROO)

Since 1 January 2006, 1,603 specified goods stated in Supplement II to CEPA have been granted zero tariff treatment when exported from the HKSAR to the PRC.

For goods beyond the 1,603 specified items, Hong Kong manufacturers may apply and request for ROO consultations in order to enjoy zero tariff treatment for exporting desired goods under CEPA. Such ROO consultations are held twice a year, and applications received on or before 31 January 2011 will be included in the first round of consultations in 2011.

To qualify, goods are required to fulfill the following principles which are consistent with the previous requirements for CEPA ROOs:

- The goods are wholly obtained in Hong Kong; or
- The goods have undergone substantial transformation in Hong Kong.

Processes including simple diluting, mixing, packaging, bottling, drying, assembling, sorting or decorating will not be regarded as substantial transformation.

Updates to the India–Singapore Comprehensive Economic Cooperation Agreement (CECA)

In line with the commitments made by it pursuant to the first CECA Review 2007, India has notified further reduction in tariffs for specific items imported from Singapore under the India-Singapore CECA. The trade reductions schedule the tariff reductions are given below:

Number of items	Category	Current FTA tariff range
307	Phased Elimination in Duty (5 stage)	0.4% - 6.0%
97	Phased Elimination in Duty (9 stage)	2.78% - 44.44%
135	Phased Reduction in Duty to 5% (9 stage)	6.39% - 13.33%

These items listed were initially excluded from the CECA; including articles of base metals, textiles, machinery and mechanical appliances, chemicals, plastic, rubber and textile articles.

In January 2008, India agreed to include these items for tariff reductions under the CECA via Protocol signed between the two sides. Two previous rounds duty reductions have already been offered on these goods in June 2009 and December 2009.

Indonesia and India agree to discuss tariff reduction

Indonesia and India have agreed to re-open discussion regarding the Indonesia–India Comprehensive Economic Cooperation Agreement (IICECA).

Some of the topics to be discussed are the non-tariff barriers and tariffs prevailing in trade between the two countries. India commented that Indonesia has applied several non-tariff barriers such as licensing requirements and sanitary and phytosanitary measures for agricultural products.

Indonesia indicated that products imported into India are often subjected to very high tariffs of 35 to 40% compared to only 5 to 10% for goods imported into Indonesia. The government intends to ask India to reach a new agreement on reducing tariff rates.

Indonesia and Iran begin negotiations

Indonesia and Iran held the first meeting for the negotiations for a Preferential Trade Agreement (PTA) between the two countries on 25 November 2010. The PTA will be the first step towards achieving agreement on the Indonesia–Iran Comprehensive Trade and Economic Partnership Agreement (II-CTEPA). Both countries agreed that to successfully pave the way for the II-CTEPA, the PTA must be finalised by end of 2011.

During the meeting, both sides reviewed market access commitments for tariff and rules of origin details. For market access, Indonesia offered 776 tariff lines (at 10-digit level) and Iran offered 522 tariff lines (at 8-digit level). The negotiation committee will be reviewing each tariff line for smooth implementation in the future.

Regarding the tariff reduction modalities, the negotiation committee also discussed the formula earlier proposed by Indonesia in 2008. As this formula is based on the margin of preference, the higher the import tariffs, the greater the tariff reductions will be. The meeting also discussed the rules of origin which will be essential to the implementation of the PTA.

Both sides have agreed to continue with the discussions and expect the PTA to be completed by the end of 2011, entering into force in January 2012.

South Korea – US FTA renegotiated

South Korea and US have reached an agreement to revise the FTA that was signed three years ago, but not yet ratified. The consensus was reached on 3 December 2010 in the form of a “Supplemental Agreement”.

The original FTA was not ratified as the US had concerns about the high export volume of automobiles into the US and the low exports from the US to Korea. Under the revised FTA, South Korea accommodated the demands of the US automotive sector and the US in return made concessions in other fields.

Some major points that were agreed in the Supplemental Agreement are:

- **Automotive standards** – South Korea has agreed to allow for 25,000 cars per US automaker to be imported into Korea if they meet the US safety standards.
- **Automotive emission standards** – South Korea will exempt low-volume importers from its ultra low emissions vehicle (ULEV) standard and relax the standards to comply with under the new Korean environmental standards.
- **Automotive tariffs elimination** – the US will be allowed to keep 2.5% duty on motor vehicles in place until year five of ratification of the FTA. South Korea on the other hand will immediately cut tariffs on US auto imports in half and fully eliminate the duty in year five of ratification.
- **Safeguard measures for automotive industry** – both sides have agreed to introduce safeguard measures for motor vehicles.
- **Duties on US-originating pork** – South Korea will only eliminate duties on US-originating pork in 2015, rather than 2013.

The revised FTA will require ratification by both countries. If the ratification process goes as planned, the revised FTA will enter into force in the second half of 2011.

Trans-Pacific Partnership negotiations advance

The fourth round of the Trans-Pacific Partnership (TPP) negotiations was held from 6 to 10 December 2010 in Auckland, New Zealand. This round is the first meeting since Vietnam and Malaysia had formally announced to join the TPP negotiations.

In this round, 24 negotiating groups advanced their work to develop the legal texts covering the full scope of commercial and trade-related issues between the negotiating countries. The technical details necessary to prepare the initial goods market access offers has been finalised. The countries plan to make their exchanges of offers in January this year.

One major progress is the discussions on the new horizontal, cross-cutting issues that will be in the TPP Agreement. These horizontal issues address questions such as how to assist the creation of efficient supply chain and how to create consistent and compatible regulations for ease of trade.

During the negotiations, the teams also received feedback from more than 100 stakeholders from business groups, NGOs and academics from the various negotiating countries. This exchange between the negotiators and the stakeholders on key issues has helped the negotiators make concrete proposals on how to facilitate balanced trade and advance the issues that is of common interest to the negotiating countries.

The fifth round of negotiations has been planned to take place in Santiago, Chile in February.

Country reports

China

GAC measures on the Administration of Origin for Import and Export under the ASEAN – China FTA

Note: also refer to our lead article for a wider discussion on the new ACFTA

GAC Decree [2010] No. 199 was issued on 26 November 2010 and came into effect from 1 January 2011. The original rule, i.e. GAC Order [2003] No.108 “Regulation of General Administration of Customs on the Implementation of < China and the ASEAN Framework on Comprehensive Economic Cooperation Agreement under the “China-ASEAN Free Trade Area of the Rules of Origin>” will be abolished at the same time.

A summary of the key changes of the new rule:

I. Clarification on direct transportation

Goods transported to China via a non-member country of the ASEAN-China FTA will be regarded as “direct shipment”, even if there is a change in mode of transport or if they were stored temporarily in a non-member country. However, they must meet the following conditions:

- Passing by the country or region due to geographic reasons or transport needs;
- Not being traded or consumed when passing through the country or region; and
- Not going through any treatment in the country or region other than such processing that is needed for loading/unloading or for keeping the goods in good conditions.

II. Provision of third-party invoicing

Third-party invoicing is provided for the new regulation. The consignee of the import or its agent must present to Customs of the importing party the Certificate of Origin (CoO) or a Movement Certificate along with the third-party invoice.

III. Clarification of late submission of CoO and submission of Supplementary Declaration and deposit

For ASEAN-originating goods, a supplementary declaration should be made to Customs if the CoO or Movement Certificate is not submitted by the consignee of the import goods or its agent.

The Regulation also addresses the tariff treatment of ASEAN-originating goods being imported into China that have been stored in an intermediate member country of the ACFTA.

The intermediate country (which must be a member country under the ACFTA) will be able to issue a Movement Certificate to facilitate the movement of ASEAN-originating goods into China.

Administrative measures for enterprises classification

The new Circular (GAC Order [2010] No. 197) came into effect on 1 January 2011. The GAC Order [2008] No.170 “Administrative Measures of the Customs of the People’s Republic of China for Enterprises Classification” was simultaneously abolished.



A key summary of the new rule is as follows:

I. The threshold of Category AA and A is reduced:

- For companies under “Category AA”, there is no requirement on yearly import and export value.
- For companies under “Category A”, the main change is the requirement on customs declaration error rate from 3% to 5%.

II. The condition for downgrading to “Category C” is loosened.

Previously, one of the conditions was that the company would be penalised by Customs with cumulative penalty amounts exceeding RMB 500,000 in one year. Under the new Regulation, the condition is adjusted to that “violation to be over 1% of the total shipment number of declaration forms and entrusted import/export registration forms, or penalties by Customs to be a cumulative amount exceeding RMB 1,000,000 in one year”.

Customs supervision over processing trade goods (II)

In order to adapt to the changing nature of Processing Trade, GAC Order [2010] No. 195 was issued on 1 November 2010, serving as an amendment to the previous regulation (GAC Order [2004] No.113). The new regulation is effective as of 5 December 2010. A summary of the changes is as follows:

- Bonded goods are allowed to be used for pledge without Customs’ approval. However, the mortgage of bonded goods is still not allowed unless with Customs’ approval.

- It is clarified that processing trade enterprises should segregate bonded goods and non-bonded goods. Bonded goods should be placed and stored in a premise specially registered with Customs. When processing trade enterprises alter the premise for bonded goods storage, it is necessary to obtain Customs’ pre-approval.
- The threshold to undertake outsourcing processing business is lowered compared with the old regulation. It is clarified that under certain situations, as long as the enterprise provides a deposit or bank guarantee to the Customs that is the equivalent to the amount of tax payable, the outsourcing processing business could be conducted.
- A revision of Article 27 of GAC Order [2004] 113 to clarify that “processing trade goods should be specially used for their due purpose exclusively.” In cases where raw materials are urgently needed for export production, the bonded and non-bonded goods and different types of bonded goods may be swapped with the pre-approval from Customs. However, this swap is only limited to the same enterprise, and should comply with the following principles: same specification, same size, same quantity and non-profit seeking.

With the update in regulation, it is recommended that companies engaged in processing trade undertake a self-assessment on the bonded/non-bonded goods management.

Foreign exchange verification system reform

To deepen the reform of the foreign exchange administration system and support the steady development of the foreign trade economy, the State Administration of Foreign Exchange (“SAFE”) has issued the Notice on the Foreign Exchange Verification System Reform under Importation of Goods (Huifa Circular [2010] No.57), which came into effect on 1 December 2010.

The key points for the reform:

- Verification to be based on the total value rather than transaction-by-transaction value;
- Desktop verification replacing on-site verification;
- The administration is changing to focusing on companies at the entity level, rather than focusing on specific transactions of companies. Accordingly, companies engaged in the import of goods will be classified to Category A, B or C according to the records in the “Foreign Exchange Verification System”. SAFE administers the import enterprises under a “Name List” (the Name List of Import Enterprises for Foreign Exchange Payment Management Purpose), which is shared by Customs nation-wide.

The reform and the systems to be implemented are similar to Customs’ existing administration method, which will facilitate the importation conducted by companies with higher grade and ease the administration of SAFE. It is recommended that importing enterprises study the regulation and apply for the higher grade.

India

Special Valuation Branch (SVB) Cell at Bangalore

Pursuant to the approval granted by the Central Board of Excise and Customs (CBEC) on 21 September 2010, a Customs SVB Cell was established in Bangalore, Karnataka.

The SVB Cell, operated with effect from 1 December 2010, is the fifth to be established in India. The other four Cells are located at Delhi, Mumbai, Chennai and Kolkata. The jurisdiction of the Bangalore SVB extends to the southern States of Karnataka and Kerala. Customs authorities at Bangalore have released a public notice detailing inter alia the procedure to be followed:

- All related party transactions entered into by Indian companies with overseas suppliers or purchasers are covered under the purview of the SVB investigation. In addition, companies having collaboration agreements, technical assistance agreements or any other contracts with related parties are also required to register with the SVB.
- The declaration regarding the relationship between the two parties is to be made by the importer at the time of filing of Bill of Entry. The appraising authorities would, in turn, refer at the matter to the SVB Cell.
- An Extra Duty Deposit (EDD) of 1% will be levied on all provisional imports pending completion of the SVB procedure. Companies under the 100% Exported Oriented Units (EOU) or Special Economic Zone status (SEZ) are outside the purview of this levy.
- Details regarding transactions in intangible property are also required to be submitted.



In line with the Customs Valuation (Price of Export Goods) Rules of 2007, the Bangalore SVB also requires exporting companies that are supplying to buyers outside India to comply with this procedure. However, on account of the fact that exports from India are zero-rated (except in cases of specified goods), the procedure, to the extent it applies to exports, is intended to provide a sound legal basis for the valuation of export.

Indonesia

Registered importer license and pre-shipment inspection report extended for two years

The Indonesian Ministry of Trade has renewed the regulation on the import of certain goods which were due to expire on 31 December 2010. Ministry of Trade regulation No 57/M-DAG/PER/12/2010, dated 29 December 2010, became effective on 1 January 2011 and will remain in force up to 31 December 2012. Implementation of this rule will be evaluated in one year's time.

The extension of this regulation addresses importers' questions about the certainty of the ending date of the previous regulation, which concerned the import of certain goods requiring a verification report or surveyor report as supporting documents in the customs clearance process. The goods to which this regulation applies are: food and beverages, textiles and textile products, footwear, electronics, toys, traditional and herbal medicines and cosmetics. Of these, only cosmetics products are exempted from the verification report requirement.

There are no major changes in the requirements of this new regulation. Instead it emphasises that the requirements and procedures to import certain products are effective until 31 December 2012, and extends the regulations to cover herbal medicine as a certain goods that need verification report for import clearance.

Korea cancels Indonesian paper dumping duty

On 20 October 2010, the Korean Trade Commission (KTC) cancelled the imposition of anti-dumping duty on Indonesian paper products. The cancellation was made after the KTC found there was no indication of injury suffered by Korean domestic producers from imports of Indonesian-originating paper products.

KTC previously imposed anti-dumping import duties for Indonesian paper products, particularly uncoated writing and printing paper. However, a 10-month investigation by the Korean anti-dumping authorities failed to find any indication of injury.

During the investigation, it was found that export of paper products from Indonesia to Korea was in decline. With this cancellation of the anti-dumping duty, Indonesian paper producers are now able to increase exports to Korea to a maximum of 50 thousand metric tons per year.

Implementation of Import Identification Number requirement

Ministry of Trade regulation 45/M-DAG/PER/9/2009, last amended by Regulation No 17/M-DAG/PER/9/2010, concerning Importer Identification Numbers (API) stated that API-U (for general importers), API-P (for manufacturer importers), and APIT (for importers of limited products) published before 2010 must be referred to the Ministry of Trade for renewal by 31 December 2010 at the latest.

This requirement is in line with the Ministry of Finance regulation No 124/PMK.04/2007 which was last amended by regulation No 220/PMK.04/2008 regarding importer registration. It stated that a Customs Identification Number (NIK) could be blocked if the API/APIT was no longer valid.

The impact of non-compliance with the above regulations is the rejection of the importation process by customs. As of 1 January 2011, customs authorities are using the computerised import system to check the API numbers recorded on import documents and incompatible data will result in automatic rejection of the import document.

To avoid rejection, the importer should make sure that the API license has been renewed in compliance with the Ministry of Trade regulation and update the importer registration database by submitting a notification letter to the Director of Information of Customs and Excise, enclosing:

- New API license;
- ID of the person responsible stated in the API license; and
- Copy of the Company's Certificate of Domicile.

The importer should study carefully and comply with the regulation above regarding API and importer registration to avoid problems and risks during the clearance process of imported goods.

New regulations:

- **188/PMK.04/2010:** Ministry of Finance regulation on import of goods carried by passengers, transportation crews, crossing borders, and shipment. The regulation letter was issued on 29 October 2010 and became effective on 1 January 2011.
- **54/M_DAG/PER/12/2010:** Ministry of Trade regulation on provision for importing of iron and steel. The regulation letter was issued on 28 December 2010 and became effective on 1 January 2011 until 31 December 2012.
- **58/M_DAG/PER/12/2010:** Ministry of Trade regulation on provision of used capital goods imports. The regulation letter was issued on 29 December 2010 and became effective on 1 January 2011 until 31 December 2011.

Malaysia

Wildlife conservation laws take effect in Peninsular Malaysia and Labuan

In our March/April 2010 edition of *Trade Intelligence*, we reported that the Wildlife Conservation Bill 2010 was tabled in Parliament for a second reading. The legal process is now completed.

According to a statement released by the Department of Wildlife and National Parks on 28 December 2010, the Act is now fully enforceable in Peninsular Malaysia and Labuan (i.e. excluding the states of Sabah and Sarawak).

This law requires importers and exporters (including re-export) of protected wildlife to hold valid license/permits, and comply with specific tagging or labelling requirements. The schedules of protected wildlife species differ from those of the Convention on International Trade in Endangered Species (CITES), which are regulated under a separate law – “The International Trade in Endangered Species Act 2008.”

The Wildlife Conservation Act 2010 (Act 716) can be viewed at www.wildlife.gov.my/pengumuman/Act%20716-%20English.pdf



Enhancing origin certification and verification cooperation under the ASEAN – Korea Trade in Goods Agreement

On 15 November 2010, Malaysia and Korea signed a Memorandum of Understanding (MoU) on Governing Mutual Administrative Assistance and Cooperation in Origin Certification and Verification under the ASEAN-Korea Trade in Goods Agreement, to ensure smooth implementation of the ASEAN-Korea FTA that entered into force on 1 January 2010.

Malaysia and Korea are planning new strategies to double trade in the next few years.

For the period of January to September 2010, Malaysia's bilateral trade with Korea grew by 36.4% to US\$12.11 billion, attributed mainly to increase in exports of crude petroleum, palm oil, crude rubber, manufactured products, electrical and electronic products and chemicals products.

Singapore

Non-preferential Certificate of Origin

Singapore Customs have updated the origin criterion for the issuance of non-preferential (ordinary) CoO to ensure it remains current and practical to traders in Singapore. The non-preferential CoO allows for Singapore exporters to guarantee overseas buyers that the goods exported are of Singapore origin.

The new updates took effect on 1 January 2011, allowing for addition of two alternative qualifying criteria on top of the existing local content requirement. These additional criteria are:

- Change in Tariff Classification rule
 - For goods to qualify, all foreign or undetermined raw materials used in production must undergo a change in tariff classification at the sub-heading level (CTSH) of the Harmonized System Tariff Nomenclature (HS); or
 - For foreign or undetermined raw materials that do not meet the CTSH rule, the *de minimis* rule may be applied. This states that the value of foreign or undetermined raw materials that do not change tariff subheading cannot make up more than 10% of the ex factory price.
- Chemical Reaction rule
 - For goods falling under the HS chapters 27 to 40, the Chemical Reaction rule may be applied as an alternative to the existing local content rule or CTSH rule. This rule applies mainly to mineral fuels, chemicals, plastics and rubber products.

These additional rules have no impact for manufacturers whose goods currently already qualify for the non-preferential CoO as they can continue to apply the local content rule. However, for new manufacturers or those who previously were not able to qualify based on the local content criteria now have more flexibility to choose a rule more suitable for their manufactured goods in order to qualify for the certificate.

The non-preferential CoO is issued by the Singapore Customs or by six other authorised organisations that have been authorised to do so by Singapore Customs. These are:

- the Singapore Commodity Exchange Limited (for rubber products only), Singapore Chinese Chamber of Commerce & Industry;
- Singapore International Chamber of Commerce;
- Singapore Indian Chamber of Commerce & Industry;
- Singapore Malay Chamber of Commerce & Industry; and
- the Singapore Manufacturers Federation.

Customs valuation rulings

In the January/February 2008 issue of the *Trade Intelligence*, we highlighted that the Customs Act would be revised to allow for the issuance of customs rulings for one or more of the following areas:

- the classification of the goods;
- the country of origin of the goods; and
- customs valuation, specifically how the goods are to be treated for the purposes of determining the customs duty, excise duty, or both, payable on the goods.

Singapore Customs has recently issued a revised set of administrative guidelines with regards to the application of customs valuation rulings with effect from 1 January 2011.

The application for a customs valuation ruling on a particular commercial arrangement must be supported with these documents:

- Letter of enquiry from the applicant;
- Issue to be considered;
- Comprehensive description for the arrangement;
- Business reasons for the arrangement;
- Copies of all relevant documents with relevant parts of the passages identified;
- Proposed treatment with reasons and references to the appropriate laws; and
- Previous request/enquiry on the same or a similar arrangement, if applicable.

Customs will evaluate and determine the customs valuation treatment of the arrangement. A customs valuation ruling will be issued, indicating the treatment for customs valuation and conditions to maintain the validity of treatment. This process may take up to 30 days, depending on the complexity of the arrangement and the completeness of the information furnished.

Waiver of security amount of SGD2,000 and below

Importers in Singapore are required to lodge a security for transactions involving dutiable goods or for storage of goods pending duty/GST payment, release of goods pending classification, temporary imports for repairs, etc, either as a bank/finance company guarantee or insurance bond. Singapore Customs has reviewed the security requirement and has decided to waive it if the amount required is at or below SGD2,000.

The waiver for amounts SGD2,000 and below was implemented with immediate effect in November 2010. However note that the Singapore Customs reserves the right to impose security requirements at any time on companies that are considered to have a poor compliance record.

Implementation of the South Korea–Singapore Mutual Recognition Arrangement

As mentioned in the May/June 2010 issue of *Trade Intelligence*, Singapore Customs had signed a Mutual Recognition Arrangement (MRA) in June 2010 with Korea Customs Service to enhance global supply chain security and to better facilitate the movement of legitimate goods between Singapore and Korea.

The MRA took effect from 1 January 2011 and as part of the MRA, Singapore's Secure Trade Partnership-Plus (STP-Plus) and South Korea's Authorised Economic Operator (AEO) companies will be recognised as being of lower risk and subsequently can enjoy a higher level of facilitation at clearance in both countries.

To enjoy the benefits under the MRA, Singapore importers should input a special code in their trade permit application received from the Korea AEO exporter. Similarly, STP-Plus companies in Singapore will receive a unique STP-Plus code from Singapore Customs and should inform their Korean importers of their code for declaration to Korea Customs when importing into Korea. Should the permit declaration be outsourced to a declaring agent the code should be provided directly to the declaring agents in order to enjoy the facilitation during the import clearance.

Taiwan



ECFA Product Specific Rules of Origin and administrative process on Preferential Rules of Origin

On 27 December 2010, the Ministry of Finance announced the product specific rules (PSR) of origin and administrative process on preferential rules of origin applicable to goods listed in the Early Harvest List (EHL) under the Economic Cooperation Framework Agreement (ECFA) between Taiwan and mainland China.

The preferential tariff treatment of goods listed in the EHL took effect on 1 January 2011. To enjoy the preferential tariff treatment (PT), the goods need to be either wholly obtained or produced in Taiwan or China or meet the product specific rules of origin.

In addition, companies who import EHL goods into Taiwan or China should follow the import/export and CoO procedures stated in the administrative process of the preferential rules of origin. The PSR and administrative process are summarised below:

Product Specific Rules of Origin (PSR)

When imported goods are made from raw materials which do not originate from Taiwan or China, the goods must undergo a substantial transformation in Taiwan or China to be considered as Taiwanese or Chinese origin. Substantial transformation occurs when:

- Goods undergo certain type(s) of manufacturing/processing;
- There is a change in the first two, four, or six digits of the tariff classification code after processing; or
- A minimum percentage of regional value content is met.

Table of PSR of Origin for EHL goods made in China

Product Specific Rules (PSR)	Number of Goods in EHL
4 digit change in HS code	190
4 digit change in HS code (excluding change from heading 2823)	1
2 digit change in HS code	19
4 digit change in HS code or meets minimum 40% added value	17
6 digit change in HS code and meets minimum 50% added value	8
4 digit change in HS code and meets minimum 40% added value	24
4 digit change in HS code and meets minimum 50% added value	8
Total	267

Table of PSR of Origin for EHL goods made in Taiwan

Product Specific Rules (PSR)	Number of Goods in EHL
Fish/aquaculture products should meet certain requirements	4
Applies only to export products: naturally or non-processed products or cultivated plants	7
Minimum 50% added value	2
4 digit change in HS code	301
4 digit change in HS code, excluding certain HS headings	4
2 digit change in HS code	93
4 digit change in HS code or meets minimum 40% added value	9
4 digit change in HS code or meets minimum 45% added value	2
6 digit change in HS code and meets minimum 45% added value	7
6 digit change in HS code and meets minimum 50% added value	12
4 digit change in HS code and meets minimum 40% added value	42
4 digit change in HS code and meets minimum 45% added value	1
4 digit change in HS code and meets minimum 50% added value	54
2 digit change in HS code and meets minimum 40% added value	1
Total	539

Administrative process of Preferential Rules of Origin

The administrative process of preferential rules of origin which applies to EHL goods includes administrative details on the ECFA certificate of origin (CoO) such as the standard format, application, issuance, re-issuance, recordkeeping, related importation duties, validity examination and rejection of preferential tariff treatment.

Companies whose goods are covered under the EHL would need to take note of the following factors prior to enjoying the preferential tariff treatment:

- Confirm that the goods are covered under the EHL;
- Apply and obtain an ECFA CoO prior to exporting the goods;
- Declare the imported goods as PT on the import declaration and provide a valid ECFA CoO;
- The PT only applies to goods with shipping date of on or after 1 January 2011;

- Only direct shipment of goods in the EHL may qualify for PT, with the following exceptions:
- Indirect shipment occurs because of geographic reasons or transportation needs;
- During shipment through a third country, the goods are not traded, consumed, or undergo other commercial activities; or
- At the third country, the goods are not subject to processing excluding handling, repackaging or maintenance required to keep the goods in good condition.
- The manufacturer or exporter should maintain related export declaration documents in case of future inquiry from the customs authorities in the country of import and/or export.

For companies with goods that fall under the EHL, it is essential to obtain a valid ECFA CoO prior to exporting the goods on or after 1 January 2011, to obtain the PT.

Proposed amendments to establishing and managing duty free shops in Penghu, Kinmen and Matsu

On 8 December 2010, Taiwan's Ministry of Finance proposed to amend the regulations of "Establishing and Managing Duty Free Shops in Penghu, Kinmen and Matsu" ("Regulations").

The main amendments include:

- expanding the scope of the regulations to include the outlying islands of Lutao (Green Island), Lanyu (Orchid Island) and Ryukyu regions, in addition to the original Penghu, Kinmen and Matsu areas; and
- management of duty free shops:
 - Sale of duty free products to travellers including Taiwanese people, foreigners, and people from local outlying islands;
 - Establishment and management of duty free shops are under the supervision of Customs authorities;
 - Goods sold in duty free shops may contain foreign products, products from other bonded or free trade areas or products from non-bonded areas;
 - Bonded goods may be stored in the duty free shops for a maximum of two years; and
 - The maximum amount of goods a traveller may purchase at duty free shops is NTD30,000 (approx. USD1,000).

The underlying goal of the regulations remains unchanged, which is for efficient establishment and management of duty free products sold in duty free shops located in the outlying islands mentioned above. Once the Legislative Yuan approves and passes the proposed amendments in early 2011, the regulations will take effect.

Thailand

Thai Customs' tariff restructuring plans

The Thai Customs Department has sent a proposal to the Ministry of Finance regarding the restructuring of the Thai Customs Tariff for approximately 2,500 products.

The main objectives of the suggested changes are to enhance the competitive advantage of domestic producers and to protect domestic producers by restructuring only products categories which cannot be produced domestically in order to minimise the negative impact on domestic producers. Also, the proposed changes are to minimise ambiguity on the classification of certain products and to eliminate the differences in tariff rates on 'similar' products for which there is no clear guidance on how to categorise these.

The exact details on the changes or the date of entry into force of the revised Customs Tariff have not been released yet. However, we understand that the changes are scheduled to be implemented in the second half of 2011 and will include the reduction of duty rates (e.g. duty reduction for certain automotive parts from 30% to 10%) and align the duty rates (i.e. 1% for raw materials goods, 5% for semi-raw materials goods and 10% for finished goods) for 'similar' products.

Excise tax exemption on imported batteries for export production

The Excise Department had proposed to the Ministry of Finance to exempt the excise tax on imported batteries that are used as raw materials for exported products.

Currently, imported batteries that are used as raw materials for certain exported products (e.g. vehicles, air-conditioners) as prescribed in Section 101 bis of the Excise Tax Act B.E. 2527 are entitled to an exemption of excise tax. However, manufacturers who import batteries for producing other exported products (e.g. video recorders, televisions, computers and mobile phones) are not entitled to this exemption or any reimbursement of excise tax. The purpose of this proposed exemption is to increase the competitive advantage for Thai manufacturers of home appliances and electronic devices who are currently subject to a 10% excise tax on imported batteries for export productions.

The Ministry of Finance has agreed to this proposal even though it would cause an estimated loss of 333 million baht on excise tax collection. This proposed incentive is still being debated in the Thai Cabinet.

Vietnam

Vietnam no longer accepts 'old' CEPT Form D

Following **Official letter 11122/BCT-XNK** dated 4 November 2010 by the Ministry of Industry and Trade (MoIT), Vietnam Customs only accept the new ATIGA Certificate of Origin Form D for ASEAN-originating from 13 November 2010.

Goods accompanied by the old CEPT Form D issued from 13 November 2010 are no longer eligible for the preferential tariff rates under CEPT (ATIGA) scheme in Vietnam.

Export/import procedures of petrol and oil

On 26 October 2010, **Circular 165/2010/TT-BTC** was issued, providing the customs procedures for importing and exporting petrol and oil.

The new regulations are similar to those provided in Circular 70/2009/TT-BTC, with some amendments as highlighted below:

- For materials imported for petrol and oil production or processing, notification of result of quality inspection needs to be submitted to Customs before carrying out import procedures – there is some difference in wording as compared with Circular 70.

- When there are discrepancies between the actual imported or exported petrol volumes and the declared volumes as mentioned in the invoices or contracts (due to the goods nature), the volumes subjected to duties would be determined based on the examined figures at the means of transport or at the handling port – the new Circular provides more detailed instructions compared with Circular 70.
- For petrol and oil under temporary importation, notifications of the results of the quality inspection of imported petrol and oil must be submitted within seven working days (instead of five working days previously) from the time of completion of pumping of petrol and oil from the means of transport into inland depots, tanks or other means of transport

The Circular took effect on 10 December 2010 and replaced Circular 70/2009/TT-BTC.

Import quotas for rice and unmanufactured tobacco originating from Laos in 2011

The 2011 import quotas for rice and unmanufactured tobacco originating from Laos remain unchanged compared to the 2010 import quotas i.e. 40,000 tons for rice per year and 3,000 tons for unmanufactured tobacco per year.

To be eligible for the 0% in-quota tariff rate, these goods originating from Laos must be imported within the quota level and be accompanied by an appropriate Country of Origin "Form S". Without this Form, imported goods will be subjected to either the MFN rate or the ATIGA rate ranging from 20% to 40%.

Circular 38/2010/TT-BCT issued by the MoIT on 2 December 2010 will take effect from 17 January 2011 and will expire on 31 December 2011.



New export/import duty rates for 2011 officially released

In order to follow ASEAN and WTO commitments, the MoF decided to reduce the import duty rates for some tariff lines by issuing **Circular 184/2010/TT-BTC** on 15 November 2010.

Key tariff changes include:

- Import duty rates reductions for certain agriculture products, automotives, wine, spirits, chemicals and furniture etc.;
- Increased duty rates for some products such as grain used for animal feeding; and
- For export duty rates, some tariff codes will enjoy lower rate rates such as titan ore (TiO₂) and timber. However, there are some tariff codes related to coal and gold ore that will have higher export duty rates.

The new export/import duty rates would be effective from 1 January 2011.

New guidance on customs valuation for imported and exported goods

On 15 December 2010, the Ministry of Finance released **Circular 205/2010/TT-BTC** providing new guidance on customs valuation for imported and exported goods which are regulated in Decree 40/2007ND-CP.

Below are some key points to take into consideration:

- Provision of methods for determining dutiable value for exported goods, allowing companies to determine the dutiable value after 90 days from the exportation date.
- The price risk management list is extended to cover exports.

- In Circular 40, companies can declare “free-of-charge” goods up to 10% value of the imported shipment and Customs will consider not calculating import duty on these products. However, under Circular 205, the dutiable value of “free-of-charge” goods is determined as the dutiable value of non-commercial goods, based on the transaction value method (method 1) of imported goods.
- For imports which are processed under a toll manufacturing contract, the dutiable value will be determined by the processing fees plus the value of raw materials which were supplied by the foreign party (clearly stated in the contract), and used in the process of manufacturing these imported goods, and other adjustments. The dutiable value of these goods does not include the value of raw materials exported from Vietnam to the foreign party for the process of manufacturing the imported goods. This was not provided by Circular 40.
- Provision of method for determining dutiable value for goods imported from bonded warehouse, according to 6 methods of determining dutiable value.
- Approving documents generated by fax, or email in customs dossiers;
- Providing advance origin ruling form;
- Allowing combination of declarations;
- Providing timeline for assessing deferral for export production activities;
- Providing more detailed guidance on bank guaranty for bulk cargo;
- Providing more detailed customs procedure for export processing enterprise (EPE);
- Providing more detailed customs procedure for bonded warehouse;
- Providing guidance on declaring machinery classified in chapter 84, 85 as per note 3,4,5 part XVI of Vietnam import-export goods list;
- Amending conditions for import duty exemption, according to Decree 87/2010/ND-CP;
- Providing more detailed provision for registering import duty exemption list; and
- Providing more detailed conditions for duty refund.

The Circular, being effective from 29 January 2011, will replace Circular 40/2008/TT-BTC.

New Circular on customs procedure

On 6 December 2010, the Ministry of Finance released **Circular 194/2010/TT-BTC** providing new guidance on customs procedures for imports and exports. Below are some key amendments in the new Circular to take into consideration:

- Providing detailed guidance for checking imported and exported goods;

The Circular will be effective from 20 January 2011 and replace Circular 79/2009/TT-BTC. We recommend companies to review the impact of the Circular on such import-export activities.

Around the world

ICC publishes Incoterms 2010

Incoterms provide an internationally recognised set of rules for the interpretation of the most commonly used trade terms in foreign trade. They are published by the International Chamber of Commerce (ICC), explaining the obligations of the buyer and the seller in the contract of a sale of goods.

The rules clarify the responsibilities of each party with regard to carriage and/or insurance arrangements, the costs for which each party is responsible and the point at which risk passes from one party to the other.

The Incoterms rules are revised every ten years to reflect changes in commercial practice. The main features of the Incoterms 2010 rules, which came into effect from 1 January 2011 are:

- The reduction in the number of Incoterms rules from 13 to 11 by introducing two new rules that can be used irrespective of the mode of transport. These are DAT (Delivered at Terminal) and DAP (Delivered at Place):
 - DAT replaces DEQ (Delivered ex-Quay).
 - DAP replaces DAF (Delivered at Frontier), DES (Delivered ex-Ship) and DDU (Delivered Duty Unpaid) and can be used for goods delivered at any named destination, ready for unloading.

- Grouping of the rules into those that can be used for any mode(s) of transport and those that are specific for sea and inland waterway transport, compared to Incoterms 2000 where the terms were ranked according to the responsibility of the seller;
- Formal recognition that the rules can be applied to both international and domestic sale contracts, as a result of which it is clearly stated, where necessary, the need to comply with import or export formalities.

It is worth noting that, with regard to FAS, FOB, CFR and CIF, the guidance notes state that: “[term] may not be appropriate where goods are handed over to the carrier before they are on board the vessel, for example goods in containers, which are typically delivered at a terminal. In such situations, the [FCA (instead of FAS or FOB), CPT (instead of CFR) or CIP (instead of CIF)] rule should be used.”

This builds on the guidance notes for FOB, CFR and CIF from Incoterms 2000, which stated that: “If the parties do not intend to deliver the goods across the ship’s rail, the [FCA (instead of FOB), CPT (instead of CFR) or CIP (instead of CIF)] term should be used”

FOB, CFR and CIF have been incorrectly used for container traffic for many years and this is a timely reminder that other terms are more accurate, although the contracts will need to be clear as to who is responsible for consolidation and loading charges.

The wording of Incoterms rules 2010 goes further than the previous rules to clarify the obligations of each party and avoid any doubts as their respective responsibilities, which should make it easier for businesses to interpret the Incoterms 2010 rules correctly. As with previous versions, it should be noted that the Incoterms 2010 rules do not give a complete contract of sale, do not refer to the price paid or payable and do not determine the point at which title passes between the parties.



WTO reports drop in anti-dumping investigations and measures

On 6 December 2010, the WTO reported that during the first half of 2010, the number of new anti-dumping investigations initiated decreased by 29% in comparison with the corresponding period of 2009. The number of new measures applied in the first half of 2010 also decreased compared to the same period in 2009.

Sectors affected by the new anti-dumping investigations

The products most frequently affected by the new investigations during the first half of 2010 were in the sector of base metals, chemicals, plastics and rubber, and plaster and ceramic products. Of the 20 reported initiations relating to the base metals sector, the majority were reported by India, Indonesia, Colombia, the EU, Thailand and the US.

Countries involved and sectors affected by the new anti-dumping measures

Concerning application of new final anti-dumping measures, India came in first place, reporting 17 new measures during the first half of 2010. Products exported from China were the most frequent subject of new measures during the first half of year 2010, accounting for nearly half of the new measures during the period.

The sectors most frequently affected by the new measures applied during the first half of year 2010 are as follows:

Sector	New measures
Base metals	21
Chemicals	12
Plastics and rubber	11
Textiles	6
Machinery and Electrical Equipment	5
Footwear	2
Plaster and Ceramic	2
Total	59

Concerning the measures applied on products in the base metals – most affected sector, the following countries applied the new measures:

Country/Territory	Number of measures applied
India	7
China	3
Canada	2
Turkey	2
US	2
EU	1
Mexico	1
Total	18

The data reported above are from the semi-annual reports reported by the Committee on Anti-dumping Practices.

WTO disputes

DS371: Thailand – Customs measures taken on cigarettes from the Philippines

The WTO Panel released its report in November 2010 requesting Thailand to bring its inconsistent measures relating to customs valuation requirements in line with its WTO obligations.

This relates to a case brought up by Philippines regarding numerous Thai fiscal and customs measures affecting the import of cigarettes. The measures included Thai customs valuation practices, excise tax, health tax, TV tax, VAT regime, retail licensing requirements and import guarantees imposed on cigarette importers. The Philippines claimed that these measures were against Thailand's obligation in the GATT 1994.

In addition, the Philippines made separate claims in respect to various customs valuation measures affecting imports of cigarettes. The Philippines claimed that as a result of these measures, Thailand acted inconsistently with various provisions of the Customs Valuation Agreement (WTO CVA) and the interpretative notes to these provisions and various provisions of the GATT 1994. According to the Philippines, Thailand did not use the transaction value as the primary basis for customs valuation as required and failed to follow the sequence of valuation methods as stated in the WTO CVA, rather it used a valuation method with no basis in the CVA.

The Philippines also claimed that Thailand's ad valorem excise tax, health tax and TV tax, on both imported and domestic cigarettes, were inconsistent with the GATT 1994 which requires the publication of trade laws and regulations of general application. The Philippines also claimed that Thailand's VAT regime is inconsistent with the GATT 1994.

In addition, the Philippines claimed that Thailand's dual license requirement of tobacco and/or cigarette retailers having to hold separate licenses to sell domestic and imported cigarettes is inconsistent with the GATT 1994, because it provides less favourable treatment for imported products than for like domestic products.

We will be following up with a more in depth analysis of this dispute case, in the next issue of the *Trade Intelligence*.

DS399: US – Update on measures against imports of passenger vehicles and truck tyres from China

On 13 December, 2010, the panel concluded that in US' imposition of the transitional safeguards measure on 26 September 2009 in respect of imports of tyres from China, is not compliant with its obligations under the GATT 1994.

This case started on 11 September 2009 where the US announced it will impose safeguard measures on imports of certain passenger vehicle and light truck tyres from China.

As consultations between US and China did not resolve the issue, a panel was established in January 2010. The EU, Japan, Taiwan, Turkey and Vietnam reserved their rights as third parties. On 8 November 2010, the final report issued to the parties recommended that the US comply with its obligations and withdraw the safeguard measure.

European Union

European Commission (EC) publishes 2011 combined nomenclature

The EC has published the latest version of the Combined Nomenclature (CN). The CN represents the first 8 digits of any customs commodity code number (CCN) and is updated every year to take into account changes in requirements relating to statistics and to commercial policy, changes made in order to fulfil international commitments, technological and commercial developments and the need to align or clarify texts. The latest version is Commission Regulation 861/2010 of 29 October 2010 and would apply from 1 January 2011.

The 2011 version of the CN amends a number of CCNs, which are primarily aimed at consolidating the Tariff by reducing the number of subheadings where divisions are no longer justified. As of 1 January, new CCNs must be used for any customs declarations, as use of the old (incorrect) codes could potentially delay the clearance of the goods.

To assist companies to identify products affected by these changes, UK's HM Revenue and Customs (HMRC) published correlation tables providing a comparison of old and new codes on the "uktradeinfo" website on 2 November 2010.

Changes have been made within the following Chapters: 31, 39, 41, 42, 46, 48, 57, 66, 68, 69, 71, 74, 76, 78-80, 82-86, 89, 90, 91 and 93-96. The most changes are within Chapter 85, principally relating to television monitors, but changes within the following Chapters may be of interest to readers:

- 4203 (clothing accessories of leather or composition leather)
- 5705 ("other" carpets and other textile floor coverings)
- 6601 (umbrellas)
- 6907 (unglazed ceramic tiles); 6908 (glazed ceramic tiles)
- 7106 (silver)
- 7115 (other articles of precious metal)
- 7116 (articles of precious or semi-precious stones)
- 7117 (imitation jewellery)
- 7118 (coins)
- 9105 (clocks)
- 9106 (stop watches)
- 9403 (furniture)
- 9405 (lamps)
- 9504 (games)
- 9506 (sports equipment)

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